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Legislative Council

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Publication of Chapters 7 to 10 of Part II of "A Companion to the history, rules and practices of the Legislative Council of the Hong Kong Special Administrative Region"

Purpose

This paper presents to the Legislative Council ("LegCo") Chapters 7 to 10 of Part II of "A Companion to the history, rules and practices of the Legislative Council of the Hong Kong Special Administrative Region" ("the Companion") at its meeting of 8 July 2015.

Background

2. Pursuant to the decision of The Legislative Council Commission ("the Commission")¹, the Companion is being written² to provide details about the Council's rules and practices as well as the historical development of its organization and procedures. The Companion serves as a source of reference for LegCo Members, Members' staff, staff of the LegCo Secretariat, public officers and members of the public on how the rules and procedures of LegCo work in practice and the way LegCo conducts its business.

¹ The decision was made at the Commission meeting on 20 November 2012.

² Production of the Companion is overseen by a supervisory committee chaired by the Secretary General and the Chief Writer of the Companion is Ms Pauline NG, a former Secretary General.

The Companion

3. The Companion, targeted to be completed by January 2016 with its first edition to be published before April 2016, comprises the following three parts:

- (a) Part I (Chapters 1 to 6) discusses the history, organization and procedures of LegCo;
- (b) Part II (Chapters 7 to 14) deals with the conduct of business in the Council and committees; and
- (c) Part III (Chapters 15 to 16) focuses on the Legislature's partnership with people.

4. Part I (Chapters 1 to 6) of the Companion, entitled "An introduction to the Legislative Council, its history, organisation and procedures"³ had been completed and was tabled at the LegCo meeting of 18 June 2014.

5. Preparation of Chapters 7 to 10 of Part II of the Companion (**Appendix**) covering the following subjects is now completed:

- (a) Conduct of business in the Council (Chapter 7);
- (b) Decorum and order at Council meetings (Chapter 8);
- (c) Questions on the work of the Government (Chapter 9); and
- (d) Motions (Chapter 10).

6. Similar to the arrangement for publication of Part I of the Companion, Part II of the Companion will be uploaded onto the LegCo Website. Hyperlinks will also be provided for this electronic version to enable easy access to the cross referenced documents. In addition, hardcopies of the Companion will be made available to tertiary institutions, public libraries, etc.

³ <http://www.legco.gov.hk/yr13-14/english/counmtg/papers/cm0618as-143-e.pdf> (LC Paper No. AS 143/13-14).

7. Drafting of Chapters 11 to 14 of Part II and Part III (Chapters 15 and 16) of the Companion is targeted for completion in November 2015 and January 2016 respectively.

Legislative Council Secretariat
July 2015



**A Companion to the history,
rules and practices of the Legislative Council of
the Hong Kong Special Administrative Region**

Part II
Conduct of business in the Council and committees
(Chapter 7 to Chapter 10)

Printed by The Legislative Council Commission
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Chapter 7

Conduct of business in the Council

7.1 Decisions of the Legislative Council are made at Council meetings. Although the HKSAR Legislature has mainly adopted the operation model of the pre-1997 Legislature in transacting its business, some developments which have taken place since the establishment of the HKSAR have also resulted in changing the business pattern of the Legislature. Nevertheless, the deliberative nature of the Council's conduct of its core business has remained unchanged. In this Chapter, detailed explanation is given of the cycle of business of the Legislature in each session, the order of business at each regular meeting of the Council and how decisions are made. The Chapter also provides the historical background of the nature of business dealt with in the Council and the procedures for dealing with each item of business on the Agenda of the Council including the voting method.

Business cycle in each session

7.2 There are 4 sessions in each 4-year term of the Legislative Council. As explained in Chapter 2,¹ the dates on which a legislative session is to begin and to end are determined by the Chief Executive of the HKSAR.² Since the second session of the First Legislative Council,³ it has been a standing arrangement that a session commences in October and ends in July of the following year.

7.3 Originally, it had been the practice that the business of a session of the Legislative Council commenced with the delivery of the Chief Executive's Policy Address in the Council. This practice was changed during the period from 2002 to 2005 and also in 2012. Since the 2012-2013 session, the Policy Address is delivered in January, i.e. 3 months after the commencement of a session in October.⁴ As explained in Chapter 5⁵, the Government considers

¹ See Chapter 2, para. 2.56.

² Section 9(2) of the Legislative Council Ordinance (Cap. 542), as reflected in Rule 11 of the Rules of Procedure.

³ The first session of the First Legislative Council commenced on 1 July 1998 as the term of the Council commenced on 1 July 1998.

⁴ The Policy Addresses in the 2002-2003, 2003-2004 and 2004-2005 sessions were delivered on 8 January 2003, 7 January 2004 and 12 January 2005 respectively. In the 2012-2013, 2013-2014 and 2014-2015 sessions, the Policy Addresses were delivered on 16 January 2013, 15 January 2014 and 14 January 2015 respectively.

⁵ See Chapter 5, para. 5.22-5.26.

7. Conduct of business in the Council

that the narrowing of the time gap between the Policy Address and the Budget (scheduled for late February) would help ensure speedy implementation of new initiatives announced in the Policy Address. As a result of this change, the current practice is that discussions on the new initiatives of the Government for the coming year take place from January onwards with the debate on the Motion of Thanks held in February. Following the announcement of the Budget when introducing the Appropriation Bill in late February, scrutiny of the Estimates will take place with the second reading debate on the Appropriation Bill to be resumed before the end of April. It usually take another few meetings to complete the remaining legislative process of the Bill. In the meantime, legislative proposals for implementing the revenue measures in the Budget are proposed and scrutinized aiming at completion of the legislative process within a permissible timeframe. For those proposals which are covered by Public Revenue Protection Orders made by the Chief Executive under the Public Revenue Protection Ordinance (Cap. 120)⁶, the legislative process for their enactment into law must be completed within 4 months from the day when these orders came into force (which is usually the date when the Chief Executive signed the order following his approval of the introduction of the Appropriation Bill into the Legislative Council). As regards revenue measures to be implemented through new legislation or amendment to current legislation, the timetable for introducing the proposed legislation is determined by the Government.

7.4 As all bills will lapse only at the end of a term⁷, the scrutiny of a bill introduced in one of the first three sessions may continue in the following session(s). It is not uncommon that a bills committee makes use of the summer recess when the Council is not in session to continue the study of a bill so that proceedings on the bill in the Council may be resumed when the Council starts to meet in October.

7.5 Within the cycle of business covering the Policy Address, Motion of Thanks and Appropriation Bill (being fixed items of business set out in the Rules of Procedure) normally from January to May or June, the Council also deals with its ongoing legislative work as well as other business of the Council at its regular meetings from October to July.

⁶ Section 5(2)(d) of the Public Revenue Protection Ordinance (Cap. 120) provides that, among other things, a public revenue order expires and ceases to be in force "upon the expiration of 4 months from the day on which the order came into force".

⁷ Section 9(4) of the Legislative Council Ordinance (Cap. 542).

Meetings

Council meetings

7.6 As explained in Chapter 2, Council meetings are scheduled for each Wednesday in a session except public holidays and during long holiday breaks and the Budget period.⁸ The date and time of each meeting of the Council are determined by the President⁹ with the exception of the date of the first meeting of a new term which is specified by the Chief Executive¹⁰. The dates of the Council meetings of the first session of a term are announced as soon as the President is elected at the first meeting, while the dates of the meetings in the subsequent sessions are made known to Members and the Government before the end of each session, normally in early July. The President may at any time defer or advance the date and time of meeting after he has determined the meeting schedule.¹¹ Written notices of the meetings of the Council are given by the Clerk to Members at least 14 clear days before the day of each meeting but in case of emergency the President may dispense with such notice.¹²

7.7 When the President is of the opinion that the Council is to continue to meet on another day to complete the unfinished business on the Agenda, the President may suspend the meeting and order the meeting to resume on another day for that purpose.¹³ Under Rule 14(5) of the Rules of Procedure, the President may at any time suspend a meeting or adjourn the Council.¹⁴

7.8 It has been the practice since April 2005 that each meeting starts at 11:00 am¹⁵ and continues until all items on the Agenda for the meeting are dealt with. In the event that the meeting is unlikely to end before midnight, the practice before March 2015 was that the President would suspend the

⁸ The Budget period refers to the period from the Council meeting at which the Appropriation Bill is introduced into the Council, which usually takes place in end February, to the Council meeting at which the Bill is resumed for second reading debate. During this period, the Finance Committee examines the Estimates referred to it by the President under Rule 71(11) of the Rules of Procedure, in a series of special meetings.

⁹ Rule 14(1) of the Rules of Procedure. This subrule reflects the power and function of the President under Article 72(3) of the Basic Law.

¹⁰ Section 10(1) of the Legislative Council Ordinance (Cap. 542).

¹¹ Rule 14(3) of the Rules of Procedure.

¹² Rule 14(2) of the Rules of Procedure.

¹³ Rule 14(4) of the Rules of Procedure.

¹⁴ Rule 14(5) of the Rules of Procedure.

¹⁵ The First Legislative Council adopted the practice of the pre-1997 Legislature of starting a meeting of the Council at 2:30 pm. In April 2005, this starting time was changed to 11:00 am to allow for longer meetings. This arrangement has remained unchanged up to this date.

7. *Conduct of business in the Council*

meeting at around 10:00 pm¹⁶ and resume the remaining proceedings on another day either at 9:00 am or at 2:30 pm. Records showed that since the start of the Fifth Legislative Council, over half of the Council meetings lasted for over one day. To enable Members to discharge their other duties in their capacity as Members of the Legislative Council and to facilitate a healthy work-life balance for those who support the work of the Legislature, the House Committee decided on 30 January 2015 to recommend to the President that the suspension time of Council meetings should be adjusted to 8:00 pm if the business on the Agenda was unlikely to finish before 10:00 pm on the day of meeting. This recommendation was accepted by the President for implementation in March 2015.

7.9 Since the 2011-2012 legislative session, it has been the practice that where it is not feasible to hold any further days of meetings before the next scheduled regular Council meeting^{17 18}, the business not dealt with at the previous meeting stood over until the next meeting and placed on the Agenda in accordance with the normal order of business set out in Rule 18 of the Rules of Procedure.¹⁹

7.10 Under Article 72(4) and (5) of the Basic Law, which are reflected in Rule 15 of the Rules of Procedure, the President may call special meetings during the recess²⁰ and, if so requested by the Chief Executive, call emergency meetings. If the emergency meeting is to be conducted after the end of a term of office or the dissolution of the Council, Rule 15(1) provides that the meeting must be convened before the date specified for the holding of the general election of all the Members of the Legislative Council.²¹

Committee of the whole Council

7.11 When describing the procedures of Council meetings, it is necessary also to explain how the Council and a committee of the whole Council carry out their work at the same Council meeting. In the Hong Kong Legislature, a

¹⁶ The practice of suspending a meeting of the Council at 10:00 pm, if all business was unlikely to finish before midnight, commenced in the 1998-99 session after the President took into account the view of the House Committee in May 1999. See Chapter 2, footnote 58.

¹⁷ For the practice before the 2011-2012 session, please see Chapter 2, footnote 60.

¹⁸ The President may consult Members through the House Committee or the Clerk on the dates and time of the meetings to continue with the unfinished business of a meeting before he makes his decision.

¹⁹ For details about the order of business at a Council meeting, please refer to paragraphs 7.37 to 7.39.

²⁰ A special meeting was held on 2 September 2010 in accordance with Rule 15(2) of the Rules of Procedure for holding a debate on an urgent motion on the tragedy of a Hong Kong tour group taken hostage by a gunman in the Philippines on 23 August 2010, at which 8 were killed and 7 injured.

²¹ Section 11 of the Legislative Council Ordinance (Cap. 542).

committee of the whole Council comprises all Members of the Council with the President acting as Chairman²². The dual chairmanship of the President in Hong Kong is a unique arrangement since the chairmanship in the committee of the whole House in other legislatures which also adopt the Westminster model is not taken up by the Speaker but by another presiding officer.²³ This unique arrangement, adopted from the pre-1997 Legislature, owes more to expediency than to any special principle. It is not easy for an observer of a Council meeting to distinguish the proceedings of the Council from those of the committee of the whole Council as they both meet at the same venue and their businesses appear on the same Agenda.

7.12 A committee of the whole Council has the power to make amendments to a bill, including adding new clauses and new schedules provided that such amendments are admitted for consideration by the President acting as Chairman of the committee of the whole Council in accordance with the Rules of Procedure.²⁴ According to the 3-reading legislative process provided in the Rules of Procedure, a bill is committed to a committee of the whole Council (or a select committee if so decided by the Council or directed by the President) after a motion for the second reading of the bill has been agreed to by the Council.²⁵

7.13 In a committee of the whole Council, Members are addressed as "members" (委員) and the President as "the Chairman" (委員會主席). Almost all rules of speaking, decorum and order, voting and other procedures set out in Parts H (Rules of Speaking), I (Rules of Order) and J (Voting) of the Rules of Procedure which apply to the Council also apply to a committee of the whole Council. The only difference is that in committee of the whole Council, as an exception to the general rule that Members may only speak once on a question, a member may speak more than once²⁶. This will be explained in Chapter 8.

²² Rule 3(1) of the Rules of Procedure.

²³ In the UK the Committee of the Whole House is presided over by the Chairman of Ways and Means, the senior Deputy Speaker. He sits next to the Clerk at the Table of the House; the mace is lowered and the Speaker's chair is left vacant while the House is in Committee. Also see *House of Commons Procedure and Practice*, Canada (2009) 2nd Edition, p. 921.

²⁴ See Rules 56 and 57 of the Rules of Procedure.

²⁵ Rule 55(1) of the Rules of Procedure.

²⁶ Rule 38(1)(a) of the Rules of Procedure. The same rule applies at Westminster when the House is in Committee.

7. *Conduct of business in the Council*

Quorum

Quorum of the Council

7.14 Article 75 of the Basic Law stipulates that the quorum for the meeting of the Legislative Council shall be not less than one half of all its members. This is reflected in Rule 17(1) of the Rules of Procedure which stipulates that this number includes the President.

Quorum of the committee of the whole Council

7.15 The quorum requirement in Article 75 applies to the Council. Since the proceedings in a committee of the whole Council are part of the legislative process determined by the Legislative Council, the quorum requirement for this committee is for the Legislative Council to decide. The First Legislative Council decided to adopt the practice of using the quorum of the Council as the quorum of a committee of the whole Council, i.e. not less than one half of all its members including the Chairman, which is reflected in Rule 17(1) of the Rules of Procedure.²⁷

Calling for a quorum

7.16 At the designated starting time of a Council meeting, the President will direct the Clerk to count the Members present in the Chamber if it appears to him that a quorum is not present. If a quorum does not exist, the President will direct the Members to be summoned by having the quorum bell rung for 15 minutes. If a quorum is not present after 15 minutes, the President will order that the meeting cannot be held. Where a quorum is present and the meeting commences, it is the practice that the President will not conduct any further counting of Members in the course of that meeting including at the

²⁷ The quorum of the pre-1997 Legislature was stipulated in the Royal Instructions. The quorum of the committee of the whole Council was not stipulated until it was included for the first time in the 1968 Standing Orders. At that time, the quorum of the committee of the whole Council was not entirely identical to that of the Council. It was 10 members excluding the Chairman in 1968 increasing to 20 members including the Chairman in 1985 and had remained the same until 30 June 1997. The quorum of the Council was 5 Members including the President from 1869 to 1969, 10 Members including the President from 1969 to 1983 and 20 Members including the President from 1983 to 30 June 1997. When the Provisional Legislative Council drafted its Rules of Procedure in 1997, it adhered to the principle that unless it was required under the Basic Law, there should not be any changes to the rules and practices originally adopted by the pre-1997 Legislature until the future Legislature of the HKSAR considered it necessary to do so. As the quorum of the Council and committee of the whole Council in the pre-1997 Legislature was the same in the last Standing Orders, the quorum requirement for the Council as set out in Article 75 was adopted as the quorum of the committee of the whole Council.

resumption of the meeting on another day or after a period of suspension unless his attention is drawn to the fact that a quorum is not present.

7.17 When the President's attention is drawn to the fact that a quorum is not present in the course of a meeting, he is required to direct the Members to be summoned. If after 15 minutes a quorum does not exist, the President is required to adjourn the meeting.²⁸ In the case of a committee of the whole Council, if a quorum does not exist after the quorum bell has been rung for 15 minutes, the Council shall be resumed and the President is required to adjourn the Council without question put.^{29 30}

7.18 At the Council meeting of 17 November 2004, following the drawing of her attention to the lack of a quorum by a designated public officer in the course of a debate, the President asked for Members to be counted and ordered the ringing of the quorum bell. On the question of whether a person, other than a Member of the Council, may draw the President's attention to the lack of a quorum at a meeting, the President, on the basis of the way Rule 17(2) of the Rules of Procedure was constructed, considered that any person attending a meeting including designated public officers and any officers of the Council may draw her attention to the fact that a quorum is not present.³¹ On 12 July 2013, the House Committee decided to amend Rule 24(h) of the House Rules to the effect that only a member of a committee is allowed to draw the attention of the committee chairman to the fact that a quorum is not present during a meeting of the committee. There was no decision to apply the same principle to Council meetings.

7.19 During the committee stage of the Legislative Council (Amendment) Bill 2012, a few Members repeatedly called for a quorum under Rule 17(3) of the Rules of Procedure with the avowed intent of filibustering the proceedings. The repeated quorum calls prolonged the proceedings, resulting in two meetings to be adjourned due to a lack of quorum.³² The same situation was also found on a number of occasions³³ during the 2012-2013 and 2013-2014

²⁸ Rule 17(2) of the Rules of Procedure.

²⁹ Rule 17(3) of the Rules of Procedure.

³⁰ Prior to 29 October 2014, the original Rule 17(3) provided that if a quorum was not present at the Committee of the whole Council after 15 minutes, the President was required to count the Council after the Council was resumed. However, as in practice no counting would again be called after the Council was resumed, Rule 17(3) was amended on 29 October 2014 to reflect the practice.

³¹ Council meeting of 17 November 2004, *Hansard*, pp. 1675-1676.

³² Council meeting of 2 May 2012 was adjourned on 3 May 2012 due to the lack of a quorum, *Hansard*, p. 9163; Council meeting of 9 May 2012 was adjourned on 11 May 2012 due to the lack of a quorum, *Hansard*, pp. 9801-9802.

³³ Council meetings to deal with the Appropriation Bill 2013 and Appropriation Bill 2014.

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sessions when the same few Members decided to filibuster. In this respect, the President invited the Committee on Rules of Procedure to review the relevant provisions on quorum in the Rules of Procedure by referring to the practices in overseas legislatures with a view to achieving more effective use of Council's time.^{34 35} In its study, the Committee on Rules of Procedure has taken into account the experience in overseas legislatures and examined various proposals, such as confining the application of the quorum requirement to particular junctures of Council proceedings and imposing restrictions on Members' right to make quorum calls during Council meetings. It concluded that these proposals were either contradictory with the object or purpose of Article 75 of the Basic Law or constituting a disproportionate use of the President's power under the relevant Rules of Procedure and the Basic Law.

7.20 If the lack of a quorum is found in a division, the division will be invalid and the President or Chairman of the committee of the whole Council, as the case may be, is required to direct the Members to be summoned in accordance with the procedure explained above.³⁶ The division will be held again after a quorum is present. In practice, where a lack of a quorum is observed after the division bell has been rung for 5 minutes, the President will order the ringing of the quorum bell to summon Members.

7.21 If a meeting is adjourned due to the lack of a quorum, the matter which is under discussion or has not yet been dealt with at the time when the Council is adjourned will stand over until the next meeting.³⁷

How vacancies are considered in determining the quorum

7.22 On 25 January 2010, 5 Members resigned from office and a question was raised at the House Committee on 29 January 2010 on whether the 5 vacancies should be taken into account when calculating the quorum of the Council. According to the Legal Adviser's advice³⁸, Article 75 of the Basic Law provides that the quorum for the meeting of the Legislative Council shall

³⁴ There is a quorum requirement but no quorum call in the House of Commons in the UK. "Counting" was abolished in 1971. Standing Order No. 41(2) states that "[t]he House shall not be counted at any time". Under the same Standing Order if the results of a division show fewer than 40 Members are present, the House moves onto the next business on the Order Paper.

³⁵ In the Rules of United States House of Representatives, Clause 7 of Rule XX provides that the Speaker "may not entertain a point of order that a quorum is not present unless a question is put to vote".

³⁶ See paragraph 7.17 and Rule 17(4) of the Rules of Procedure.

³⁷ Rule 17(5) of the Rules of Procedure.

³⁸ Information note for all Members of the Legislative Council issued by the Legal Adviser on 2 February 2010 (LC Paper No. LS44/09-10).

be not less than one half of "all its members" ("全體議員" in the Chinese text of the Basic Law). The expression "全體議員" is not defined in the Basic Law. Although the Legislative Council Ordinance (Cap. 542) provides in section 17 that a vacancy in the membership of the Council does not affect its power to transact business or the validity of its proceedings, the effect of a vacancy on the quorum for a Legislative Council meeting is not provided for. It would be for the President to interpret Article 75 for the purpose of conducting a Legislative Council meeting. Taking a purposive approach in interpreting "全體議員" in the context of Article 75, the expression is capable of meaning the full membership of the Council or the total membership in office.

7.23 Before the President made his ruling, he took advice from the Counsel to the Legislature³⁹ and an outside Counsel on the matter. He also referred to the practices of other legislatures on quorum requirements compiled by the Legislative Council Secretariat. The President announced his ruling at the Council meeting of 3 February 2010 which was the first Council meeting after the resignation of the five Members took effect from 29 January 2010.

7.24 In his ruling, the President stressed that he must preside over meetings in accordance with the Basic Law and the Rules of Procedure of the Council. He noted that the expression "全體議員" appeared in various articles of the Basic Law and also in Annex I and Annex II to the Basic Law. He considered that if he were to give a meaning to the expression for the purpose of ascertaining the number of Members required to form a quorum, the interpretation he was giving to it in the context of Article 75 might be regarded as also applicable to other provisions in the Basic Law in which the same expression had been referred to. This would give rise to unforeseeable implications on the application of these provisions.

7.25 In view of the complexity of the issues involved, the President decided to exercise great prudence and to act in accordance with Rule 17 of the Rules of Procedure which he considered to be a supplemented reproduction of the quorum provision in Article 75 of the Basic Law. He then fixed the number of members forming a quorum at 30 (membership of the Legislative Council was at that time 60), which was a number "not less than one half of all its Members" whether the expression "all its Members" should be taken to mean 60 or less than 60. The decision would therefore not be in contravention

³⁹ The Counsel to the Legislature is the Legal Adviser of the Legislative Council Secretariat who also serves as the legal adviser to the House Committee.

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of the relevant provisions of the Basic Law. The President further reiterated that this decision of his should not prejudice any further interpretation of the expression "all its Members" ("全體議員").

7.26 The Committee on Rules of Procedure supported the decision of the President, but it also conducted a study on the matter in response to a member's request. Apart from referring to the advice and reference materials considered by the President, the Committee also invited the Government to give views on the quorum of the Council, particularly whether the term "全體議員" in Article 75 of the Basic Law should mean the full Council of 60 or the total number of Members in office.

7.27 The Government submitted its views to the Committee in April 2010. The Government also studied the legal advice given to the President and conducted research on the principles adopted by overseas legislatures on quorum requirement and the deliberation of the Drafting Committee of the Basic Law and Standing Committee of the NPC on the subject. The Government came to the view that the expression "all the members of the Legislative Council" ("全體議員") in the Basic Law should mean the entire authorized membership of the Legislative Council, rather than all Legislative Council Members actually in office for the time being. Hence the basis for computing the quorum requirement under Article 75(1) should be the entire authorized membership of the Legislative Council, even if the offices of some members had become vacant at the time of the meeting of the Council. The Committee noted that the views of the Government on the matter were in line with the decision of the President and also the views expressed by its members. It concluded that no further study was required.

7.28 From the 2012-2013 session onwards, with the membership of the Legislative Council increased to 70, the quorum for meetings of the Council and committee of the whole Council is 35 Members including the President or Chairman.

Presiding in Council and in committee of the whole Council

7.29 Article 72(1) of the Basic Law provides that the President of the Legislative Council presides over meetings of the Council. This provision is reflected in Rule 3(1) of the Rules of Procedure which further provides that "There shall be a President of the Council who, when present at a meeting of the Council or a committee of the whole Council and able, in his opinion, to act, shall preside or be Chairman". Two elements have been built into this Rule: the President is the only person who can preside over the meeting if he

is present; and he is the person to decide if he is "able to act", i.e. able to preside over the meeting.

7.30 In the event that the President is absent from a meeting of the Council or a committee of the whole Council or when, in his opinion, he is unable to act, the following arrangement will apply:

- (a) the Chairman of the House Committee, who is the President's deputy, shall preside⁴⁰;
- (b) in the absence of the Chairman of the House Committee or when he considers himself unable to act, the Deputy Chairman of the House Committee, who shall act as the President's deputy, shall preside⁴¹; or
- (c) in the absence of both the Chairman and Deputy Chairman of the House Committee or when the Deputy Chairman also considers himself unable to act, Members shall elect among the Members present a Member to preside at that meeting⁴².

7.31 As explained in Chapter 2⁴³, the President's deputy enjoys all those powers conferred by the Rules of Procedure on the President or the Chairman that are exercisable in respect of the meeting, or part of the meeting, of the Council or a committee of the whole Council.

7.32 There have been occasions in the history of the Hong Kong Legislature when the Presidents of the Council were of the opinion that they were unable to act and requested the President's deputy to preside at relevant parts of the meetings:

- (a) At the Council sitting on 2 June 1993, President Sir John SWAINE advised the Council during Members' question time that in view of a potential conflict of interest with his being a director of the Hong Kong Bank, he invited Mrs Elsie TU, the President's deputy, to take the Chair when the question on bank charges for cash deposits was asked and answered during question time; and

⁴⁰ Rule 3(2)(a) of the Rules of Procedure applies.

⁴¹ Rule 3(2)(a) and Rule 5(2) of the Rules of Procedure apply.

⁴² Rule 3(2)(b) of the Rules of Procedure applies.

⁴³ See Chapter 2, para. 2.80.

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- (b) For the Council meeting of 29 February 2012, President Jasper TSANG considered himself unable to determine the application for an adjournment debate under Rule 16(2) of the Rules of Procedure in relation to the Chief Executive's responsibility for upholding the fairness and impartiality of the next Chief Executive Election as he had announced earlier in public that he would seriously consider standing in that Election. Ms Miriam LAU, the President's deputy, exercised the power of the President and permitted the adjournment debate to be put on the Agenda. However, as President Jasper TSANG subsequently announced that he would not run in the Chief Executive Election before the Council meeting, he presided over the adjournment debate.

7.33 There was also one occasion in the pre-1997 Legislature when Mr Andrew WONG, then President, was challenged by some Members, after his election as a member of the Provisional Legislative Council, that he would face conflicts of interest when required to adjudicate on issues relating to the provisional legislature. At that time, Mr WONG was also running for the presidency of the provisional legislature. A Member gave notice to move a motion to urge the Government to seek a declaration from the court that there were such conflicts of interest. Mr WONG, as President, allowed the motion and an amendment to the motion to be put on the Order Paper of the sitting of 29 January 1997 and he himself presided at the debate. On its conclusion, the Council passed the amended motion.⁴⁴

Language

7.34 Article 9 of the Basic Law provides that in addition to the Chinese language, English may also be used as an official language by the executive authorities, legislature and judiciary of the HKSAR. In the legislature, a Member may address the Council in either Putonghua, Cantonese or the English language.⁴⁵ Simultaneous interpretation and sign language interpretation services are provided for all Council meetings to facilitate the following of the proceedings of Council meetings in any of these languages.

⁴⁴ The motion was moved by Mrs Elizabeth WONG and amended by Mr David CHU. The amended motion passed by the Council was that the Council believed that Mr Andrew WONG would still have the ability to safeguard the impartiality and integrity of his office after joining the provisional legislature, and would help in the continuity of the Council. No point of order was raised on Mr WONG's presiding over the motion debate.

⁴⁵ Rule 2 of the Rules of Procedure.

All documents presented to the Council or generated by the Council are in both Chinese and English.

Agenda of the Council

7.35 Article 72(2) of the Basic Law provides that the President has the power and function to decide on the agenda⁴⁶, giving priority to government bills⁴⁷ for inclusion in the agenda. This article is reflected in the following Rules of Procedure:

- (a) Rule 19 which provides that the Agenda of the Council shall be decided by the President and all items of business on the Agenda should follow the order of business set out in Rule 18⁴⁸; and
- (b) Rule 18 which sets out the order of business at a Council meeting, with Government bills and motions being given priority over those initiated by Members⁴⁹.

7.36 The Agenda of the Council is issued by the Clerk to the Legislative Council setting out all the items of business as decided by the President. Owing to the time required by the President to consider proposed amendments to bills and motions, a preliminary Agenda is issued 6 clear days before the Council meeting and the formal Agenda one clear day before the meeting. The Agenda may be revised before the meeting or in the course of the meeting to include urgent items of business approved by the President, such as adjournment debates under Rule 16(2) or Rule 16(4) of the Rules of Procedure.

Order of business

7.37 The order of business of a regular meeting is set out in Rule 18 of the Rules of Procedure. This order basically follows that of the pre-1997 Legislature except that bills and motions proposed by the Government and by Members are separately itemized and bills are placed before motions.

⁴⁶ In the pre-1997 Standing Orders, the expression "Order Paper" was used to describe "Agenda" of the Council.

⁴⁷ Government bills in this context refer to Government motions which include bills as "議案" is used in the Chinese version of Article 72(2) of the Basic Law.

⁴⁸ Rule 19(1) of the Rules of Procedure.

⁴⁹ Rule 18(1) of the Rules of Procedure.

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Government's bills and motions are placed ahead of Members' bills and motions in compliance with the requirement set out in Article 72(2) of the Basic Law⁵⁰ although the same requirement was also stipulated in the pre-1997 Standing Orders.⁵¹ The giving of priority to Government bills and motions in the order of business of the Legislative Council is to reflect the constitutional obligations imposed on the Government by the Basic Law to draft and introduce bills, motions and subsidiary legislation⁵². The other change to the order of business after 1997 is the inclusion of a new item of business under which Members may debate subsidiary legislation tabled in the Council but to which no amendments have been proposed. This amendment to Rule 18 was approved by the Council on 2 December 2009 as explained in the latter part of this Chapter⁵³ and also in Chapter 10.

Rule 18

7.38 Rule 18(1) of the Rules of Procedure provides that the business of each Council meeting other than a meeting attended by the Chief Executive under Rule 8 or Rule 13, or the first meeting of a term or a meeting to elect the President shall be transacted in the following order:

- (a) Administration of oath or affirmation.
- (b) Obituary and other ceremonial speeches.
- (c) Reading by the President of messages and announcements by the President.
- (d) Presentation of petitions.
- (e) Laying on the Table of papers and of reports of committees.
- (f) Asking and answering of questions put to the Government.
- (g) Statements by designated public officers.
- (h) Personal explanations.
- (i) Government bills.
- (j) Government motions other than those on subsidiary legislation or other instruments made under an Ordinance.
- (ja) Government motions on subsidiary legislation and other instruments made under an Ordinance.

⁵⁰ Article 72(2) of the Basic Law provides that the President of the Legislative Council has the power and function to decide on the agenda, giving priority to government bills for inclusion in the agenda.

⁵¹ Standing Order 12(3) provided that motions proposed to be made by and bills in the charge of public officers should be placed on the Order Paper before motions proposed to be made by and bills in the charge of Members.

⁵² Article 62(5) of the Basic Law.

⁵³ See paragraphs 7.63-7.64.

- (jb) Members' motions on subsidiary legislation and other instruments made under an Ordinance.
- (k) Members' bills.
- (l) Members' motions other than those specified in (jb) above.
- (m) Requests for leave for Members to attend as witness in civil proceedings and for persons to give evidence of Council proceedings.
- (n) Motions for the adjournment of the Council under Rule 16(4) of the Rules of Procedure.

7.39 The above items of business come in two parts. Items (a) to (h) are matters which do not require a decision of the Council and no debates are allowed on any of them. With the exception of questions to the Government and petitions⁵⁴, notice is not required for these items.⁵⁵ Items (i) to (n) belong to the main part of the business of the Council where bills and motions are debated and voted on. This division of business is similar to the arrangements in the legislatures of common law jurisdictions. In these legislatures, "other business" comprises unopposed private business, questions and a number of miscellaneous items of business are taken before "public business" which primarily comprises business on which, in general, debates take place.⁵⁶ When the Committee on Rules of Procedure of the Provisional Legislative Council was drafting the first set of the Rules of Procedure in 1997-98, conscious efforts were made to realign the business relating to legislative proceedings and other motions in the light of Article 72(2) of the Basic Law.⁵⁷ Government bills under item (i) are placed ahead of all other items which require debate and decision of the Council.

Suspension of Rule 18

7.40 Where there is a need to alter the order of business set out in Rule 18 of the Rules of Procedure whether as a one-off or temporary arrangement, a suspension of the Rule by resolution of the Council under Rule 91 is

⁵⁴ In the case of petitions, although no notice requirement is stipulated, the Member who wishes to present a petition is required to inform the President not later than the day before the meeting at which he wishes to present it. Rule 20(2) refers.

⁵⁵ Rule 18(2) of the Rules of Procedure.

⁵⁶ Erskine May (2011), *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 24th Edition, p.329.

⁵⁷ Article 72(2) of the Basic Law provides that the President of the Legislative Council shall exercise the power and function to decide on the agenda, giving priority to government bills for inclusion in the agenda.

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required.⁵⁸ The President is still required to give priority to government bills and motions after Rule 18 is suspended.

Administration of oath or affirmation

7.41 As explained in Chapter 3⁵⁹, when assuming office, Members of the Legislative Council must, in accordance with Article 104 of the Basic Law, swear to uphold the Basic Law of the HKSAR and swear allegiance to the HKSAR. The manner and form of The Legislative Council Oath are specified in the Oaths and Declarations Ordinance (Cap. 11). The taking of Oath (or Affirmation if the Member chooses to do so) takes place at the first meeting of a new term. For those Members who fail to take the Oath or Affirmation at the first meeting or those who are returned to the Council through a by-election during the term, the taking of the Oath or Affirmation is held at the start of the earliest Council meeting possible. According to Rule 1 of the Rules of Procedure, no Member of the Council shall attend a meeting or vote at a meeting until he has made or subscribed the Oath or Affirmation.

Obituary or ceremonial speeches

Obituary speeches

7.42 By convention, obituary speeches are made to mark the death of serving Members. Obituary speeches start with the President, followed by other Members. The observance of silence, if held, usually lasts for one minute as a token of respect for the deceased Member and is held after all obituary speeches are made.⁶⁰ Prior leave of the President is required for this item to be placed on the Agenda.⁶¹

⁵⁸ An example is the motion moved by the Chief Secretary for Administration to suspend Rule 18 of the Rules of Procedure at the Council meeting of 20 June 2012 for the purpose of advancing the Government's motion on the restructuring of the Government Secretariat before the Government bills on the Agenda. *Hansard*, p. 15909-15911.

⁵⁹ See Chapter 3, para. 3.25-3.33.

⁶⁰ Examples are the obituary speeches made on 24 June 1992 in respect of Mr Stephen NG Ming-yum; 19 May 1993 in respect of Mr Stephen CHEONG Kam-chuen; 4 June 1997 in respect of Mr Samuel WONG Ping-wai. Speeches paying tribute to Mr MA Lik who died on 8 August 2007 when the Council was in recess were made during the debate on the Motion of Thanks on 24 October 2007 and on the Valedictory Motion on 13 July 2008.

⁶¹ Rule 18(2) of the Rules of Procedure.

Observance of silence

7.43 The President may order or allow the observance of silence, usually for one minute, to mourn the death of serving Members and persons who were closely related to the Council⁶² or made great contributions to Hong Kong.⁶³ Generally speaking, serving heads of the Central People's Government or the HKSAR Government, or former Presidents of the Council are considered closely related to the Council. For deceased persons who fall outside this category, the President may allow Members to move an adjournment debate for paying respect to them.⁶⁴ Alternatively, the observance of silence may take place in the House Committee. It is out of order for Members without obtaining the permission of the President to initiate an observance of silence in the course of a Council meeting.⁶⁵

7.44 In recent years, the President has also allowed the observance of a one-minute silence to mourn the deaths in major incidents, including some which took place outside Hong Kong.^{66 67 68} On 2 September 2010, a special meeting of the Council was convened during the summer recess to debate on a motion in relation to the deaths of Hong Kong citizens in an incident which

⁶² The Legislative Council observed a one-minute silence and paid obituary tributes to Sir Edward YOUDE, then Governor and President of the Council, at its sitting on 10 December 1986. The Council also observed a one-minute silence to mourn the death of Sir David TRENCH, past Governor and President of the Council, at its sitting on 7 December 1988.

⁶³ The Hong Kong Legislative Council paid tribute to the late Mr DENG Xiaoping by observing one minute's silence in memory of Mr DENG on 26 February 1997. The Provisional Legislative Council which held its meetings in Shenzhen at that time also observed silence as a tribute to Mr DENG on 22 February 1997 followed by an announcement made by the President.

⁶⁴ The President allowed a Member to move an adjournment debate at the Council meeting of 19 January 2005 under Rule 16(4) of the Rules of Procedure in relation to the death of Mr ZHAO Ziyang, former Premier of the People's Republic of China, but the Member did not give the relevant notice for moving the motion before the given deadline.

⁶⁵ On 19 January 2005, President Mrs Rita FAN suspended the meeting when a Member sought to initiate the observance of silence to pay tribute to Mr ZHAO Ziyang and some Members stood in response. The Council resumed but was adjourned due to the absence of a quorum. *Hansard*, pp. 3329-3330. Also on 4 June 2014, President Jasper TSANG suspended the meeting when a Member sought the observance of silence in memory of the deceased on 4 June 1989. The Council resumed after 2 minutes. *Hansard*, pp. 14225-14226.

⁶⁶ On 12 May 1999, the President allowed a one-minute silence to pay tribute to the compatriots killed in the bombing of the Chinese Embassy in Yugoslavia and also a debate moved by the Chairman of House Committee on the same day to condemn the North Atlantic Treaty Organization for the bombing.

⁶⁷ Examples of the observance of a one-minute silence to pay condolences to the victims of disasters are the victims of a tsunami in South Asia at the Council meeting of 5 January 2005, those of earthquakes in Sichuan at the Council meetings of 14 May 2008 and 24 April 2013, those of an earthquake in Haiti at the Council meeting of 14 January 2010, and those of an earthquake in Japan at the Council meeting of 16 March 2011.

⁶⁸ On 5 January 2005, the President allowed an adjournment debate moved by a Member on a tsunami in South Asia under Rule 16(4) of the Rules of Procedure. On 16 March 2011, the President allowed the asking of urgent questions and holding of an adjournment debate in respect of the earthquake in Japan.

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occurred in the Philippines on 23 August 2010. A one-minute silence was observed at the start of the meeting.

Reading of messages and President's announcements

Historical background

7.45 Historically, during the early days of the pre-1997 Legislature when the Governor was the President of the Legislative Council, the President usually directed a public officer to read out messages from the Crown or the Secretary of State on matters relating to the Royalty or business of the Legislative Council.⁶⁹ Starting from mid 1860s, these messages were instead laid on the Table of the Council at the appropriate juncture, e.g. at the first reading of a bill if the message from the Secretary of State was related to that bill⁷⁰. The President's announcements were usually related to the turnover of the membership of the Council and appointment of members of standing committees.⁷¹ Apart from welcoming new Members to the Council, valedictories were also made at this juncture to pay tributes to retiring Members. On occasions, the President, as Governor, made announcements in the form of statements to set out the Government's position in response to pressing issues or major incidents of public concern.⁷² No question was allowed on the President's announcements or statements.

Current practice

7.46 In the HKSAR Legislature, announcements by the President at Council meetings are generally related to matters relating to the Council. For example, at the Council meeting of 3 February 2010, the President made a statement on his views regarding the quorum of the Council following the resignation of 5 Members in the week before the meeting.⁷³ On occasions, the President may announce changes to some of the standing meeting arrangements or his approach in controlling the order of the Council. For example, at the beginning of the Council meeting of 15 January 2014 at which the Chief Executive would deliver his Policy Address, the President made remarks on how he would deal with Members using offensive and insulting

⁶⁹ The last time when a message from the Secretary of State was read at a Council sitting was on 22 January 1866.

⁷⁰ Council sitting on 26 April 1866; Council sitting on 5 May 1868.

⁷¹ For example, Council sittings on 24 January 1929 and 10 January 1968.

⁷² For example, Council sittings on 9 March 1938 and 21 June 1989.

⁷³ Council meeting of 3 February 2010, Hansard, pp. 4718-4719.

language about the Chief Executive. The President may also announce a specific arrangement for the conduct of a Council meeting in the course of the meeting when he considers it necessary to do so.⁷⁴ The President's announcements are not subject to debate, but he may at his discretion respond to Members' questions for the purpose of elucidation.

7.47 Messages received from outside bodies or announcements of a general nature are usually circulated to Members outside the meetings of the Council. Prior leave of the President is required if they are to be entered into the order of business of a meeting.⁷⁵ Valedictory speeches are now made at the end of the last meeting of a term upon a motion moved by the Chairman of the House Committee.

Presentation of petitions

Historical background

7.48 The presentation of petitions by Members of the Legislative Council has a long history in Hong Kong. It was first provided for in the 1858 Standing Orders, and petitions were originally presented to the Governor after he had taken the chair at a sitting. It was not until 1913 that petitions were presented to the Council. Even so, the President, who was the Governor, had the authority to decide whether a petition should be presented to the Council based on the criteria laid down for petitions at the time. Under the Standing Orders in 1858, it was simply required that a petition should be respectful and deserving of presentation.

7.49 In the 1884 Standing Orders, presentation of petitions was linked with private rights and the examination of witnesses; and petitions were required to relate to "matters of Legislation". The 1929 Standing Orders removed the requirement for a petition to relate to matters of legislation, but other criteria were added. These included the need for the signification of the Governor's recommendation if the petition was to ask for a grant of public money or the release of a debt to public funds, and a provision for conforming with any other rules from time to time prescribed by the Council.

⁷⁴ Council meeting of 8 May 2013, *Hansard*, pp. 9934-9936; Council meeting of 21 May 2014, *Hansard*, pp. 11613-11615.

⁷⁵ Rule 18(2) of the Rules of Procedure.

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7.50 As regards the method of dealing with petitions, the initial requirement in 1858 was to have a motion passed by the Council for a petition to be read. A petition, once read, could be followed up by the Council itself or referred to a committee and witnesses could be called. The linking of petitions to the infringement of private rights affected by proposed bills in 1884 particularly highlighted the fact that "all parties interested may, upon petition for that purpose, and on motion made, seconded, and carried, be heard before the Council, or any Committee thereof, either in person, or by Counsel."⁷⁶ The Member who presented the petition, or the petitioner, or any other witnesses could be called and their evidence should be taken down by the Clerk.

7.51 The 1912 Standing Orders stated that the President should receive petitions but if he had any doubt about whether a petition related to legislation, he should refer the matter for the decision of a committee known as the Law Committee. However on the question of whether the petition was "properly and respectfully worded"⁷⁷, the President's decision was final. All petitions which the President agreed to receive should be laid on the Table without question put unless the Member presenting a petition moved that it be read, printed or referred to a select committee for consideration and report. Petitions relating to any bill being examined by a special or standing committee should be referred to that committee which was required to present the petitions back to the Council with its reports.

7.52 The standing orders for the presentation of petitions and referral of petitions to committees were substantially changed in 1968. The most significant change was that a motion was no longer required to be passed by the Council for a petition to be referred to a committee. Standing Order No. 13 provided that if not less than 10 Members rose to support a request from a Member that the petition presented before the Legislative Council be referred to a select committee, it should stand referred to a select committee. In 1968, the total number of Members in the Council was 26. The new provision had enabled a matter which was of great concern to a substantial number of Members of the Council, though not the majority of Members, to be studied by a select committee. The number of members required for giving support to this kind of referral was raised to 15 in 1976 (out of a membership of 42 (up to 46)⁷⁸) and to 20 in 1983 (out of a membership of 48 (up to 58)⁷⁹)

⁷⁶ Standing Orders Nos. 47-48 of the Standing Orders of the Hong Kong Legislative Council (1884).

⁷⁷ See Chapter 6, para. 6.4.

⁷⁸ The figure in bracket shows the maximum number of Members allowed.

⁷⁹ The figure in bracket shows the maximum number of Members allowed.

"to reflect the expansion of the Council membership". It should be noted that in 1968 select committees were the only form of committee in the Council other than standing committees which were given defined terms of reference.

7.53 The provisions included in the 1968 Standing Orders continued to be used in the pre-1997 Legislature until June 1997 and were adopted for use by the Provisional Legislative Council and included in the Rules of Procedure of the present HKSAR Legislature.

Current practice

Content and format

7.54 Under Rule 20 of the Rules of Procedure, petitions may only be presented by Members of the Council. A Member who wishes to present a petition to the Council should inform the President at least one day before the Council meeting at which the petition is intended to be presented. He should certify in writing that the petition is respectful and, in his opinion, deserving of presentation. The petition should be in the Chinese or English language.

7.55 Where the President is of the opinion that a petition is making provision:

- (a) for imposing or increasing a tax; for imposing or increasing a charge on the revenue or other public moneys of the HKSAR; or
- (b) for altering such a charge otherwise than by reducing it; or
- (c) for compounding or remitting a debt due to the Government,

the petition should not be allowed to be presented unless written consent has been given by the Chief Executive. The consent so given should be recorded in the minutes of proceedings of the Council.⁸⁰

7.56 When presenting a petition to the Council, a Member should not include in his speech anything more than a summary statement of the number and description of the petitioners and the substance of the petition.⁸¹

⁸⁰ Rule 20(3) of the Rules of Procedure.

⁸¹ Examples are Mr Albert HO's presentation of a petition relating to an appeal for supporting the standing efforts of the United Nations Commission on Human Rights to prevent any inhuman acts, genocides and massacres in the light of the 63rd anniversary of the Nanking Massacre (13 December 2000), and Mr Michael MAK's presentation of a petition to urge the Government to take decisive initiatives to provide promptly comprehensive and sound preventive measures against infection (30 April 2003).

7. *Conduct of business in the Council*

Referral of a petition to a select committee

7.57 A petition will be referred to a select committee if not less than 20 Members rise to support such a request made by a Member immediately after the petition has been presented. The arrangement, as explained above, has been adopted in the Rules of Procedure as it was part of the pre-1997 mechanism to enable a matter which was of great concern to a substantial number of Members of the Council to be studied by a select committee. Where the power to summon witnesses is to be exercised by the select committee, section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) provides that an authorization by a resolution of the Council is required.

7.58 The first referral of a petition to a select committee in the history of the HKSAR Legislature took place on 8 May 2013.⁸² The petition was related to the conduct of a former Commissioner of the Independent Commission Against Corruption, and was then referred to a select committee appointed by the President on 17 June 2013. The select committee met and decided to conduct an inquiry into the matter. It reported back to the Council on 9 July 2014. Since then, a number of petitions were referred to select committees for study.⁸³

7.59 After a petition is referred to a select committee appointed by the President, it is for the select committee to decide when and how the substance in the petition is to be followed up.⁸⁴ Where it is considered by the select committee that a full-scale inquiry should be conducted and the select committee should be authorized to exercise the power to summon witnesses for conducting the inquiry, a motion to that effect should be moved in the Council. The motion should contain the scope of the inquiry to be conducted. The select committee should carry out its work in accordance with the procedure set out in Rule 79 of the Rules of Procedure.

⁸² Council meeting of 8 May 2013, *Hansard*, pp. 9414-9415.

⁸³ A petition was referred to a select committee at the Council meeting of 25 June 2014, *Hansard*, pp. 15428-15429; two petitions were referred to select committee(s) at the Council meeting of 15 October 2014, *Hansard*, pp 7-11.

⁸⁴ A decision was made by the House Committee on 14 June 2013 that the number of select committees established under Rule 20(6) of the Rules of Procedure without being authorized to exercise the powers under section 9(1) of Cap. 382 that could be in operation should be capped at one at any one time.

Tabling of papers and committee reports

7.60 The papers that come within the scope of Rule 21 of the Rules of Procedure for presentation to the Council include the following:

- (a) any reports or documents⁸⁵ required to be laid on the Table of the Council under any ordinance in the Laws of Hong Kong, such as annual reports of statutory bodies⁸⁶;
- (b) any subsidiary legislation or other instrument published in the Government Gazette for laying on the Table of the Council;
- (c) a report of a Bills Committee after completion of the study of a bill referred to it under Rule 75(4) of the Rules of Procedure;⁸⁷
- (d) a report of the House Committee on the consideration of subsidiary legislation and other instruments laid on the Table of the Council in accordance with Rule 49D of the Rules of Procedure; and
- (e) any paper which The Legislative Council Commission, any committee of the Council, a Member or a designated public officer wishes to present.

7.61 Under Rule 21 of the Rules of Procedure, both designated public officers and Members may present papers to the Council but the papers presented by Members require the permission of the President.⁸⁸ A copy of the paper should be sent to the Clerk who will distribute it to each Member and arrange for its publication.⁸⁹

⁸⁵ There are documents, such as the Road Users' Code under section 109 of the Road Traffic Ordinance (Cap. 374) which is required to be tabled in the Legislative Council but they are not required to be published in the Gazette.

⁸⁶ It is common that a statutory body receiving or incurring public funds is required by law to cause its annual report which includes a statement of account to be laid on the Table of the Legislative Council. Examples include yearly financial statements of certain organisations, e.g. the Fish Marketing Organisation under section 23(3) of the Marine Fish (Marketing) Ordinance (Cap. 291), and the Hong Kong Housing Authority under section 14(4) of the Housing Ordinance (Cap. 283).

⁸⁷ Rule 75(4) of the Rules of Procedure provides that at any time after a bill has been referred to the House Committee after it is moved at the Second Reading debate, the House Committee may allocate it to a Bills Committee for consideration.

⁸⁸ Rule 21(1) of the Rules of Procedure.

⁸⁹ Rule 21(2) of the Rules of Procedure.

7. Conduct of business in the Council

Speaking on papers presented to the Council

General principles

7.62 The Member or the designated public officer presenting a paper in the Council may, with the permission of the President, address the Council on the paper.⁹⁰ As no debate may arise on any address,⁹¹ any Member who wishes to address the Council is required to provide an advance copy of his intended address to enable the President to decide whether it may provoke a debate.⁹² The President may in his discretion allow short questions to be put to the Member or the designated public officer making the address for the purpose of elucidating any matter raised by the Member or the designated public officer in the course of his address.⁹³

Speaking on subsidiary legislation

7.63 Any Member or designated public officer, with the permission of the President, may also address the Council on subsidiary legislation or other legislative instruments⁹⁴ which are tabled in the Council within the scrutiny period⁹⁵ unless a motion is to be moved at the same meeting to amend the subsidiary legislation (or instrument) or to take note of a report on the said subsidiary legislation (or instrument) tabled in accordance with Rule 49D of the Rules of Procedure. The arrangements set out in Rules 49D and 49E of the Rules of Procedure were introduced in 2009 after a study was conducted by the Committee on Rules of Procedure to address Members' concern over the restriction on their addresses in relation to subsidiary legislation under the scrutiny of the Council. While Members could speak at the debate on the subsidiary legislation if a motion to amend it is to be moved, not all subsidiary legislation would be amended and the only opportunity for Members to speak on such legislation was through addressing the Council under Rule 21 of the Rules of Procedure. It had become difficult for Members as such addresses could not provoke a debate.

7.64 After its study, the Committee on Rules of Procedure proposed a procedure which was endorsed by the Council on 2 December 2009. Under

⁹⁰ Rule 21(3) of the Rules of Procedure.

⁹¹ Rule 21(6) of the Rules of Procedure.

⁹² Rule 2 of the House Rules.

⁹³ Rule 21(6) of the Rules of Procedure.

⁹⁴ This type of subsidiary legislation is subject to negative vetting and no motion is required to be moved in the Council on the legislation unless to amend or repeal it.

⁹⁵ See paragraph 7.82.

this new procedure, a report of the House Committee which has the responsibility of overseeing the scrutiny of subsidiary legislation should be tabled at the expiry of the scrutiny period under Rule 49D of the Rules of Procedure. The Chairman of the House Committee will move a motion under Rule 49E to take note of the report if any Member indicates that he wishes to speak on any of the subsidiary legislation in the report. If notice of a motion has already been given to amend the same subsidiary legislation under Rule 29(2) of the Rules of Procedure, a separate motion to take note of the report will not be allowed. Similarly, if the subsidiary legislation is referred to in a report which is the subject of a motion to be debated in the Council, no Member is allowed to address the Council on the same subsidiary legislation under Rule 21(7) of the Rules of Procedure. More details on the manner of debating a motion moved under Rule 49E of the Rules of Procedure are provided in Chapter 10.⁹⁶

Speaking on the reports of Bills Committees

7.65 The requirement that the reports of Bills Committees should be tabled in the Council was only put in place by the First Legislative Council of the HKSAR. To establish a formal relationship between the Council and its committees, all committees are required to report to the Council upon completion of their work or as and when considered necessary. Under Rule 76(9) of the Rules of Procedure, a Bills Committee is required to, as soon as it has completed consideration of the bill allocated to it, advise the House Committee in writing of its deliberations and then report further to the Council. When the report of the Bills Committee has been laid on the Table of the Council, Rule 21(4) provides that the Member presenting it may address the Council on the report at the commencement of the resumption of the second reading debate on the bill. Rule 54(7) further provides that the Member making this report may, with the permission of the President, be the first Member to speak at the second reading debate on the bill.

7.66 Rule 21(4A) of the Rules of Procedure was added in 2005 to enable the Member presenting a report of the Bills Committee to speak at the meeting of the Council if an announcement is to be made at the same meeting for the withdrawal of the Bill. This arrangement was considered necessary because an announcement to withdraw or postpone a bill was originally only allowed to be made at the beginning of the proceedings for resumption of its second reading debate or for its third reading. Where a decision to withdraw a bill is

⁹⁶ See Chapter 10, para. 10.96-10.98.

7. *Conduct of business in the Council*

made in the course of the study of the bill by a Bills Committee after the debate on second reading is adjourned, the most appropriate occasion to announce the withdrawal of the bill is at the resumption of the second reading debate. On 4 May 2005, the Council endorsed the amendment to Rule 64 of the Rules of Procedure so that the Member or public officer in charge of the bill may announce the withdrawal of the bill at the beginning of proceedings for the resumption of the second reading debate if the purpose of the resumption is for making such an announcement.⁹⁷ Rule 21(4A) was added to enable the Member presenting a report of the Bills Committee to speak at the same meeting and before the Member or public officer in charge of the Bill makes such an announcement.

Question time

7.67 Under Article 73(5) of the Basic Law, the Legislative Council has the power and function to raise questions on the work of the government. The government must answer questions raised by Members of the Council in accordance with Article 64 of the Basic Law which enshrines various aspects of the government's accountability to the legislature. In specific terms, Rule 22(1) of the Rules of Procedure provides that any Member may address a question to the Government on its work by either seeking information on such matter or asking for official action with regard to it.

Oral and written questions

7.68 Members are required to give notice of the questions they wish to ask at a particular meeting except for urgent questions where permission is given by the President in accordance with Rule 24(4) of the Rules of Procedure.⁹⁸ A Member should specify whether an oral or a written reply is required.⁹⁹ Details on how Members are allocated with question slots to ensure a fair chance for each Member to ask oral and written questions are provided in Chapter 9.

⁹⁷ Rule 64(2) of the Rules of Procedure.

⁹⁸ Rule 24(1) and (4) of the Rules of Procedure.

⁹⁹ Rule 22(2) of the Rules of Procedure.

7.69 Under Rule 23 of the Rules of Procedure, with the exception of those meetings mentioned in subrule (1) ¹⁰⁰, no more than 22 questions ¹⁰¹ may be asked at each Council meeting and no more than 6 of which may require an oral reply where there are to be one or more debates on motion(s) not intended to have legislative effect. ¹⁰² Where no such debate has been scheduled for a meeting, the President may allow up to 10 oral questions to be asked at that meeting. ¹⁰³ The House Committee may recommend to the President that no oral questions should be asked in respect of a particular meeting. ¹⁰⁴ In this respect, the House Committee decided, as reflected in Rule 7(e) of the House Rules, that no oral questions may be put to the Government at the Council meetings for debate on the Appropriation Bill and for the debate on the Motion of Thanks.

7.70 In practice, a 2-hour time slot (which has in practice been extended to 2.5 hours) is earmarked as Question Time for the asking of 6 oral questions at each Council meeting. With the broadcasting of Council proceedings on television and websites, the proceedings on oral questions in particular capture the attention of the general public. The asking of questions at Council meetings has become an important tool for calling the Government to account in respect of its work. Even if a Member is not allocated with a question slot at a meeting, he may ask supplementary questions. The queue for supplementary questions often becomes rather long. On 25 May 2012, the House Committee decided that the time taken by an oral question (including any supplementary or follow-up questions and answers) should not exceed 22 minutes in total. This is now reflected in Rule 9A of the House Rules. In order that Members may have a fair chance to ask supplementary questions, the President has made use of the electronic queuing system to register the time a Member pressed the button to indicate his intention to ask supplementary questions and he may accord priority to those who have asked the least number of supplementary questions in the session and those who are higher on the queuing list. Details are provided in Chapter 9.

¹⁰⁰ Rule 23(1) of the Rules of Procedure provides that no questions may be asked at the first meeting of a term or a meeting at which the President is elected or the Chief Executive delivers the Policy Address.

¹⁰¹ On 20 March 2013, the Council amended Rule 23(2) of the Rules of Procedure to increase the number of questions that may be asked at each meeting from no more than 20 to no more than 22 in view of the increase in membership of the Fifth Legislative Council. *Hansard*, pp 7645-7647. The number of questions has been increased from 20 to 22 since the Council meeting of 17 April 2013.

¹⁰² Rule 23(2) and (3) of the Rules of Procedure.

¹⁰³ Rule 23(3) of the Rules of Procedure.

¹⁰⁴ Rule 23(4) of the Rules of Procedure.

7. *Conduct of business in the Council*

Urgent questions

7.71 Notwithstanding the maximum number of questions permitted for each Council meeting¹⁰⁵ and the notice requirements¹⁰⁶ set out in the Rules of Procedure, a Member may still ask permission from the President to ask a question without notice under Rule 24(4) of the Rules of Procedure on the ground that it is of an urgent character and it relates to a matter of public importance, provided sufficient private notice has been given to the Government to enable the question to be answered. This applies at any meeting including any of the meetings mentioned in Rule 7(e) of the House Rules,¹⁰⁷ except those meetings set out in Rule 23(1) of the Rules of Procedure. Where the President has permitted two or more urgent questions on related subject matters to be asked at a Council meeting, he may invite the designated public officer(s) to first answer each of these questions according to the order of these questions on the Agenda and then to answer all supplementary questions. Details are provided in paragraph 9.64.

Statements by designated public officers

7.72 Statements by public officers are given after Question Time. There was a historical reason for this. It was not uncommon in the early years of the pre-1997 Legislature that Government officers made use of statements to explain anything that was misunderstood in their replies to Members' questions at previous sittings or to supplement their earlier replies.¹⁰⁸ For example, on 20 November 1968, the Attorney General made a statement to express regret for providing a wrong figure in his answer to an oral question at a previous sitting and made an apology for the mistake.¹⁰⁹ Another example was the Attorney General's statement made on 19 November 1969 to correct the wrong impression given to the general public as a result of a newspaper report on the privileges of Members of the Legislative Council.¹¹⁰ Generally speaking, statements were made to announce new legislation, Government's White Papers and results of inquiries conducted by the Government. The frequency of making statements was relatively high in late 1960s and

¹⁰⁵ Rule 23 of the Rules of Procedure.

¹⁰⁶ Rule 24 of the Rules of Procedure.

¹⁰⁷ Examples are the question on the acceptance of passage and discounts by public officers at the Council meeting of 29 February 2012 and on West Kowloon Reclamation Concept Competition at the Council meeting of 15 February 2012.

¹⁰⁸ Council sitting on 30 July 1969, *Hansard*, pp. 446-448.

¹⁰⁹ Council sitting on 20 November 1968, *Hansard*, pp. 575-576.

¹¹⁰ Council sitting on 19 November 1969, *Hansard*, pp. 161-163.

throughout the 1970s with some 6 to 8 statements made in each session. Although it had always been advocated by the Legislature that any new and important policies of the Government should first be made known to Members through the making of statements in the Council, this practice has become less frequently used in recent years. During the 4-year term of the Fourth Legislative Council, only two statements were made and both were related to the methods for electing the Chief Executive and forming the Legislative Council in 2012.

7.73 The current Rule 28 of the Rules of Procedure was adopted from Standing Order No. 20 of the pre-1997 Legislature. Under Rule 28(1), a designated public officer should inform the President of his wish to make a statement on any issue concerning public interest before the beginning of the meeting at which he wishes to make the statement. According to Rule 18(1) of the Rules of Procedure, statements should be made after Question Time and before the Council proceeds to the part of the business where Council's decisions are required. If it is considered necessary that a statement should be made but the Council has already commenced business under item (i) in Rule 18(1) of the Rules of Procedure or beyond, suspension of Rule 18 is required.

7.74 Rule 28(2) of the Rules of Procedure provides that there should be no debate on a statement but the President may allow short and succinct questions relevant to the statement to be put to the public officer making the statement. This subrule originally stipulated that the short questions should only be for the purpose of elucidation. However in practice Members' questions on a statement were usually not only for elucidation.¹¹¹ In 2007-2008, in response to the request of the President, the Committee on Rules of Procedure studied the rules and practices of overseas legislatures for asking questions on ministerial statements and recommended that Rule 28(2) be amended to its present form. The amendment was approved by the Council on 20 February 2008. Since then, the President has allowed at least one hour to enable the short and succinct questions put to the public officer making the statement to be answered as far as possible.¹¹²

¹¹¹ The practice of the President allowing Members to ask long and substantive questions on statements made by public officers has long existed even during the days of the pre-1997 Legislature. See Council sitting on 17 June 1970, *Hansard*, pp. 715-716.

¹¹² Refer to Council meetings of 18 November 2009 (1 hour 36 minutes), 14 April 2010 (1 hour 48 minutes) and 4 December 2013 (1 hour 2 minutes).

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Personal explanations

7.75 Where a Member wishes to make an explanation of a personal nature in the Council, he should inform the President and provide him with an advance copy of the intended explanation. He must obtain the President's agreement before he may make the explanation. The President should ensure that the explanation will not provoke a debate and that the contents are appropriate before he gives leave to the Member for making the explanation. The Member's explanation should not depart from the agreed contents.¹¹³

7.76 Similar to other addresses or statements, no debate may arise on an explanation but the President may allow short questions to be put to the Member making the explanation for the purpose of elucidation.¹¹⁴

7.77 If the explanation is in connection with a motion moved under Article 79(6) or 79(7) of the Basic Law for the disqualification of a Member from office, the President may direct that the explanation be copied and sent to every Member if the Member who wishes to make the explanation is unable to attend the meeting, and the text of the explanation is taken as read.^{115 116}

Government bills

7.78 Government bills are proposed by the Government with a public officer designated as the public officer in charge of each of these bills. A bill is passed by the Council after it has been read the third time in the Council. Details on the procedure on bills are set out in Part K of the Rules of Procedure and they are further explained in Chapter 11. In gist, a bill including a Government bill must go through the following 5 stages after publication in the Gazette and presentation to the Council:

- (a) The short title of the bill is read the first time by the Clerk; the Council is deemed to have ordered the bill to be set down for second reading;¹¹⁷

¹¹³ Rule 28A(1) of the Rules of Procedure.

¹¹⁴ Rule 28A(2) of the Rules of Procedure.

¹¹⁵ Rule 28A(3) of the Rules of Procedure.

¹¹⁶ See Chapter 3, para. 3.107.

¹¹⁷ Rule 53 of the Rules of Procedure.

- (b) The public officer in charge of the bill moves a motion "That the Bill be read the second time" and speaks on the motion. The Council proceeds to debating the general merits and principles of the bill.¹¹⁸ Normally the second reading debate is adjourned after the public officer in charge of the bill has spoken.¹¹⁹ The bill then stands referred to the House Committee for consideration.¹²⁰ At House Committee, the bill may then be referred to a Bills Committee for detailed study. Following receipt of a report on a bill from a Bills Committee, if one was formed, the public officer in charge of the Bill may give notice for the resumption of the second reading debate in the Council.
- (c) The second reading debate is resumed in the Council and the motion voted on after the debate. If passed, the bill is read the second time.
- (d) The Council resolves into a committee of the whole Council.¹²¹ At Committee stage, the Chairman proposes the motion "That the following clauses stand part of the bill". The number of each clause is then read by the Clerk and the clause is deemed to have been proposed and a debate will take place. If any amendment is to be proposed to a clause, a motion needs to be moved to amend the clause. A debate will then follow. If the motion to amend the clause is passed, the amended clause is put to vote, and if passed again, will become part of the bill.¹²²
- (e) The Council then resumes and the bill moves to the third-reading stage. The public officer in charge of the bill moves a motion "That the Bill be read the third time." A debate then takes place and the motion is put to vote. Once passed, the bill is read the third time and is passed.¹²³

¹¹⁸ Rule 54(3) of the Rules of Procedure.

¹¹⁹ The normal procedure under Rule 54(4) of the Rules of Procedure of referring a bill to the House Committee is subject to an expedited process for urgent bills.

¹²⁰ Rule 54(4) of the Rules of Procedure.

¹²¹ Rule 55(1) of the Rules of Procedure.

¹²² Rule 58 of the Rules of Procedure.

¹²³ Rule 63 of the Rules of Procedure.

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7.79 There was at one time a practice of the Council to deal with all the bills which had reached the same stage one by one and then move to the next stage.¹²⁴ As a result, public officers responsible for those bills which were resumed for second reading had to wait for their turn at every stage until their respective bills were finally read the third time at the same meeting. The present arrangement, though not stated in the Rules of Procedure, is that the Council deals with all remaining stages of a bill in turn before moving to the next bill on the Agenda. This arrangement is regarded as a more effective way to deal with bills. Details of the actual operation at Committee stage, including the way amendments to clauses and schedules are handled, are provided in Chapter 11.

7.80 Where there is an urgent need for the passage of legislation, the Government may introduce bills that may have their 3-reading process completed in one Council meeting. In this case, after the public officer in charge of the bill has spoken at the second reading debate, any Member may move without notice for the bill not to be referred to the House Committee under Rule 54(4) of the Rules of Procedure. If this motion is passed, the Council will immediately proceed to debating the motion on the second reading of the bill and if passed, will then proceed direct to committee stage and then third reading at the same meeting. Examples are the Immigration (Amendment) Bill 1982¹²⁵ and the Overseas Trust Bank (Acquisition) Bill 1985¹²⁶.

Motions on subsidiary legislation and other instruments

7.81 The legal requirements and procedures for dealing with subsidiary legislation are provided in sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) and in Rule 21 and the entire Part G (Motions) of the Rules of Procedure. As explained in Chapter 6, the supporting technical details of a piece of legislation are often set out in subsidiary legislation which may bear the title of proclamation, rule, regulations, order, resolution, notice,

¹²⁴ The last Council sitting at which all bills which reached the same stage were dealt with before moving to the next stage was the Council sitting was held on 8 July 1992.

¹²⁵ The Immigration (Amendment) Bill 1982 aimed to give effect to the policy of the Government to set up closed camps and detain Vietnamese refugees arriving in Hong Kong on, or after, 2 July 1982. The Bill was first read at the Council sitting of 30 June 1982 and passed through the 3-reading process at the same sitting. *Hansard*, pp. 1016-1030.

¹²⁶ The Overseas Trust Bank (Acquisition) Bill 1985 was passed with 3 readings done at the same sitting on 7 June 1985. The Bill provided for the acquisition by the Government of the Overseas Trust Bank, the compensation payable in respect of such acquisition and the carrying on of the business of that Bank and for connected purposes. *Hansard*, pp. 1181-1193.

rule of court, or other instruments. Unless otherwise provided in the ordinance, subsidiary legislation is subject to the scrutiny and intervention by the Legislative Council through the procedures set out in section 34 (for those subject to the negative vetting procedure) and section 35 (for those subject to the positive vetting procedure) of Cap. 1. Motions may be moved by both public officers and Members to amend¹²⁷ a piece of subsidiary legislation tabled or proposed in the Council.

7.82 Under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), all subsidiary legislation must be laid on the Table of the Legislative Council at its sitting next following the publication of the subsidiary legislation in the Gazette.¹²⁸ Amendments to the subsidiary legislation may be made by resolution in the Council not later than 28 days after the laying on the Council's table of the subsidiary legislation.¹²⁹ This 28-day scrutiny period may be extended by resolution of 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.¹³⁰ Where the scrutiny period ends on a date after the last meeting of the session but before the second meeting of the next session, separate extension arrangements are provided in the Ordinance.¹³¹ The notice periods for moving these resolutions vary and they are set out in Rule 29 of the Rules of Procedure. This is further explained in Chapter 11.

7.83 Under section 35 of the Interpretation and General Clauses Ordinance (Cap. 1), where any subsidiary legislation is subject to the approval of the Legislative Council, the subsidiary legislation must be submitted to the Legislative Council for its approval. The Council may by resolution amend the whole or any part of the subsidiary legislation so submitted. The wording used to describe this requirement may be in different formats but the effect is the same. For example, it could read as "The Legislative Council may ... by resolution authorize ..." ¹³², or "Subject to the approval of the Legislative Council, the Board may .." ¹³³, or "... as may be determined by the Legislative Council by resolution" ¹³⁴, etc. Where the provision in the Ordinance has the effect of requiring the approval of the Legislative Council, a proposed

¹²⁷ Under section 3 of the Interpretation and General Clauses Ordinance (Cap.1), "amend" includes repeal, add to or vary and the doing of all or any of such things simultaneously or by the same Ordinance or instrument.

¹²⁸ Section 34(1) of the Interpretation and General Clauses Ordinance (Cap. 1).

¹²⁹ Section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1).

¹³⁰ Section 34(4)(a) of the Interpretation and General Clauses Ordinance (Cap. 1).

¹³¹ Section 34(4)(b) of the Interpretation and General Clauses Ordinance (Cap. 1).

¹³² Section 29(1) of the Public Finance Ordinance (Cap. 2).

¹³³ Section 29(1) of the Pharmacy and Poisons Ordinance (Cap. 138).

¹³⁴ Section 23 of the Hong Kong Export Credit Insurance Corporation Ordinance (Cap. 1115).

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resolution should be submitted to the Council. For dealing with proposed resolutions, the rules in Part G (Motions) of the Rules of Procedure will apply.

7.84 Proposed resolutions on subsidiary legislation are subject to amendments. Any Member who wishes to amend a proposed resolution should give due notice unless with leave of the President the notice requirement is dispensed with. The amendment motions are placed under the same item for the motion on the Agenda.

7.85 The procedure to take note of a report of the House Committee on the consideration of subsidiary legislation and other instruments as explained in paragraph 7.63 above, is to enable Members to speak on the subsidiary legislation which is tabled in the Council but to which no amendment is made.¹³⁵ The procedure is set out primarily in Rules 49D and 49E and also in Rules 21(7), 33(2A), 33(3AA), 33(3C) and 38(1)(fa) of the Rules of Procedure and is explained in Chapter 10.

7.86 The sequence of motions on subsidiary legislation on the Agenda is arranged in the following order:

- (a) Government motions moved under the Basic Law or any statute including those in relation to subsidiary legislation moved under section 35 of Cap. 1 or those tabled in the Council under section 34;
- (b) Members' motions to amend the motions in (a) above, placed under the relevant motions to which the proposed amendments relate¹³⁶;
- (c) Members' motions to extend the scrutiny period of subsidiary legislation tabled in the Council under section 34 of Cap. 1;
- (d) Members' motions to amend subsidiary legislation if there is no Government motion in relation to that subsidiary legislation; and

¹³⁵ Under Rule 21(6) of the Rules of Procedure, no debate may arise on any address presented by a Member or a designated public officer under subrules (3), (4A) and (5).

¹³⁶ The sequence of the motions to amend subsidiary legislation laid on the Table of the Council in accordance with section 34 of Cap. 1, is based on the order in which the amendments relate to the texts of the subsidiary legislation, i.e. the location in the text, and, if that being equal, the time of submission.

- (e) Members' motion to take note of the report of the House Committee on the consideration of subsidiary legislation and other instruments under Rule 49E(2) of the Rules of Procedure.

7.87 For the Government motions in (a) above, they may include a motion under the Basic Law or a statute, such as a motion to endorse the appointment of judges. The sequence of these Government motions is determined according to the seniority of the public officers moving the motions¹³⁷ unless advised otherwise by the Government and with the consent of the President. If the motion is one not intended to have legislative effect, the motion is placed after all those motions (including amendments) with legislative effect have been dealt with.

Members' bills

7.88 Under Article 74 of the Basic Law, Members may introduce bills in accordance with the provisions of the Basic Law and legal procedures. Members, individually or jointly, 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. According to Rule 54(2) of the Rules of Procedure, the signification of the Chief Executive's written consent must be recorded in the minutes of proceedings.

7.89 The procedure for dealing with Members' bills at meetings of the Council and in committee of the whole Council is substantially the same as that for Government bills. The main difference is that all motions¹³⁸ arising from a Members' bill in the Council or in a committee of the whole Council are regarded as Members' motions and their passage requires a majority vote of each of the two groups of Members from functional constituencies and geographical constituencies present in the Council or committee, except that in the case of an amendment proposed by the Government where a majority vote of the Members present is required.

¹³⁷ For example, a motion to be moved by the Chief Secretary for Administration is placed before a motion to be moved by a Bureau Secretary. The seniority of public officers on the same rank is determined according to their seniority on the Government Precedence List.

¹³⁸ See "subsidiary motions" in relation to the processing of a bill in Chapter 10.

Members' motions

Motions intended to have legislative effect

7.90 Other than proposing amendments to subsidiary legislation tabled or moved in the Council, any Member of the Council may also move a motion to pass a resolution which the Legislative Council may make under the law to make or amend regulations, schedules, codes or other subsidiary legislation in an ordinance as referred to in paragraph 7.83 above. The mover of the motion should comply with the notice requirements under Rule 29 and the manner of giving notice of such a motion or any amendment to the motion under Rule 30 of the Rules of Procedure. Such motion or amendment, if moved by a Member, is also subject to the restriction in Rule 31(1) of the Rules of Procedure that the Chief Executive's written consent must be obtained if the President is of the opinion that the motion or amendment may have a charging effect on the revenue or other public moneys of Hong Kong.¹³⁹

7.91 There are also motions which may be moved by Members in accordance with specific provisions of the Basic Law. Examples are motions to amend the Rules of Procedure of the Legislative Council (Article 75)¹⁴⁰, to give mandate to the Chief Justice to form and chair a committee to investigate a charge against the Chief Executive for serious breaches of the law and/or dereliction of duty (Article 73(9))¹⁴¹, to relieve from duty a Member convicted and sentenced to imprisonment for one month or more for a criminal offence (Article 79(6))¹⁴², to censure a Member for misbehaviour or breach of oath (Article 79(7))¹⁴³ and motions in connection with procedures concerning amendments to the Basic Law (Article 159)¹⁴⁴.

7.92 Motions intended to have legislative effect are placed on the Agenda of the Council before those not intended to have legislative effect on the Agenda of the Council. Those moved in accordance with the Basic Law are placed before all other motions under item (I) in respect of Members' motions other than those specified in paragraph (jb)¹⁴⁵ in Rule 18(1) of the Rules of

¹³⁹ Details of the discussion between the Government and Members of the First Legislative Council on the applicability of Article 74 of the Basic Law are provided in Chapter 10.

¹⁴⁰ Council meeting of 28 April 1999.

¹⁴¹ Such a motion requires to be initiated by at least one quarter of the membership. See Chapter 5, para. 5.66.

¹⁴² See Council meeting of 9 September 1998, *Hansard*, pp. 1384-1402; and also Council meeting of 18 April 2012, *Hansard*, pp. 8210-8277 and 8302-8354.

¹⁴³ See Council meeting of 18 April 2012, *Hansard*, pp. 8164-8209.

¹⁴⁴ See Council meeting of 19 January 2000, *Hansard*, pp. 3397-3484.

¹⁴⁵ Rule 18(1)(jb) of the Rules of Procedure refers to Members' motions on subsidiary legislation and other instruments made under an Ordinance.

Procedure. The order of motions in the same category on the Agenda is determined according to the time at which the relevant notices were received by the Clerk.

Members' motions not intended to have legislative effect

7.93 One of the powers and functions of the legislature of the HKSAR is "to debate any issue concerning public interests". This power and function, which is set out in Article 73(6) of the Basic Law, in fact reflects a long-standing practice of the Hong Kong Legislature to facilitate Members to initiate motion debates to call the government to account on matters of public interests. In October 1992, to enable individual Members to have a fair chance to move motion or adjournment debates in the Council while maintaining better control of the duration and speaking time of debates, the House Committee decided that no more than two debates should be held at each regular Council sitting. The House Committee also decided that there should be an allocation system for Members to be provided with a debate slot on an issue concerning public interests at the Council sitting of their preference, as far as practicable. These practices, which were set out in the House Rules, were adopted by the First Legislative Council of HKSAR and have been maintained up to this date. Generally speaking, each Member may be allocated 3 debate slots in each 4-year term. More details are provided in Rules 13-18 of the House Rules and further explained in Chapter 10.

7.94 Prior to November 2012, in bidding for debate slots, Members had the choice of initiating either a motion debate or an adjournment debate pursuant to Rule 16(4) of the Rules of Procedure. The choice was to enable those Members who did not wish to formulate a motion in express terms for the purpose of debating an issue to move that "This Council do now adjourn" for the purpose of raising the issue with a view to eliciting a reply from a designated public officer. However, in practice, since the establishment of the First Legislative Council, there was only one occasion on which a regular debate slot was used for holding an adjournment debate.¹⁴⁶ On the contrary, there had been an increase in the number of requests put to the House Committee for supporting the holding of adjournment debates outside the allocation system. For example, in the 2008-2012 term alone, the House Committee supported the holding of adjournment debates on 16 issues concerning public interests under Rule 16(4) of the Rules of Procedure. These

¹⁴⁶ Council meeting of 6 February 2002.

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debates were held in addition to the two regular motion debates.¹⁴⁷ On 23 November 2012, upon the recommendation of the Committee on Rules of Procedure, the House Committee amended Rule 13(a) of the House Rules to the effect that the debates under the allocation system should all be motion debates. Any Member who wishes to move an adjournment debate for raising an issue for debate should act in accordance with Rule 16 of the Rules of Procedure.

7.95 Motions not intended to have legislative effect also include motions initiated by committees to take note of their reports or by Panels to facilitate Members to speak on Government consultation documents before the expiry of the consultation period. The mechanism adopted by the House Committee for allocating debate slots to committees for such purposes is explained in Chapter 10. Debates on motions initiated by committees will take place before the regular motion debate(s) initiated by individual Member(s) on the Agenda of the Council.¹⁴⁸

7.96 There is a standing arrangement for the Director of Bureau responsible for the policy of a motion debate passed in the Council to report on the actions taken by the Government in relation to the subject matter within 2 months after the passage of the motion. The report is circulated to the relevant Panel and it is for the Panel to decide whether and how the subject matter should be followed up.

Adjournment debates under Rule 16 of the Rules of Procedure

7.97 Under Rule 16 of the Rules of Procedure, Members may move a motion that the Council do now adjourn for the purpose of debating an issue or issues. This is to enable those Members who do not wish to formulate a motion in express terms to raise an issue or issues for debate in the Council. Members may seek to move adjournment debates under Rule 16(2) or Rule 16(4) which are subject to different requirements, as explained in Chapter 10.

¹⁴⁷ Of the 16 requests supported by the House Committees, 2 adjournment debates scheduled to be held at the last Council meeting of 11 July 2012 could not be held before the conclusion of the meeting at midnight 18 July 2012.

¹⁴⁸ Rule 15(c) of the House Rules. In recent years, it is normal practice for committees requesting priority allocation of debate slots to recommend to the House Committee that only one other motion debate without legislative effect should be held at the same Council meeting, and the House Committee would normally support such a recommendation, which is in line with the practice of holding not more than two motion debates at each regular Council meeting.

Rule of anticipation

7.98 In determining the Agenda of the Council, the President should also have regard to the "rule of anticipation" which is adopted with modifications in Rule 25(3) and Rule 31(2) of the Rules of Procedure. The general principle underlying the rule of anticipation is that a matter appointed for consideration by the legislature must not be anticipated by another matter of substantially the same content but contained in a less effective form of proceeding. The intention is to ensure that matters before the Council are dealt with in the most effective form of proceeding and that the Council's time is used effectively. Generally speaking, a bill or a motion intended to have legislative effect is regarded as more effective than a motion not intended to have legislative effect, while a motion is more effective than a question.¹⁴⁹ The proceedings of a standing committee or a select committee or committee authorized by the Council to conduct an inquiry must not be anticipated by a question or a motion not intended to have legislative effect.¹⁵⁰

Question vs. question

7.99 Under Rule 25(3)(a), if the subject matter of a question or any part of it is substantially the same as that of any matter of another question notice of which has been given earlier for the same Council meeting, the President may direct the Clerk to inform the Member that the question or that part of the question is out of order. Where time allows, i.e. if the notice of the question concerned is given ahead of the deadline for submitting the question, the Member who is so informed may submit another question or a question with the part which overlaps another question removed or changed before the deadline. As a general rule, the President would not allow a question to preempt a question for which earlier notice has been given. There is no distinction between oral and written questions when considering the rule of anticipation.

7.100 As regards urgent questions, if a question raised under Rule 24(4) of the Rules of Procedure satisfies the tests of urgency and public importance, the rule of anticipation would not apply to such a question. In other words, the urgent question is allowed to be asked even though the question or any

¹⁴⁹ See Erskine May's *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 22nd Edition, pp.334-335.

¹⁵⁰ Progress Report of the Committee on Rules of Procedure for the period May 1999 to June 2000, para. 3.2-3.16.

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part of it may be substantially the same as one already permitted by the President to be asked by another Member at the same Council meeting.¹⁵¹

Question vs. motion

7.101 A question cannot pre-empt a motion for which notice has been given for a specific Council meeting. The Council meeting at which the motion is to be moved may not necessarily be a meeting before the meeting at which the question is intended to be asked. As the notice period for a motion (12 clear days) is longer than that for a question (7 clear days), it is possible that the question intended to be asked takes place before the motion debate. However, Rule 25(3)(b) prevents the question from pre-empting the holding of the debate on a motion for which notice has already been given for a specific Council meeting. Where notice has already been given for the moving of the motion, the question with substantially the same subject content is not allowed to be asked.¹⁵²

Question vs. bill

7.102 As regards bills, since a Member or designated public officer may at any time give notice of his intention to present a bill¹⁵³, the notice of the presentation of a bill may be given after a question with substantially the same subject matter has been approved by the President for inclusion on the Agenda for the same meeting. There is no anticipation in this case as the date of the presentation of the bill would not be known at the time the President considered the admissibility of the question.

7.103 The situation is different in case of the resumption of the second reading debate on a bill. The minimum notice period depends on the circumstances¹⁵⁴ and the President may in his discretion dispense with the notice. Notice of resumption of debate should usually be given by the Member or public officer in charge of the bill not less than 12 clear days before the day on which the debate is to be resumed. However, where resumption of debate is to take place 9 clear days or less after the meeting of the House Committee at which the bill was considered in preparation for resumption, then notice of resumption of debate shall be given no later than 2 clear days after that meeting. Thus, under normal circumstances, the notice

¹⁵¹ Progress Report of the Committee on Rules of Procedure for the period May 1999 to June 2000, para. 3.7.

¹⁵² Progress Report of the Committee on Rules of Procedure for the period May 1999 to June 2000, para. 3.8.

¹⁵³ Rule 51(1) of the Rules of Procedure.

¹⁵⁴ Please refer to Rule 54(5) of the Rules of Procedure for details.

for the resumption of the second reading debate on a bill is given before the President considers the admissibility of questions for the same Council meeting. Any question which will pre-empt the debate on a bill will not be allowed under Rule 25(3)(b) of the Rules of Procedure.

Motion vs. motion

7.104 A motion intended to have legislative effect notice of which has been given for a specific Council meeting must not be anticipated by a motion which is not intended to have legislative effect. Where two motions of the same category are substantially the same, both are allowed to be placed on the Agenda of the Council for that particular meeting. The order of the two motions on the Agenda is determined according to the time at which the notices are received unless one of the motions is moved by a designated public officer, which will then have priority over a Member's motion.¹⁵⁵ When the Council has decided on the first motion, the second motion will not be proceeded with in accordance with Rule 32 of the Rules of Procedure.¹⁵⁶

Bill vs bill

7.105 Although not explicitly stated in the Rules of Procedure, it is procedurally in order to have two bills with substantially the same provisions before the Council at the same time. Rule 51(7)(a) of the Rules of Procedure provides that once the Council has decided on a bill at the second reading debate of the bill, the other bill with substantially the same provisions will not be proceeded with in the same session and will be withdrawn.

Decisions of the Council

7.106 Decisions of the Council are made through the passage of motions. As mentioned in paragraph 7.39, not every item of business on the Agenda of the Council is seeking a decision of the Council. For those items which require a decision, a motion is to be moved for that purpose. The motion is proposed and debated. After all Members and designated public officers who

¹⁵⁵ A Government motion is placed before a Member's motion on the Agenda of the Council under Rule 18 of the Rules of Procedure.

¹⁵⁶ Rule 32 of the Rules of Procedure provides that where the Council has taken a decision on a specific question and the question is decided in the affirmative, the same question may not be moved during the current session except upon a motion to rescind the decision with the permission of the President. If the question is decided in the negative, no further motion in respect of that question may be moved during the current session.

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wish to speak on the motion have spoken, the question on that motion is put to vote.

Previous decisions (Rule 32 of the Rules of Procedure)

7.107 Once the Council has decided on a question and the decision is in the affirmative, Rule 32(1) of the Rules of Procedure provides that no further motion in relation to that question may be moved within the same session except a motion to rescind that earlier decision if permitted by the President.¹⁵⁷ If the decision on a specific question is in the negative, Rule 32(2) provides that no further motion may be moved in relation to that question within the same session. The fundamental principle behind Rule 32 is that the same question cannot be debated and voted on twice within the same session. It is a measure to ensure that the Council's time is put to effective use.

7.108 Rule 32(1) of the Rules of Procedure does not apply to the motions moved under Rule 49B for disqualifying a Member from office under Articles 79(6) and 79(7) of the Basic Law. As the President will immediately declare that the Member is no longer qualified for the office after a motion moved under Rule 49B is passed, there is no opportunity for a motion to be moved to rescind the decision of the Council.¹⁵⁸

Valedictory speeches

7.109 There was a long convention of Members of the pre-1997 Legislature making valedictory speeches upon the retirement of Members at sittings prior to their retirement. This was originally done at the start of the sitting if it was only the President who made such a speech. On occasions, valedictory speeches were made at the end of the sitting if more Members had indicated intention to speak and the President agreed to include the speeches as an item of business in the Order Paper in accordance with Standing Order No. 11(2).

7.110 On 30 May 1997, the House Committee decided that there should be a motion debate to enable Members to make valedictory remarks. A valedictory motion was moved on 23 June 1997 by the Chairman of the House Committee to bid farewell to the British Government and wish the Hong Kong Special Administrative Region continued stability and prosperity.

¹⁵⁷ Rule 32(1) of the Rules of Procedure.

¹⁵⁸ See Chapter 3, para. 3.109.

7.111 On 7 April 1998, prior to the prorogation of the Provisional Legislative Council, a valedictory motion was moved by the Chairman of the House Committee to wish for the smooth formation of the First Legislative Council to continue to serve the people of the HKSAR. The speaking time on this occasion was 13 minutes for the mover and 5 minutes for all other Members.

7.112 From the First Legislative Council onwards, a valedictory motion moved at the last Council meeting of each term has become a standing arrangement. The motion is moved by the Chairman of the House Committee. The speaking time is 15 minutes for all Members. For the Fourth Legislative Council, due to the bunching of business at the end of the session, the valedictory motion, though placed on the Agenda of the Council, could not be moved before the Council was prorogued at midnight on 17 July 2012.

Voting

Voting method prescribed in Annex II to the Basic Law

7.113 Article 68 of the Basic Law provides that the procedure for voting on bills and motions in the Council is prescribed in Annex II to the Basic Law. Annex II sets out the method for the formation of the Legislative Council and the voting procedures. It also provides that if there is a need to amend the method for forming the Legislative Council and its voting procedure subsequent to the year 2007, such amendments must be made with the endorsement of two-thirds of all the members of the Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the NPC for the record. As mentioned in paragraphs 2.38 and 2.53, the Standing Committee of the tenth NPC adopted a procedure for amending Annex II. Based on this procedure, on 23 June 2010, the Legislative Council passed a motion containing an amendment to Annex II to provide for the composition of the Fifth Legislative Council. No amendment was proposed to the voting procedure as it was decided by the Standing Committee of the NPC on 29 December 2007 that the procedure for voting on bills and motions in the Legislative Council was to remain the same.¹⁵⁹

7.114 The voting procedures set out in Annex II to the Basic Law are reflected in Rule 46 of the Rules of Procedure. Unless otherwise provided in

¹⁵⁹ See Chapter 2, para. 2.51.

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the Basic Law, the passage of all motions before the Council or a committee of the whole Council, except those proposed by a Member, shall require a majority vote of the Members present. The passage of motions proposed by a Member, including a motion or a bill and an amendment to any motion or bill, requires a majority vote of each of the two groups of Members present: Members returned by functional constituencies and Members returned by geographical constituencies. As various articles of the Basic Law have separately stipulated the voting requirement for motions moved under those articles, Rule 46(1) also provides for these exceptions.

Voting requirements under other articles in the Basic Law

Articles 79(6) and 79(7) of the Basic Law

7.115 Under Article 79 of the Basic Law, the President of the Legislative Council shall declare that a Member of the Council is no longer qualified for the office under a number of circumstances. These include the conviction and sentencing of a Member to imprisonment for one month or more for a criminal offence committed within or outside the HKSAR and who is relieved of his or her duties by a motion passed by two-thirds of the Members of the Legislative Council present (Article 79(6)); and the censure of a Member for misbehaviour or breach of oath by two-thirds of the Members of the Council present (Article 79(7)). Under both circumstances, the passage of a motion by two-thirds of the Members present is required. This requirement is reflected in Rule 49B of the Rules of Procedure.

Articles 49 and 52(3) of the Basic Law

7.116 Article 49 of the Basic Law provides that if the Chief Executive considers a bill passed by the Legislative Council not compatible with the overall interests of HKSAR, he may return it to the Legislative Council within three months for reconsideration. If the returned bill is passed by the Council by not less than a two-thirds majority of all the Members, the Chief Executive must sign and promulgate the bill within one month or dissolve the Council if no consensus can be reached. Under Article 52(2), if after the Legislative Council is dissolved, the new Council passed the original bill again by a two-thirds majority of all the Members but the Chief Executive still refuses to sign it, the Chief Executive must resign. The requirements for the passage of the bill under Article 49 are set out in Rule 66 of the Rules of Procedure. No procedure is separately provided for the voting requirement in Article 52(2) but an exception has been made in this respect in Rule 46(1) of the Rules of Procedure.

Article 73(9) of the Basic Law

7.117 Article 73(9) of the Basic Law provides that the Council may pass a motion to give a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigation committee to investigate a charge against the Chief Executive for serious breach of law or dereliction of duty lodged by one-fourth of all the Members of the Legislative Council. If the investigation committee considers the evidence sufficient to substantiate the charge, 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. An exception has been made in Rule 46(1) of the Rules of Procedure to provide for the special voting requirement under Article 73(9) to take effect.

Article 159 of the Basic Law

7.118 Article 159 of the Basic Law provides that the power to propose bills for amendments to the Basic Law is vested in the Standing Committee of the NPC. Proposals to amend the Basic Law should have the consent of two-thirds of the deputies of the HKSAR to NPC, two-thirds of all the Members of the Legislative Council and the Chief Executive before they can be submitted by the HKSAR to the NPC. An exception has been made in Rule 46(1) of the Rules of Procedure to provide for motions moved under Article 159.

Amendment to Annex I and Annex II to the Basic Law

7.119 Paragraph 7 of Annex I to the Basic Law provides that if there is a need to amend the method for selecting the Chief executive for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the NPC for approval. The same provision is also provided in part III of Annex II to the Basic Law in respect of the formation of the Legislative Council and its voting procedures subsequent to the year 2007. An exception has been made in Rule 46(1) of the Rules of Procedure to provide for motions to amend Annex I and Annex II to the Basic Law in accordance with the special voting requirements.

Other voting procedures

7.120 Other than the voting methods and requirements stipulated in the Basic Law, the Legislative Council is empowered by Article 75 of the Basic Law to make its own rules of procedure which cover other aspects of the voting procedures.

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Meaning of "majority vote"

7.121 In the pre-1997 Legislature, all questions were decided by a majority of the votes of the Members present and voting. When the President put a question to the Council, he first called upon those Members who were in favour of the question to say "Aye" and then upon those who were against to say "No". He then, according to his judgment of the number of voices on either side, stated what he thought had the majority and if no Member challenged his statement he would declare the question to have been decided. If challenged, the President was required to order the Council to proceed to a division at which the votes on "Aye", "No" and "abstention from voting" would be counted. Only the votes on "Aye" and "No" were counted when deciding if there was a majority vote as it was explicitly stated in the Standing Orders that the majority vote was based on those Members "present and voting".¹⁶⁰

7.122 The voting requirement in Annex II to the Basic Law is different. Passage of government bills requires at least a simple majority of Members present, while passage of Members' motions, bills or amendments to government bills requires a simple majority vote of each of the two groups of members present, i.e. those returned from functional constituencies and those from geographical constituencies. The counting of votes is therefore based on the Members "present" rather than the Members "present and voting". This has given rise to the question of whether those who abstain from voting should be counted when calculating if there is a majority vote. Coupled with the fact that the Government had its own views on the interpretation of the use of different expressions to describe "vote" in the Chinese text of the Basic Law when referring to the two scenarios, the Committee on Rules of Procedure of the First Legislative Council decided to study the matter in detail.

7.123 The Committee on Rules of Procedure noted that the use of different expressions to describe "vote" in the Chinese text of Annex II but considered that it was only a matter of style in writing. It endorsed the views of the Legal Adviser of the Legislative Council Secretariat and an outside Counsel that the description of the voting procedures in Annex II when read as a whole was reasonably clear. According to the legal advice, it was evident that decisions of the Council should be governed by the principle of "the majority rules" which applied consistently throughout the Basic Law notwithstanding the different requirements for different circumstances. Hence the word "vote"

¹⁶⁰ Standing Order No. 35(1) of the pre-1997 Standing Orders.

should refer to "affirmative vote". Since "abstention from voting" was not a vote, "a majority vote" should refer to the majority of the actual votes cast in favour of the question. To remove any doubt over this point, the Committee recommended that the meaning of "a majority vote" should be stated clearly in the Rules of Procedure.¹⁶¹ Rule 46(4) was added to the Rules of Procedure on 28 April 1999¹⁶². The Rule provides that there is a majority vote when the Members voting in favour of a question exceed half of the number of the Members present at the time of voting.

7.124 Current voting procedures, as set out in Rule 47 of the Rules of Procedure, are similar to that in the pre-1997 Legislature except that Members are asked to raise their hands to indicate if they are in favour of the question or against the question. The President will state according to his judgment whether or not he thinks the majority of the Members present are in favour of the question and if this is not challenged he will declare the question to have been so decided. If challenged, the President will order the Council to proceed to a division.¹⁶³ In a division which is carried out through the use of an electronic voting system installed in the Chamber, all Members are required to indicate their presence and cast their votes (or abstention) by pressing the appropriate buttons on the voting panels. Any Member who fails to register his presence at the time of voting will be reminded to do so by the President. If the electronic voting system for any reason cannot be used, the votes will be recorded by the Clerk in accordance with Rule 49 of the Rules of Procedure. Based on the total number of Members present and those who have cast their votes in favour of the question, the President declares the result of the division.

The President's vote

7.125 The counting of the presence of the President at the time of voting is dictated by the Basic Law which requires all Members present to be counted.¹⁶⁴ There is no specific rule in the Rules of Procedure to stipulate how the President should cast his vote, nor is there any provision in law or in the Rules of Procedure to deprive the President of his right to vote. Nevertheless, there is a long-standing convention that the President would abstain from voting in order to maintain his neutrality. In the pre-1997

¹⁶¹ Progress Report of the Committee on Rules of Procedure for the period July 1998 to April 1999, para. 2.8-2.15.

¹⁶² Council meeting of 28 April 1999, *Hansard*.

¹⁶³ See requirement to use electronic voting system under Rule 48 of the Rules of Procedure.

¹⁶⁴ See Progress Report of the Committee on Rules of Procedure for the period July 1998 to April 1999, para. 2.16-2.18.

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Legislature, although the President did not cast his original vote, he was still required to exercise his casting vote in the event that there was a tied vote. This situation does not arise in the HKSAR Legislature as any motion which does not have the support of over half of the Members present is regarded as not passed. This is reflected in Rule 46(1) and (4) of the Rules of Procedure.

Consent by no dissenting voice

7.126 There is also a procedure to enable the Council to give consent to a course of action provided there is no dissenting voice. This kind of unanimous consent is provided in the Rules of Procedure mostly for giving leave to a course of action which is a decision on a specific question before the Council. For example, Rule 35(2) of the Rules of Procedure provides that at the request of the mover, a motion or an amendment may be withdrawn by leave of the Council before the question is put thereon, if there is no dissenting voice. Where one or more Members express disagreement, no leave is given and the Council will proceed with the motion or amendment. Similar arrangements are provided for the withdrawal of an amendment, a proposed new clause or new schedule at committee stage in the consideration of a bill under Rule 58(11)¹⁶⁵ and the withdrawal of questions not yet asked under Rule 26(8)(b). Under Rule 89 and Rule 90, the Council is deemed to have ordered the grant of leave for a Member to attend as witness in civil proceedings and to give evidence of Council proceedings respectively unless on a motion moved without notice by any Member it refuses to grant such leave.

Voting in a committee of the whole Council

7.127 The same voting procedures for the Council have been adopted for the committee of the whole Council. As the President is also the Chairman of the committee of the whole Council, he also refrains from voting on any question to maintain his neutrality.

Voting in committees

7.128 The voting procedures in Annex II to the Basic Law only apply to motions, bills and amendments to bills in the Council. It is for the Council to decide the voting procedures for its committees. In the pre-1997 Legislature,

¹⁶⁵ Rule 58(11) of the Rules of Procedure. As under Rule 58(1) on the number of any clause being called, the question that that clause stands part of the bill shall be deemed to have been proposed, any withdrawal proposed in the course of debate after the number of the clause has been read will be subject to Rule 58(11) of the Rules of Procedure.

decisions made in committees were determined by the number of Members voting, with the Members abstaining from voting or not voting disregarded. The same voting procedures were adopted by the committees of the First Legislative Council and this practice has been in use up to this date.

7.129 The only new provision made in the Rules of Procedure relating to voting in committees is Rule 79A on the voting rights of chairmen of committees. Under Rule 79A, where the Rules of Procedure provide that the chairman of a committee shall have a casting vote in the event of a tie vote, he cannot exercise the vote in such a way as to produce a majority vote in favour of the question put. The Rule also provides that if the chairman of a committee has an original vote and he wishes to cast his vote, the vote should be cast at the same time as other members of the committee exercise their votes.

Records of Council meetings

7.130 Under Rule 6 of the Rules of Procedure, the Clerk has the responsibility to keep the minutes of proceedings of the Council and of committees of the whole Council. He is also responsible for the production of the Official Record of all proceedings in the Council and in committee of the whole Council. The two records of proceedings, though referring to the same proceedings, aim to serve different purposes. The minutes of proceedings record the attendance, decisions taken, details of every division held, and also other records as required by the Rules of Procedure.¹⁶⁶ The Official Record of proceedings, generally known as "*Hansard*", is a verbatim record of the speeches made at a meeting.

7.131 The requirement that minutes should be kept for each Council meeting dates back to the first sitting of the pre-1997 Legislature. In the early days, the minutes of a sitting were read, corrected if so requested and voted on as soon as a quorum had been formed at the start of the next sitting. From 1912 onwards¹⁶⁷, the minutes were approved without being read in the Council but speeches began to be recorded in verbatim form in the minutes. On 9 October 1968, a new set of Standing Orders was approved by the Council to replace the 1929 Standing Orders. In the new Standing Order No. 4, the responsibilities of the Clerk were expanded to include not only the keeping of

¹⁶⁶ See Rule 53(3) and Rule 54(2) of the Rules of Procedure.

¹⁶⁷ The practice to record speeches in the minutes started from the Council sitting on 7 March 1912. The Standing Orders were also revised at the same sitting.

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the minutes of proceedings but also the production of the Official Record of proceedings which recorded all speeches in the debates. Under the new Standing Order No. 4(2), the Clerk was required to submit the minutes of proceedings of each sitting to the President for his signature and to distribute copies to Members before the commencement of the next sitting. Although the procedure to endorse the minutes is not prescribed in the Rules of Procedure today, the same practice is maintained up to this date.

7.132 The Hansard is a verbatim record which gives an accurate and truthful report of the speeches made by speakers primarily in the debates but it has been the practice that all speeches made during the proceedings of a Council meeting are recorded. As most speeches made at meetings are delivered in Cantonese, it is necessary for Hansard production staff to convert the speeches from colloquial Cantonese to written Chinese for the purpose of recording when preparing the Hansard. The process involves conversion of the sentences and phrases from colloquial Cantonese to their equivalents in written Chinese. Prudence and care are exercised by the editors and transcribers to ensure accuracy and integrity of the Hansard.

7.133 In producing the Hansard, reference is often made to the principle described in Erskine May: "[The Official Report], though not strictly verbatim, is substantially the verbatim report, with repetitions and redundancies omitted and with obvious mistakes corrected but which, on the other hand, leaves out nothing that adds to the meaning of the speech or illustrates the argument."¹⁶⁸ When the draft version of the Hansard is circulated to all Members and designated public officers for comment, only proposed amendments which are not material in nature may be accepted. The confirmed version will then be translated into the other official language so that a complete Chinese and English version of the proceedings is available for public access. More details about the preparation of the Hansard are provided in Chapter 4.¹⁶⁹

7.134 The Official Record of the proceedings in the Council and in committees of the whole Council is published in both Chinese and English and is available for public access both in the Legislative Council Library and on the Legislative Council website.

¹⁶⁸ See Erskine May (24th Edition), p. 130.

¹⁶⁹ See Chapter 4, para. 4.17-4.18.

Chapter 8

Decorum and order at Council meetings

8.1 Decorum generally refers to the way a Member behaves in the Council¹ including his manner of speaking, the expressions and words he uses in his speeches and his behaviour when not speaking. The general principle is that a Member should respect the office of a Legislative Council Member. While Members enjoy freedom of speech and debate, such freedom is not without bounds. They should treat other Members and persons attending meetings of the Council including the Chief Executive and public officers with courtesy and civility in the legislature which is and is also expected by the public to be an esteemed institution.²

8.2 The preservation of decorum and order at Council meetings is the responsibility of the President who refers to Part H and Part I of the Rules of Procedure to regulate Members' behaviours at meetings of the Council. Part H on "Rules of Speaking" was originally known as "Rules of Debate" in the Standing Orders of the pre-1997 Legislature and the rules in this Part were primarily related only to debates. However, as some of the principles, such as those relating to interruptions, behaviour while not speaking, etc., also apply to other speeches, Part H was retitled in the Rules of Procedure as the general rules on speaking. Nevertheless, when making a ruling on the speeches made under those items of the Agenda for which no debate is allowed, the President would first refer to the specific provisions in the relevant rules before referring to the general provisions in Part H.

8.3 In this Chapter, apart from setting out the rules and practices regarding Members' behaviours in the Council, some precedents of the behaviour and expressions ruled unacceptable by Presidents over the years are also quoted to illustrate the principles behind the rulings at the time and the development of these principles in recent years. The rules and practices examined in this Chapter, though described in the context of a Council meeting, also apply to a committee of the whole Council. The President, who is also Chairman of the

¹ Rule 42 of the Rules of Procedure.

² Progress Report of the Committee on Rules of Procedure (October 2008 to June 2009), para. 3.5. In response to a Member's challenge on whether Rule 41 should apply to the Chief Executive, the President stated in his letter to the Member on 23 October 2013 that the Chief Executive should be given the courtesy and respect in his capacity as the head of the HKSAR. In a circular to all Members on 10 January 2014, the President called upon Members to uphold the dignity of the Council and respect all persons who attend Council meetings.

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committee of the whole Council, is responsible for preserving the decorum and order in the committee of the whole Council. This chapter also describes how some of the principles also apply to other committees.

Manner of speaking

Speaking to the Chair

8.4 At a meeting of the Council or a committee of the whole Council, a Member may speak when called upon by the President or Chairman and should stand when speaking. He should address his observations to the President or Chairman.³ The philosophy behind this arrangement, as explained in Chapter 1⁴, is that when a Member's speech is directed to the Chair and not to individuals, there is a cooling effect which helps cultivate '*a temper of moderation*' in the Council.

Speaking order

Historical background

8.5 Prior to 1993, Members were called to speak in a fixed order of precedence which matched the order of their seating in the Chamber with the most senior Members being seated in the front row. Although Standing Order No. 27 provided that those Members wishing to speak "shall rise" to indicate their intention to speak,⁵ Members in practice tried to 'catch the President's eye' by raising their hands instead of rising and those recognized by the President would have their names entered on a list. In a debate, as soon as the mover of the motion had spoken, the President referred to the list of Members he had recognized and called them in the order of their precedence in the Council. Towards the end of the debate, the President might ask Members to raise their hands to ascertain who else wished to speak. He would then call upon those who raised their hands to speak before he invited the mover of the motion to reply and the question was put to vote. Where an amendment was to be moved, the mover of amendment could only move the amendment at the

³ Rule 36(1) of the Rules of Procedure.

⁴ See Chapter 1, para. 1.29.

⁵ Standing Order No. 27(4) of the 1991 Standing Orders of the Hong Kong Legislative Council.

time when he was called upon to speak on the motion according to his seniority.⁶

8.6 After the first batch of elected Members were returned to the Council in 1985, some Members suggested to the President that the system of speaking by order of seniority should be changed to one that would "prevent repetition of points" and "allow junior Members to participate more lively" in a debate.^{7 8} This wish of Members to have a more spontaneous and lively debate was echoed by the newly elected Members returned from geographical constituencies in 1991. In February 1993, when Sir John SWAINE was elected as President, he began to exercise discretion in the way he called upon Members to speak. While he basically referred to the order of precedence, he also alternated Members from different political groupings to speak in a debate.

8.7 On 28 July 1995, Standing Order No. 27 was amended to allow Members to raise their hands as an alternative to rising since raising of hands had already been a long-standing practice adopted by Members to indicate their intention to speak⁹.

8.8 In January 1999, the electronic voting system which was installed in 1991¹⁰ was enhanced to provide a queuing device which recorded the time at which a Member pressed the "Request-to-speak" button. This queuing device, originally designed for registering requests for asking supplementary questions, was extended to motion debates to enable the President to refer to the time Members indicated their intention to speak in order to determine their speaking order. At the Council meeting of 28 April 1999, the Council amended Rule 36(4) to replace the words "shall rise or raise their hands" by "indicate or have indicated their intention to speak".^{11 12}

⁶ There is an example of separate debates held on the motion and amendments at the Council sitting on 21 November 1990, *Hansard*, pp. 535-537. Another example of the speaking order of separate debates on a Member's motion can be found in the Council sitting on 13 November 1991, *Hansard*, pp. 53-54.

⁷ Point of order raised by Mr Jimmy McGregor at the Council sitting on 29 November 1989, *Hansard*, pp. 482-483.

⁸ Mr Martin LEE spoke during the debate on amendments to the Standing Orders at the Council sitting on 10 July 1991, *Hansard*, pp. 74-77.

⁹ See paragraph 8.5.

¹⁰ Standing Order No. 36A was added to the Standing Orders of the Hong Kong Legislative Council on 10 July 1991 to provide for electronic voting when a division was called.

¹¹ Legal Notice 107 of 1999.

¹² Progress Report of the Committee on Rules of Procedure for the period July 1998 to April 1999 (April 1999), para. 4.6-4.7.

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Current practice

8.9 Any Member who wishes to speak in a debate may press the "Request-to-speak" button in the electronic queuing system to indicate his intention to speak or he may raise his hand to catch the eye of the President or the Clerk. Since the 2011-2012 session, with the help of a more advanced information display system in the new Chamber, it has become possible for the names of the next three Members on the speaking list to be shown on the annunciators which are installed in main corridors, Members' dining and reading areas as well as through the internal broadcast system accessible in Members' individual offices. After all those Members on the speaking list have spoken, the President usually asks if any other Members wish to speak before he invites the mover of the motion to speak in reply. If the motion is a Member's motion, the President will invite the designated public officer(s) responsible for the policy area relevant to the subject matter of the motion to speak¹³ before the mover makes his reply.

8.10 Strictly speaking, any Member who has not yet spoken may still speak after the public officer's last speech so long as the mover of the motion has not made his reply. However, it is the convention that Members are encouraged to speak before the public officer's last speech. Where the President has exceptionally allowed a Member to speak after the public officer's last speech, he would ask the public officer if he wishes to further respond. After that, the President will ask the mover of the motion to make his reply. The reply should be confined to matters raised during the debate and once the reply has been made, or in the event that there is no reply, the debate comes to a close. No other Member is allowed to speak after the mover of the motion has made his reply.¹⁴

Interruptions

Raising a point of order

8.11 A Member has the right to finish his speech without interruptions, unless another Member raises a point of order.^{15 16} A point of order in this context is a procedural intervention by a Member if he considers that the rules

¹³ It has been a practice that the relevant designated public officer is invited to speak both at the early part and also towards the end of the debate.

¹⁴ Rule 33(3A) and Rule 33(4) of the Rules of Procedure.

¹⁵ Sir Gilbert Campion (1950), *An introduction to the Procedure of the House of Commons*, 2nd Edition, p. 188.

¹⁶ Council sitting on 13 January 1993, *Hansard*, p. 1596.

and practices of the Council have been breached and he wishes to bring this to the attention of the President. It is the practice that a Member rises to indicate that he wishes to raise a point of order. If a Member is speaking when a point of order is raised, the President will ask the Member speaking to resume his seat and allow the Member who interrupts to explain the point he wishes to bring to notice for the President's decision.¹⁷ It is at the President's discretion as to whether he would allow other Members to express views on a point of order.¹⁸

Seeking elucidation

8.12 If a Member who is not speaking rises to seek elucidation of a matter raised by the Member speaking, the President should first ask the Member speaking if he is willing to give way. If the latter agrees, the President will ask the Member speaking to resume his seat and call upon the Member who interrupts to speak. If the Member speaking is not willing to give way, the interruption will not be allowed.¹⁹

Explaining misunderstanding

8.13 If a Member who has spoken rises to explain something which he said earlier but has been misunderstood by the Member speaking, it is again up to the Member speaking to decide whether to give way. If the Member speaking does not wish to give way, the President may allow the Member who finds himself misunderstood to speak again after the Member speaking has finished his speech, but only to explain the part which has been misunderstood.²⁰

President's power under Rule 36(2) of the Rules of Procedure

8.14 From the above, it is clear that a Member has the right to speak without interruptions. Only one Member is allowed to speak at any one time and he should speak standing. When he has finished, he should resume his seat. If two or more Members rise to speak at the same time without waiting to be called or do not resume their seats even when ordered, the President may rise. When he rises, every Member must sit down.²¹ If any Member refuses to stop interrupting or sit down when the President rises, the act alone is a

¹⁷ Rule 39(a) of the Rules of Procedure.

¹⁸ In the House of Commons of Canada, Standing Order 19 permits a brief debate on the point of order at the Speaker's discretion. *House of Commons Procedure and Practice* (Canada), 2nd edition, p. 633.

¹⁹ Rule 39(b) of the Rules of Procedure.

²⁰ Council sitting on 21 November 1990, *Hansard*, p. 85.

²¹ Rule 36(2), (3) and (4) of the Rules of Procedure.

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violation of Rule 36(2) of the Rules of Procedure and may be regarded as grossly disorderly conduct.²²

8.15 When the Committee on Rules of Procedure of the First Legislative Council conducted a review of the Rules in 1999, it was noted that Rule 36(2) was modelled on a previous standing order which was seldom used. However, the Committee considered that "this subrule would be relied on to maintain discipline in the event of serious disorder during the proceedings of the Council", and decided that Rule 36(2) should be retained in the Rules of Procedure.

Speaking time

Normal speaking time

8.16 In any debate in the Council, a Member may not speak for more than 15 minutes on each occasion except with the permission of the President in exceptional circumstances.²³ This time limit however does not apply to the speech on a report of a Bills Committee on a bill made under Rule 54(7) at the commencement of the resumption of the second reading debate on the relevant bill.²⁴ This speech, which is supposed to be made under Rule 21(4) of the Rule of Procedure for the purpose of presenting the report of a Bills Committee, may, with the permission of the President, be delivered during the second reading debate²⁵ to provide completeness and coherence to the debate on the bill. As speeches made under Rule 21 (Presentation of Papers) are not subject to the 15-minute time limit under Rule 36(5), the President allows the Member presenting the Bills Committee's report to speak for more than 15 minutes. If the Member presenting the report continues to make his own speech or speak again at a later time, this second speech, permitted by the President under Rule 38(2) of the Rules of Procedure, will then be subject to the 15-minute time limit.

²² Reference can be made to the practice in the UK House of Commons where the Speaker should be heard in silence when he rises to intervene in a debate. Any Member who is speaking or offering to speak should sit down. Any Member who persists in standing after the Speaker has risen and refuses to resume his seat when directed by the Chair to do so may be either directed to withdraw from the House for the remainder of the sitting or named for disregarding the authority of the Chair. See Erskine May's *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 24th Edition, p. 456.

²³ Rule 36(5) of the Rules of Procedure.

²⁴ Rule 36(6) of the Rules of Procedure.

²⁵ Rule 21(k) of the House Rules provides that the chairman or any member of a Bills Committee, when reporting to the Council on the work of the Bills Committee, shall address the Council at the resumption of the second reading debate on the bill unless the purpose of resumption is for the withdrawal of the bill, in which case the speech should be made under Rule 21(3) of the Rules of Procedure.

Speaking time for debates on motions not intended to have legislative effect

8.17 Under Rule 37 of the Rules of Procedure, the House Committee may recommend to the President the speaking time for motions not intended to have legislative effect. In this respect, a decision was made by the House Committee on 7 October 1992²⁶ that for motions of this nature the speaking time limits should be shortened. A new Rule 17 of the House Rules was made on 16 October 1992 to set out this arrangement which has continued in force. Under this House Rule, the speaking time for speaking on a motion not intended to have legislative effect is 7 minutes except for the mover of the motion who has 15 minutes in total for moving the motion and making his reply and an additional 5 minutes to respond to amendments, if any. Any Member proposing an amendment to the motion has 10 minutes for his speech and, with the permission of the President, an additional 3 minutes to speak on his revised amendment if an earlier amendment has been passed and there is a need to reword his original proposed amendment.

8.18 To streamline the process for seeking agreement to the shortened speaking time limits, the House Committee decided on 16 March 2001²⁷ to amend Rule 17(b) of the House Rules to the effect that the speaking time limits for motion debates stipulated therein are deemed to have been agreed by the House Committee unless it has decided otherwise, and a recommendation would be made to the President for his agreement. This deeming arrangement only applies to debates on motions not intended to have legislative effect, including those initiated by the chairmen of committees to take note of the reports of committees²⁸ or consultation papers published by the Government²⁹. These motion debates do not include those on reports of the House Committee on the consideration of subsidiary legislation and other instruments, for which the 15-minute speaking time limit is adopted. For motions relating to investigative reports, such as those from select committees³⁰, the Public Accounts Committee³¹ or any committee conducting an inquiry, the general practice is that the shortened speaking time applies unless agreed otherwise by the House committee.

²⁶ Minutes of the House Committee meeting on 7 October 1992.

²⁷ Minutes of the House Committee on 16 March 2001.

²⁸ Council meetings of 8 February 2006, 1 November 2006, 25 June 2008, 2 July 2008, 7 July 2010, 15 February 2012, 29 February 2012 and 11 July 2012.

²⁹ Council meeting of 14 March 2001.

³⁰ Council meetings of 12 February 2003, 7 July 2004, 15 December 2010 and 11 July 2012.

³¹ Council meetings of 2 March 2011 and 13 July 2011.

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8.19 As stated in Rule 37 of the Rules of Procedure, the Rule does not apply to motions intended to have legislative effect or those motions referred to in Part JA of the Rules of Procedure. The 15-minute speaking time applies to all these motions and also motions to adjourn the Council under Rule 16(2) of the Rules of Procedure, as well as other motions relating to the conduct of proceedings of the Council, such as shortening the ringing of the division bell to one minute³², seeking withdrawal of a Member or disallowing his vote on grounds of direct pecuniary interest³³, etc. In the event that a motion is moved to adjourn a motion debate for which a specified time recommended by the House Committee has been accepted by the President, Rule 17(c) of the House Rules provides that the same specified time will also apply to the motion to adjourn debate if it is accepted by the President.³⁴

8.20 This 15-minute speaking time also does not apply to motions to adjourn the Council under Rule 16(4) of the Rules of Procedure. It is due to the fact that the duration of the debate on the issue, or each of the issues if more than one is included in the motion, is kept within one and a half hours (75 minutes for speeches by Members and 15 minutes for replies by designated public officers) unless extended by the President. Each Member, including the Member who raises the issue for debate, may speak up to 5 minutes.³⁵

Public officers' speaking time

8.21 The restrictions on speaking time which apply to Members do not apply to designated public officers.³⁶ However, there are exceptions such as the speaking time for the debate on the Motion of Thanks which has been specified as a result of a decision of the House Committee. As the debate on the Motion of Thanks is conducted in 5 sessions under specific themes, those designated public officers responsible for the policy areas in each session will each speak for 15 minutes subject to not exceeding 45 minutes in total for a session. This has been explained in Chapter 5³⁷. Another exception is the reply of a designated public officer at the end of an adjournment debate moved under Rule 16(4) of the Rules of Procedure. The speaking time is

³² Rule 49(4) of the Rules of Procedure.

³³ Rule 84 of the Rules of Procedure.

³⁴ Rule 17(c) of the House Rules.

³⁵ Rule 18(b) of the House Rules.

³⁶ Rule 36(6) of the Rules of Procedure.

³⁷ See Chapter 5, para. 5.33 to 5.36.

limited to not more than 15 minutes, as stipulated in Rule 16(6) and (7) of the Rules of Procedure and explained in Chapter 10³⁸.

Speaking more than once on a question

8.22 A Member may not speak more than once on a question (which is the subject matter of a motion before the Council or committee of the whole Council to be voted on).³⁹ However, there are exceptional circumstances, provided for in Rule 38 of the Rules of Procedure, as set out below, which allow a Member to speak more than once:

- (a) in committee of the whole Council except on a motion to adjourn further proceedings of the committee;⁴⁰
- (b) at the resumption of the second reading debate on a bill when a Member is making a report of a Bills Committee on the bill;⁴¹
- (c) during a debate when a Member wishes to explain some part of his speech which has been misunderstood after he has spoken in the same debate;⁴²
- (d) to enable a Member to reply at the end of the debate on a motion if he is the mover of the motion;⁴³
- (e) to enable Members to speak on each of the items under a motion to take note of a report of the House Committee on the consideration of subsidiary legislation and other instruments if the motion relates to more than one item;⁴⁴
- (f) to enable Members to speak on a motion and also on an amendment to a motion if a joint debate is not held;⁴⁵

³⁸ See Chapter 10, para. 10.82.

³⁹ Rule 38 of the Rules of Procedure. The word "question" under this Rule means the question proposed by the President to the Council in respect of the motion moved. Members may speak after the question is proposed.

⁴⁰ Rule 38(1)(a) and Rule 40(4) of the Rules of Procedure.

⁴¹ Rule 38(2), Rule 54(7) and Rule 76(9) of the Rules of Procedure.

⁴² Rule 38(3) of the Rules of Procedure.

⁴³ Rule 38(1)(d) of the Rules of Procedure.

⁴⁴ Rule 38(1)(fa), Rule 49E(7) and (8) of the Rules of Procedure.

⁴⁵ Rule 38(5) of the Rules of Procedure. See Council sitting on 10 July 1991, *Hansard*, p. 88.

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- (g) to enable Members to speak again during the debate of a motion on a motion to adjourn that debate;⁴⁶ or
- (h) any other circumstances permitted by the President.⁴⁷

8.23 Regarding the number of times a public officer may speak on an item of business for which he attends a meeting, Rule 10 of the Rules of Procedure⁴⁸ provides that with the exception of those rules set out in that rule⁴⁹, the Rules of Procedure shall apply to that public officer as they apply to a Member. The rules of speaking are not part of those exceptions. It therefore appears to follow that the rule limiting Members to speak not more than once to a question should also apply to a designated public officer.

8.24 In 2000, Rule 38(1)(f) and Rule 38(8) were added to the Rules of Procedure to specifically provide that a designated public officer⁵⁰ may speak a second time upon a Member's motion. This was resulted from a study conducted by the Committee on Rules of Procedure on the speaking order of Members in a motion debate. The Committee noted that there was a strong wish among Members that the designated public officer responsible for the subject matter of a debate ought to speak at an earlier part of the debate to enable Members to understand the position of the Government. Since Members could only speak once in a debate, it would not be possible for them to respond to the points made by the designated public officer if the latter only spoke at the end of the debate just before the mover's reply. To encourage designated public officers to speak both at the start and at the end of a debate, the Committee recommended the addition of new Rule 38(1)(f) and Rule 38(8) which were endorsed by the Council on 5 April 2000.⁵¹ Since then, it has been the practice for the President to first ask the designated public officer if he wishes to speak after the mover(s) of the motion and amendments have spoken at the start of the debate.

⁴⁶ Rule 38(5) of the Rules of Procedure. See Council meeting of 19 February 2014 on motion to adjourn a debate, *Hansard*, pp. 7260-7362, and Council meeting of 9 May 2012 on motion to adjourn proceedings of the committee of the whole Council, *Hansard*, pp. 9457-9569.

⁴⁷ At the Council meeting of 19 April 2012, the President allowed Mr LEUNG Kwok-hung to speak again at the end of the debate on a motion to disqualify him from office under Article 79(6) of the Basic Law as provided in Rule 49B(1) of the Rules of Procedure. *Hansard*, pp. 8336-8338.

⁴⁸ Rule 10 of the Rules of Procedure.

⁴⁹ The rules which do not apply to public officers under Rule 10 of the Rules of Procedure are Rules 1, 3, 8, 17, 20, all rules in Part J (Voting) and Rule 71(2), (5A), (5B) and (5C).

⁵⁰ Under Article 62 of the Basic Law, the government designates officials to attend meetings of the Council and to speak on behalf of the government. For details, see Chapter 5, para. 5.81-5.87.

⁵¹ Progress report of the Committee on Rules of Procedure (May 1999 to June 2000), para. 3.29-3.31.

Speaking in committee of the whole Council

Historical background

8.25 As mentioned in Chapter 7 ⁵², a committee of the whole Council as part of the 3-reading process in the consideration of a bill was adopted from the Westminster parliamentary model. The original intention of creating this form of "grand committee" in the House of Commons was to provide Members with greater freedom of debate and the opportunity to speak to a question as often as they wanted without the presence of the Speaker. ⁵³ In following the Westminster mode of deliberation, the pre-1997 Hong Kong Legislature provided in its Standing Order No. 28(1) that "Save with the leave of the President, a Member may not speak more than once on a question, except (a) in committee;" (the word "committee" was replaced by "committee of the whole Council" in 1995). Standing Order No. 28(1)(a) became the present Rule 38(1)(a) in the Rules of Procedure of the HKSAR Legislature.

8.26 There have been discussions on whether there is, or should be, a limit to the number of times a Member may speak in a committee of the whole Council, as referred to in Rule 38(1)(a) of the Rules of Procedure. According to Rule 55 of the Rules of Procedure, after a motion for the second reading of a bill has been agreed to, the bill stands committed to a committee of the whole Council unless the bill is committed to a select committee by the decision of the Council or the direction of the President. ⁵⁴ In a committee of the whole Council, Members discuss the details of the bill, not its principles. This stage in the progress of the consideration of a bill is accordingly known as the "committee stage". The committee has the power to make amendments including the addition of new clauses and new schedules to the bill provided that they comply with the requirements set out in Rule 57 of the Rules of Procedure. ⁵⁵ It becomes inevitable that Members should be allowed to speak more than once in a committee of the whole Council as this is the stage at which Members speak and vote on the clauses and schedules as well as any amendments to such clauses and schedules.

8.27 The issues raised by Rule 38(1)(a) were first discussed by the Committee on Rules of Procedure in the 1999-2000 session. The Committee noted that there was no rule to put an end to a debate in a committee of the

⁵² See Chapter 7, para. 7.11-7.13.

⁵³ *House of Commons Procedure and Practice* (Canada), 2nd Edition, pp. 915-916. Also Chapter 1, para. 1.14.

⁵⁴ Rule 55 of the Rules of Procedure.

⁵⁵ Rule 57 of the Rules of Procedure sets out the requirements for amendments to bills which are further explained in Chapter 11.

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whole Council even if the debate had become a protracted expression of views by a few members. A consultation was then conducted among Members of the Council but the majority of Members considered that the arrangement as set out in Rule 38(1)(a) of the Rules of Procedure should be maintained.⁵⁶

Measures to deal with filibusters

Closing of debate in May 2012

8.28 In May 2012, after the passage of the second reading of the Legislative Council (Amendment) Bill 2012⁵⁷, two Members proposed over 1 300 amendments to the Bill and started a filibuster during the joint debate at the committee stage of the Bill. After 33 hours of debate with primarily three Members persisting in, according to the President, irrelevance or tedious repetition of arguments, it was clear to the President that they had no intention to end the filibuster and that would bring Council business to a standstill, adding much pressure to the need to deal with the bunching of outstanding business before the Council stood prorogued on 18 July 2012. Subsequent to a point of order raised by a Member, the President, by invoking Rule 92 of the Rules of Procedure, decided to allow the movers of the amendments to conclude their speeches within 3 hours and close the debate on the seventh meeting day of the debate on 17 May 2012.

8.29 In his written ruling issued on 22 May 2012 (**Appendix 8-A**), President Jasper TSANG provided an account of the matters that he had considered for, and how he had arrived at his decision to close the debate. The President considered it his duty to ensure the efficient conduct of meetings. Article 72 of the Basic Law had given him the power and function to preside over meetings and to exercise other powers and functions as prescribed in the Rules of Procedure of the Legislative Council. Where he had difficulty in conducting a meeting in a reasonably efficient manner in accordance with Article 72 and where a matter which should have been provided for in the Rules of Procedure but had not been so provided, it fell to him as President to decide what practice and procedure should be followed. In accordance with Rule 92 of the Rules of Procedure, when making the relevant decision, he would be guided by the practice and procedure of other legislatures which are relevant to the matter under his consideration if he should think fit.

⁵⁶ Progress Report of the Committee on Rules of Procedure (May 1999-June 2000), para. 3.32-3.33.

⁵⁷ The Legislative Council (Amendment) Bill 2012 sought to restrict a Legislative Council Member who had resigned from office from standing in any by-elections in the same term within 6 months of his resignation.

8.30 In the absence of any procedure in the Rules of Procedure to close protracted debate or any measures used by other legislatures which could immediately be adopted in the Hong Kong Legislature, the President noted that the ultimate decision on how to deal with the situation rested with him. As a wide and protracted debate had been allowed and all Members had been given the opportunity to speak, he considered that there were reasonable grounds for him to put an end to the joint debate.⁵⁸ Before he announced his decision that the debate should come to an end, he had a private meeting with Members of the Council and, after listening to Members' views, ordered an extension of the debate by 3 hours to allow other Members to speak and the movers of amendments to conclude their speeches.

8.31 This was the first time the President of the Hong Kong Legislature invoked Rule 92 to curtail a debate although the Rule had been invoked from time to time to facilitate the conduct of business, such as the order of a joint debate in committee stage before Rule 58(2) was amended.⁵⁹ Following the President's decision to end the joint debate and thus the filibustering exercise, Mr LEUNG Kwok-hung, a Member who took part in the filibustering, sought the court's leave for an application of judicial review of the President's decision in court. Mr LEUNG's main grounds of challenge were based on his claim that Members' constitutional rights to make and repeal laws under Article 73(1) of the Basic Law, and hence their right to speak in the debate had been infringed. Mr LEUNG's application was dismissed by the Court of First Instance and his appeal was also rejected by the Court of Appeal which upheld the principle that the courts do not interfere with the internal workings of the Legislature, and the Legislature has exclusive control over the conduct of its affairs⁶⁰.

8.32 Mr LEUNG was subsequently granted leave to appeal to the Court of Final Appeal ("CFA"), but his appeal was dismissed unanimously by CFA.⁶¹ CFA held that the purpose of Article 73 of the Basic Law is to confer certain powers and functions on the Legislative Council as a law-making body, i.e. as an institution. The courts will not intervene to rule on the regularity or irregularity of the internal processes of the legislature but will leave it to the legislature to determine exclusively for itself matters of this kind, subject to

⁵⁸ On 17 May 2012, after 33 hours of debate on the Legislative Council (Amendment) Bill 2012, the President suspended the meeting for a private meeting with Members and decided that he would allow the three movers of the 1 307 amendments to the Bill and the designated public officer responsible for the Bill to speak for another 3 hours before he closed the debate.

⁵⁹ Rule 58(2) was amended at the Council meeting of 30 March 2011 to allow a single discussion in relation to a series of interdependent amendments to the bill to be held at committee stage.

⁶⁰ Unreported, CACV 123/2012, dated 1 February 2013.

⁶¹ Unreported, FACV 1/2014, dated 29 September 2014.

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any constitutional requirements. In its judgment, CFA also stated that the President has the power to set limits to and terminate a debate. The existence of the power is inherent in, or incidental to, the power granted by Article 72(1) of the Basic Law to the President to preside over meetings, quite apart from Rule 92. The provisions in the Rules of Procedure, as far as they relate to the President and his powers and functions, are necessarily subject to Article 72 of the Basic law which sets out the President's powers and functions. CFA concluded that it is not for CFA to consider whether or not the power was properly exercised.

Scheduling of business for the remainder of the 2011-2012 session

8.33 The bunching of business at the end of the 2011-2012 session arose not only as a result of the protracted debate on the Legislative Council (Amendment) Bill 2012 but also due to the protracted debate on almost every Government bill on the Agenda when it reached committee stage when Members were allowed to speak more than once on a question. These protracted debates were initiated by the same Members with the effect of delaying the Council's consideration of a motion related to the re-organization of the Government Secretariat which was placed at the last item of Government business on the Agenda. In dealing with the bunching of outstanding business before the Council stood prorogued on 18 July 2012, the President decided to schedule additional meeting days for the remaining Council meetings before prorogation based on the recommendations of the House Committee which reviewed at each of its meetings the Secretariat's assessment of the time required for each of the outstanding items on the Agenda. Between 25 May 2012 and 18 July 2012 (day of prorogation), there were altogether 28 meeting days for 7 Council meetings. The Council was able to dispose of all Government items on the Agenda except the motion related to the re-organization of the Government Secretariat. In this particular case, the House Committee played an important role in consulting Members on setting timeframe for debates in the Council for dealing with the bunching of business which resulted from protracted debate.

Time orders

8.34 On 13 May 2013, after the committee of the whole Council had spent 55 hours debating the 710 amendments to the Appropriation Bill 2013, with four members mainly speaking alternately, President Jasper TSANG noted with grave concern the impact of the protracted debate on the Bill on the transaction of other Council business. After examining various alternatives on how to deal with the remaining proceedings, he considered that setting a timeframe was the only appropriate course of action as he had to strike a balance among all relevant factors, including the right of Members to

participate in the legislative process, the use of filibuster by Members as a tactic to bargain with the Administration, the smooth conduct of Council meetings and the proper functioning of the Council as a law-making institution. The President, after meeting with Members, ordered that a timeframe should be set for the remaining proceedings on the Bill so as to complete all the proceedings before 22 May 2013. The President's ruling is at **Appendix 8-B**.

8.35 Regarding the Appropriation Bill 2014, the President ruled admissible 1,192 amendments to the Bill. By 16 May 2014, the committee of the whole Council had spent 63 hours debating the amendments, with three Members speaking 161 times in total, and there were at least 47 occasions on which the President reminded the Members who, in his opinion, persisted in irrelevance or tedious repetition of their arguments in the debate of the need to comply with Rule 45(1) of the Rules of Procedure. At the start of the Council meeting of 21 May 2014, the President set out a timeframe to complete the remaining proceedings on the Bill by 4 June 2014. In allocating the time for the remaining proceedings on the Bill, the President had also taken into account the need for the Council to deal with all the outstanding business in the current legislative session.

8.36 In his ruling, the President said, "*The setting of a time limit for debates does not deprive Members of the right to monitor the work of the Government. On the other hand, allowing the debates on the Bill to be protracted without any time limit would definitely deprive Members of the opportunities to monitor the Government by various effective means in the Council.*" The President's ruling is at **Appendix 8-C**. The setting of a timeframe to complete proceedings was also adopted for the Appropriation Bill 2015.

Further discussion by the Committee on Rules of Procedure

8.37 President Jasper TSANG attended meetings of the Committee on Rules of Procedure on a number of occasions on the way to deal with protracted debates at the committee stage of bills and the handling of voluminous amendments to bills. On 24 February 2014, he invited the Committee to examine the feasibility of four procedural options⁶². He stressed that in the past incidents of protracted debates in the Council, in order to ensure the orderly, fair and proper conduct of meetings, he had no

⁶² The 4 procedural options put forward by the President to the Committee on Rules of Procedure on 24 February 2014 were time allocation by the House Committee, time allocation by the Council, extending the application of Rule 57(4)(d) to cover a series of amendments and empowering the President to select amendments.

alternative but to exercise the constitutional power given to the President to exercise proper control over meetings by ending the relevant debates. He considered the absence in the Rules of Procedure of specific procedure for dealing with filibusters highly undesirable. In response to the President's request, the Committee conducted a consultation exercise among Members on the procedural options and made reference to the experience in overseas legislatures. However, no consensus could be reached on the proposals.

Content of speeches

8.38 A Member may speak on a question being proposed. His speech should be confined to the subject under discussion and no irrelevant matters should be introduced.⁶³

8.39 A Member is not allowed to impute improper motives to another Member in his speech.⁶⁴ Any Member may raise a point of order if he considers that improper motives have been imputed to another Member in a Member's speech. The Member speaking is required to explain the part of his speech that has given rise to the point of order. If such remark is ruled out of order by the President, the Member is required to withdraw such remark.

8.40 A Member is not allowed to use the name of the Chief Executive to influence the Council.⁶⁵ No reference to the conduct of the Chief Executive may be made in a Member's speech unless the conduct is related to the Chief Executive's performance of official duties or the conduct is the subject of a motion moved under Article 73(9) of the Basic Law for the impeachment of the Chief Executive.⁶⁶ Details are provided in Chapter 5.⁶⁷

8.41 Rule 41(2) of the Rules of Procedure provides that no reference should be made to a case pending in a court of law in such a way as, in the opinion of the President or Chairman, might prejudice that case. In recent years, more cases of disputes over public administration or involving public funds are placed before the court for adjudication or judicial review. As a result, in order that Members may still raise the related issues for debate in the Council, the President has allowed motions relating to such issues to be moved. Nevertheless, the President reminded Members on each occasion of

⁶³ Rule 41(1) of the Rules of Procedure.

⁶⁴ Rule 41(5) of the Rules of Procedure.

⁶⁵ Rule 41(6) of the Rules of Procedure.

⁶⁶ Rule 41(7) of the Rules of Procedure.

⁶⁷ See Chapter 5, para. 5.70-5.74.

the need to comply with Rule 41(2) so as not to prejudice the cases which were *sub judice*.⁶⁸

Offensive and unparliamentary expressions

8.42 Under Rule 41(4) of the Rules of Procedure, it is out of order to use offensive and insulting language about Members of the Council. Where a Member is challenged for having used expressions which are regarded as offensive and insulting especially when such expressions are used to direct at certain persons who may include Members of the Council, the President will ask the Member to clarify. Whether an expression is regarded as offensive or insulting depends on the context in which it is used. If the Member clarifies that such expressions are not intended to refer to any Member of the Council, the President is unlikely to rule the use of such expressions out of order.⁶⁹ Otherwise, the Member is required to withdraw such expressions. On occasions, even if the expressions are not intended to refer to any Member, the President may rule that such expressions are 'unparliamentary' and so cannot be used in the Council.⁷⁰ A list of the expressions having been ruled as offensive, insulting or 'unparliamentary' is kept as reference for use by the President and committee chairs and is available on the Legislative Council's website (**Appendix 8-D**). Any Member who considers that any expression on the list should be removed may refer the matter to the Committee on Rules of Procedure for a review. It is for the Committee to decide if such a review should take place.

Behaviour when not speaking

8.43 Members are expected to behave appropriately in the Council even when they are not speaking. The requirement that a Member should enter or leave the Council with decorum is a tradition which can be dated back to

⁶⁸ For example, at the Council meeting of 19 October 2011, when proposing the question on a Member's motion not intended to have legislative effect that sought Council's support in opposing foreign domestic helpers' enjoyment of the right of abode in Hong Kong, the President reminded Members that a recently decided court judgment on a case that involved issues relating to foreign domestic helpers' right of abode in Hong Kong was subject to a notice of appeal that had been filed by the HKSAR Government, and in accordance with Rule 41(2) of the Rules of Procedure, Members should avoid making references in their speeches to matters which might prejudice that case which was pending before the Court of Appeal. *Hansard*, p. 435.

⁶⁹ At the Council meeting of 13 January 2010, the President ruled the remarks made by a Member not out of order as he was referring to "people" and not the Members of the Council. *Hansard*, pp. 4133-4134.

⁷⁰ See President's ruling at Council meeting of 13 January 2010, *Hansard*, pp. 4133-4134.

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1858.⁷¹ The behaviour expected of a Member when he is in the Council has been extended to cover every moment when he is present at a Council meeting including the time when he is not speaking, as illustrated in Rule 42 of the Rules of Procedure.

Attire

8.44 Rule 42(a) of the Rules of Procedure refers to the requirement for Members to enter or leave the Council with decorum. The Rule was amended in 1998 to require Members also to be properly attired. Although the term "properly attired" is not defined, Members are expected to be attired in a manner that reflects their respect for the proceedings of the Council. This requirement was first included in the Rules of Procedure by the Provisional Legislative Council and was adopted by the First Legislative Council of the HKSAR in its Rules of Procedure.

8.45 Prior to July 1997, although Members' attire was not mentioned in the Standing Orders, there was a general understanding which was in line with the common practice of overseas legislatures that male Members were expected to wear jackets and ties.⁷² President Sir John SWAINE took a serious view on any Member who displayed any sign or message on the Member's clothing, which was not permitted in the case of persons admitted to the press or public gallery according to the Administrative Instructions issued by him under the Legislative Council (Powers and Privileges) Ordinance⁷³. At the sitting on 28 July 1995, he asked a Member to zip up his jacket so that the slogan on the Member's T-shirt would not be shown.⁷⁴ The same approach can be found in the ruling made by President Andrew WONG at the Council sitting on 13 March 1996. He requested two Members to have the signs on their clothing removed.⁷⁵

8.46 During the early years of the HKSAR, Members were reminded that casual attire such as T-shirts and sweat shirts was not acceptable when attending a meeting of the Council.⁷⁶ This standard of attire was generally

⁷¹ Standing Order No. 32(a) of the Standing Orders of the Pre-1997 Legislature was modified to become Rule 42(a) of the Rules of Procedure of the HKSAR Legislature.

⁷² Erskine May (24th Edition), p.451; House of Commons Procedure and Practice, Canada (2009) 2nd Edition, p. 605.

⁷³ Section 12 of the Administrative Instructions for Regulating Admittance and Conduct of Persons (Cap. 382, sub.leg. A).

⁷⁴ Council sitting on 28 July 1995, *Hansard*, p. 6369.

⁷⁵ Council sitting on 13 March 1996, *Hansard*, p. 10.

⁷⁶ On 10 October 2003, as instructed by President Mrs Rita FAN, the Secretary General issued a circular to remind Members that they should be properly attired when attending a meeting of the Council. Casual attire such as T-shirts and sweat shirts was not acceptable.

accepted and respected by Members. In October 2004, following the return of a Member who insisted on wearing T-shirts with slogans, President Mrs Rita FAN invited the Committee on Rules of Procedure to look into the matter. After deliberation, the Committee considered that in view of the change of times, T-shirts and sweat shirts should no longer be regarded as improper attire. The Committee also considered that there was no need to expressly provide in the Rules of Procedure what was not acceptable as the President's rulings in this regard would gradually develop into conventions and practices. Nevertheless, the Committee agreed that if a Member, whose attire was considered by the President as extremely improper, ignored the President's advice, the Member might be regarded as behaving in a grossly disorderly manner and could be dealt with in accordance with Rule 45(2) of the Rules of Procedure.⁷⁷

8.47 At the Council meeting of 9 July 2014, upon a point of order raised by a Member, President Jasper TSANG considered the attire of Mr LEUNG Kwok-hung who wore shorts to the meeting improper and a violation of Rule 42(a) of the Rules of procedure. The President ordered Mr LEUNG to change to trousers before returning to the Chamber.⁷⁸

8.48 As regards the display of signs and messages on Members' clothing, the consideration is whether the contents of such signs and messages would give rise to unreasonable interference with the proceedings of a meeting as in the case of interruptions during debates or would compromise the dignity of the Council. On occasions, a Member has put on a mask when he speaks in the Council. In considering whether the wearing of a mask is acceptable, the President must be satisfied that he can recognize the Member wearing the mask and that the use of the mask is relevant to the subject matter of the speech he is making.^{79 80}

Other behaviour

Crossing the floor

8.49 Rule 42(b) of the Rules of Procedure provides that no Member is to cross the floor of the Council unnecessarily. In the configuration of the Chamber, there is unobstructed line of sight between the President and

⁷⁷ Rule 45(2) of the Rules of Procedure provides that the President, the Chairman of a committee of the whole Council or the chairman of any committee shall order a Member whose conduct is grossly disorderly to withdraw immediately from the Council or the committee for the remainder of that meeting.

⁷⁸ Council meeting of 9 July 2014, *Hansard*, pp. 16167-16169.

⁷⁹ Council meeting of 25 May 2005, *Hansard* pp. 7728-7745.

⁸⁰ Council meeting of 13 January 2010, *Hansard*, pp. 4086-4087.

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Members as well as among Members (including designated public officers) themselves. When a Member or public officer speaks at a Council meeting, the speech is addressed to the President. Any unnecessary crossing of the space between the President and the Member speaking is disrespectful to the President and the Member concerned, and is therefore not allowed.⁸¹

Reading other materials

8.50 Under Rule 42(c) of the Rules of Procedure, Members are not allowed to read newspapers, books, letters or other documents at a meeting unless they are directly connected with the business of the Council. With the advancement in technology, Members do not necessarily read any written materials from printed copies. There is no prohibition against Members using electronic devices to access information. It is for individual Members to exercise prudence to ensure that anything they read at a meeting is related to the business of the Council and no disruption is caused to other Members. Members' behaviour inside the Chamber is also subject to public scrutiny.

No interruptions to a Member or a public officer speaking

8.51 Under Rule 42(d) of the Rules of Procedure, a Member is expected to be silent and should not make unseemly interruptions when another Member is speaking. This principle also applies where the person speaking is the Chief Executive or any designated public officer. It is basic courtesy that Members listen to the speeches of others and make no interruptions unless allowed under the Rules of Procedure.

Display of objects at meetings

General principles

8.52 Though not explicitly provided for in the Rules of Procedure, Members are expected to exercise self-discipline when bringing in objects for display at meetings of the Council. In principle, such objects are only allowed if they are used as visual aids to assist the Members when speaking in the Council. The objects displayed should be related to the agenda item(s) of the meeting. Where the objects are not in use, they are usually allowed to remain in the Chamber during the meeting provided that such objects do not disturb the proceedings of the meeting or cause obstruction to other Members or

⁸¹ "Crossing the floor" in some overseas legislatures is an expression to refer to a Member changing to another political party but this does not apply in Hong Kong's situation.

public officers in their participation in the proceedings, or block the President's view of those present in the Chamber.⁸² The objects in display should also be placed within the Member's own seating area.⁸³ If a Member displays a sign or message the content of which is improper, or if the Member refuses to stop the display of objects as ordered by the President, his behaviour may be regarded by the President as grossly disorderly conduct and he may be ordered to withdraw for the remainder of the meeting under Rule 45(2) of the Rules of Procedure.

Studies conducted by the Committee on Rules of Procedure

8.53 At the Council meeting of 14 October 2009 when the Chief Executive delivered the Policy Address, over 20 Members displayed placards at their desks throughout the meeting. President Jasper TSANG, who was presiding at the meeting, did not ask the Members to remove the placards. After the Council meeting, 32 Members jointly wrote to the President expressing their concern. In his response, the President advised that the display of placards caused no disturbance to the proceedings of the meeting or obstruction to any Member or public officer attending the meeting. Nevertheless he affirmed that should any Member hold a placard high up or attempt to present the placard to any public officer hence affecting the order in Council, he would regard such behaviour as grossly disorderly and would order the Member to withdraw immediately from the Council in accordance with the Rules of Procedure.

8.54 The subject was subsequently taken up by the Committee on Rules of Procedure for detailed study. Given the controversial nature of the subject, a consultation exercise was conducted among all Members on whether the current regulatory standards ought to be changed. Two-thirds of Members did not consider it necessary to change the current standards, but there was a strong view among Members that displays of signs and messages should only be allowed when Members were speaking and the objects helped illustrate their arguments. The Committee did not propose any change as a result of this study.

8.55 The subject was revisited by the Committee on Rules of Procedure after the occurrence of several incidents in January and February 2011 involving some Members throwing objects at public officers during meetings

⁸² Council meeting of 14 November 2012, *Hansard*, p. 1798.

⁸³ Council meeting of 25 October 2012, *Hansard*, p. 925. Also see Progress Report of the Committee on Rules of Procedure (October 2013 to June 2014), para. 2.14.

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of the Council and committees. In this review exercise, the Committee studied the rules and practices of parliaments in some overseas jurisdictions and noted that most allowed the use of visual aids by Members during debates, but those objects which might pose danger would not be permitted in the Chamber. The Committee also noted that the practice in the HKSAR Legislature was for individual Members to raise a point of order if they considered that any objects being brought into the Chamber were causing obstruction. Upon the point of order, the President would, if necessary, direct the Member concerned to remove the objects and, if the Member refused to do so, would order the immediate withdrawal of the Member for the remainder of that meeting. The Committee considered this arrangement adequate to deal with disruptions at Council meetings caused by the display of objects by Members at meetings. It also considered that there was no need to regulate the kinds of objects which could be brought into the Chamber.

8.56 In the course of this review exercise, the Committee noted the principle adopted by the House of Representatives of the New Zealand Parliament in its Standing Order 108⁸⁴ under which a member may use an appropriate visual aid to illustrate a point being made during his speech provided that the aid does not inconvenience other members or obstruct the proceedings of the House; and the aid must be removed from the Chamber at the conclusion of the member's speech. The Committee held the view that the President should consider making reference to this principle in the event that he needs to rule on the use of any object which may cause inconvenience to other Members or obstruct the proceedings of the Council. On 30 May 2011, the Chairman of the Committee wrote to the President and put forward this suggestion.⁸⁵ On 8 March 2012, President Jasper TSANG, through a circular to all Members issued by the Clerk, reminded Members that any objects displayed during Council meetings should not cause obstruction to other Members in their participation in the proceedings of the Council and should be confined to the Members own seating area. Refusal to comply with the President's direction would be regarded as grossly disorderly conduct.

8.57 Restrictions on the objects that could be brought into the Chamber were again studied by the Committee on Rules of Procedure in the 2011-2012 session after the Legislative Council had moved to the new Legislative Council Complex. Following an incident in the new Chamber during which a Member allowed an inflated balloon to rise to the ceiling, the President

⁸⁴ Standing Order 108 was renumbered as Standing Order 112 in the 2014 version of the Standing Orders of the House of Representatives of the New Zealand Parliament.

⁸⁵ Progress Report of the Committee on Rules of Procedure (October 2010 to June 2011), para. 2.8-2.16.

instructed that such objects would be prohibited from being brought into the Chamber in view of the potential safety risks posed to the lighting system of the Chamber.⁸⁶ The Committee concurred with the President's view and agreed that all chairmen of committees should be advised to apply the same approach during meetings of committees.⁸⁷

8.58 Since the commencement of the Fifth Legislative Council, the display of objects by Members during Council meetings has become more frequent and the size of the objects has also become a matter of concern. Another study was conducted by the Committee on the Rules of Procedure in the 2012-2013 session to consider if Members should stow away their display items after speaking and whether there should be any restrictions on the size of the display objects. The Committee noted that the practices adopted by other legislatures varied, but some legislatures did stipulate restrictions on the size and style of the objects displayed. Generally speaking, the size limit is that the display should be confined to the desk of the Member speaking or the immediate area where the Member is making a speech. Regarding the style of objects displayed, the concerns include the effect on the intelligibility of the official records of proceedings, the impact on the public perception, esteem or decorum of the legislature, and whether the objects may pose a threat to the safety of Members and other persons. As divergent views were expressed by members of the Committee, no decision was made to propose any changes to the current arrangements.

Decision of the Chair final

8.59 In the Council, the President has the duty to preserve order and ensure that business of the Council is conducted in an orderly, efficient and fair manner in accordance with the Rules of Procedure.⁸⁸ Under Rule 44 of the Rules of Procedure, the decision of the Chair is final. Whilst most decisions of the President can be made on the spot, he may decide to study the matter and provide a ruling after the meeting. The President usually announces his decision in the Council. His decision, once made, is not open for debate or discussion at the Council. On occasions, Members may raise a point of order in the Council for the purpose of seeking clarification after the President has

⁸⁶ A circular was issued by the Clerk to the Legislative Council on 2 November 2011.

⁸⁷ A circular was issued by the Chairman of the Committee on Rules of Procedure to all chairmen of committees on 23 November 2011.

⁸⁸ According to the Judgment of the Court of Final Appeal on 10 September 2014, Articles 73 and 72 of the Basic Law indicate that the Legislative Council is to have exclusive authority in determining its procedure and that the President is to exercise his power to "preside over meetings" under Article 72 so as to ensure the orderly, efficient and fair disposition of the Council's business.

made a decision. The President may upon his own initiative provide a more substantial response, which is not obligatory, or advise Members to refer to his written ruling later.

Disciplinary actions under the Rules of Procedure

Discontinuation of speeches

8.60 Speaking in the Council is one of the most fundamental rights of a Member but, as explained in Chapter 2 ⁸⁹, this right is not without bounds. To preserve the order of the Council, the President is given the power under Rule 45(1) of the Rules of Procedure to direct a Member to discontinue his speech if the Member persists in irrelevance or tedious repetition of his own or other Members' arguments in the debate. In so doing, the President should call the attention of the Council to such repetition and direct the Member to discontinue his speech. This direction of the President is not subject to challenge as the decision of the Chair is final. If the Member disobeys the direction of the President and refuses to discontinue his speech, his behaviour can be regarded by the President as grossly disorderly and he will be ordered to withdraw immediately from the Council for the remainder of that meeting under Rule 45(2) of the Rules of Procedure.

8.61 This power of the President under Rule 45(1) of the Rules of Procedure can also be exercised by the Chairman of the committee of the whole Council. In the case of a committee of the whole Council, where Members may speak more than once on a question during the committee stage in the consideration of a bill ⁹⁰, a Member who has been directed by the Chairman to discontinue his speech may rise and speak again. Questions have been raised on how far a Member who persists in irrelevance or tedious repetition can be stopped from speaking any further in the same debate. Rule 45(1) does not provide for such a situation. The President has adopted the practices in other jurisdictions that only the refusal to obey the direction of the Chair to discontinue a speech is regarded as grossly disorderly conduct but not irrelevance or tedious repetition.⁹¹

⁸⁹ See Chapter 2, para. 2.29-2.30.

⁹⁰ Rule 38 of the Rules of Procedure.

⁹¹ Erskine May (24th Edition), p. 452.

Withdrawal of offensive or unparliamentary expressions

8.62 The mere utterance of an expression which is offensive and insulting or unparliamentary does not constitute disorderly conduct. However, if a Member is ordered to withdraw such expressions and he refuses to withdraw, his refusal to obey the President's order can be regarded as grossly disorderly conduct for which the President may order him to withdraw immediately from the Council for the remainder of the meeting under Rule 45(2) of the Rules of Procedure.

8.63 It is not uncommon for the President to suspend the meeting to consider in greater depth whether an expression used by a Member is out of order before he makes his ruling. Prior to the resumption of the meeting, he may make his view known to the Member concerned in a private meeting if he considers that the expression is out of order and ought to be withdrawn.⁹² Once the President has announced his ruling in the Council, no more discussion can take place. If considered necessary, the President may refer the matter to the Committee on Rules of Procedure for further study.

8.64 On occasions, a Member may make insulting or offensive remarks towards a certain person or impute improper motives to a person but whose name is not identified in his speech. Where a point of order is raised, the President will ask the Member if he is referring to any Member of the Council. If the Member admits that he is referring to a Member or some Members of the Council, the President will ask him to withdraw the remarks.⁹³ If he refuses, the President would regard it as grossly disorderly conduct and order his immediate withdrawal for the remainder of the meeting.⁹⁴

Resumption of seat

8.65 Under Rule 36 of the Rules of Procedure, a Member should speak standing. Members are not allowed to speak when seated and they should remain silent when another Member is speaking.⁹⁵ Where a Member is persistently interrupting another Member or a public officer who is speaking and if leave is not granted to allow the interruption⁹⁶, the President will order

⁹² Council meeting of 9 December 2009, *Hansard*, pp. 2926-2928.

⁹³ Council meeting of 25 June 2010, *Hansard*, pp. 10254-10261.

⁹⁴ Council sitting on 13 November 1996, *Hansard*, pp. 96-107.

⁹⁵ Rule 36(1), (4) and Rule 42(d) of the Rules of Procedure.

⁹⁶ Rule 39 of the Rules of Procedure.

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the Member to resume his seat.⁹⁷ If such request of the President is ignored, the President will repeat his order which is regarded as a warning to the Member(s) concerned. If such warning is again ignored, the President may regard such behaviour as grossly disorderly conduct and may order the Member(s) to withdraw immediately from the Council.

Immediate withdrawal from the Council for grossly disorderly conduct

8.66 Under the current Rules of Procedure, the ordering of a Member to withdraw from the Council for the remainder of that meeting is the most severe form of punishment that can be imposed against a Member for refusal to rectify behaviour that the President considers disorderly. Rule 45(2) of the Rules of Procedure provides that the President "shall" order a Member whose conduct is grossly disorderly to withdraw immediately from the Council, and the Clerk shall act on such order received to ensure compliance with it.

8.67 In the Hong Kong Legislature, the term "disorderly conduct" is not defined. It is for the President to determine whether any breach of the stipulations set out in Rules 41, 42 and 45(1), or any other conduct of a Member constitutes grossly disorderly conduct and as he deems fit, to order the Member concerned to withdraw from the Council. The grossly disorderly conduct involved in previous cases where a Member or a group of Members were ordered to withdraw from the Council or in a committee of the whole Council under Rule 45(2) of the Rules of Procedure included the following:

- (a) refusal to withdraw offensive language or accusations;^{98 99 100}
- (b) refusal to discontinue speech after having persisted in irrelevance in a debate;^{101 102}
- (c) refusal to stop displaying improper signs;¹⁰³
- (d) speaking aloud and refusal to sit down;^{104 105 106 107} and

⁹⁷ Reference can be made to the practice in the UK House of Commons as explained in Erskine May (24th Edition), p. 453.

⁹⁸ Council sitting on 13 November 1996, *Hansard*, pp. 96-107.

⁹⁹ Council meeting of 10 November 2004, *Hansard*, pp. 1189-1192.

¹⁰⁰ Council meeting of 16 March 2005, *Hansard*, pp. 5574-5579.

¹⁰¹ Council meeting of 27 April 2005, *Hansard*, pp. 6633-6636.

¹⁰² Council meeting of 13 December 2006, *Hansard*, pp. 927-928.

¹⁰³ Council meeting of 27 June 2005, *Hansard*, pp. 8911-8917.

¹⁰⁴ Council meeting of 12 October 2005, *Hansard*, pp. 9-11.

¹⁰⁵ Council meeting of 11 October 2006, *Hansard*, pp. 8-12.

¹⁰⁶ Council meeting of 3 May 2007, *Hansard*, pp. 6674-6676.

¹⁰⁷ Council meeting of 7 January 2009, *Hansard*, pp. 3762-3763.

- (e) crossing the floor of the Council and refusal to return to seat.^{108 109 110}

8.68 In the event that a Member is ordered to withdraw from the Council but refuses to leave the Chamber, the present practice is that the President will suspend the meeting to allow the Clerk to persuade the Member to leave or to physically remove him with the help of the security staff.

8.69 On occasions, there may be acts which amount to a certain degree of rudeness and disorderliness, such as throwing of objects. These acts themselves are considered by the President as grossly disorderly behaviour. Members who act in such a manner are immediately ordered to withdraw from the Council.

8.70 Questions have been raised on whether a Member who has acted in a manner which may constitute a criminal offence¹¹¹ at a meeting is subject to arrest and prosecution under the Laws of Hong Kong. Under section 4 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) ("Powers and Privileges Ordinance"), no civil or criminal proceedings shall be instituted against any Member for words spoken before, or written in a report to, the Council or a committee. However, this only covers words (spoken or written) but not other types of conduct which may constitute a criminal offence ("criminal conducts"). The immunity given to a Member under sections 3 and 4 of the Powers and Privileges Ordinance does not cover criminal conducts even if they are performed during the proceedings of the Council or a committee. The only protection that the Member has is immunity from arrest whilst attending a meeting of the Council or a committee.

8.71 Under Article 77 of the Basic Law, Members of the Legislative Council shall be immune from legal action in respect of their statements at meetings of the Council. Under Article 78 of the Basic Law, Members shall not be subjected to arrest when attending or on their way to a meeting of the Council. Section 5(b) of the Powers and Privileges Ordinance further

¹⁰⁸ Council meeting of 5 July 2007, *Hansard*, pp. 10152-10155.

¹⁰⁹ Council meeting of 15 October 2008, *Hansard*, pp. 20-25.

¹¹⁰ Council meeting of 15 January 2009, *Hansard*, pp. 4058-4060.

¹¹¹ In light of an incident at the Council meeting of 16 April 2014, the Chief Secretary for Administration wrote on the following day to the President to express concern about the throwing of objects by a Member at a public officer during the meeting. She considered that such violent misbehaviour was menacing in nature and might constitute criminal conduct such as common assault. The President in his reply on 28 April 2014 stated that the Member was ordered to withdraw immediately from the Council due to his grossly disorderly conduct. He also reiterated that Members were aware that while enjoying certain privileges and immunities as provided under the Basic Law and the Legislative Council (Powers and Privileges) Ordinance, they are subject to the same laws that apply to people in Hong Kong generally. Similar letters were issued in respect of the incident at the Council meeting of 23 February 2011.

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provides that no member shall be liable to arrest for any criminal offence whilst attending at a sitting of the Council or a committee. Thus, it appears that Members are not immune from prosecution for their criminal conducts. A Member may be arrested for a criminal offence if he is not attending or on his way to a meeting of the Council or a committee.

Repeated grossly disorderly conduct at Council meetings

8.72 There is no sanction in the Rules of Procedure to deter repeated or persistent disorderly conduct of Members at Council meetings. Studies of the subject have been conducted by the Committee on Rules of Procedure since the Fourth Legislative Council in response to requests from President Jasper TSANG following a number of incidents involving persistent grossly disorderly conduct of some Members at Council meetings. The Committee has deliberated on various measures adopted by other legislatures, such as naming and suspension of service and salaries. The Committee generally considers that the power given to the President under Rule 45(2) of the Rules of Procedure is adequate to deal with the situation. Nevertheless, with the increase in the number of incidents involving the throwing of objects at meetings of the Council, the Committee re-visited the subject in the 2011-2012 session and agreed to examine a proposal to enable the President or Chairman of the committee of the whole Council to formally propose the question that a Member who has been ordered a second time to withdraw under Rule 45(2) of the Rules of Procedure be prohibited from attending the next Council meeting. No decision has yet been made.

Extension of rules of order to other committees

8.73 Rule 44 (Decision of Chair Final) and Rule 45 (Order in the Council and Committee) of the Rules of Procedure are modelled on Standing Orders No. 43 and 44 which originally applied only to the Council, the committee of the whole Council, standing committee and select committees. When the Standing Orders were amended in 1992 to incorporate the informal OMELCO committees into the committee system of the Council, no change was made to these standing orders. Committees such as the House Committee, bills committees, panels, and subcommittees of these committees were not included in these Standing Orders. In 1999, a review of whether these rules should also be applicable to these other committees was conducted by the Committee on Rules of Procedure. Noting the more informal nature of the deliberations of these other committees, the Committee at that time did not consider that there was any need for the chairmen of these committees to give effect to the rules of order of the Council in order to maintain order at meetings of these committees.

8.74 In 2003, the subject was studied again by the Committee on Rules of Procedure following the lodging of a complaint against the Chairman of a joint meeting of Panels during which the Chairman ordered a member to withdraw from the meeting after the member refused to withdraw a remark considered offensive by the Chairman.¹¹² While no members at the joint panel meeting disputed the Chairman's decision, there was a question on whether the scope of the power given to Panels under Rule 77(15)¹¹³ of the Rules of Procedure should be so extensive that the chairman of a Panel could order the withdrawal of a member on the ground that there was no dissenting view from the members present. On 1 March 2004, the Committee concluded that the power given to the chairmen of these other committees under the then Rules of Procedure was adequate for them to deal with disputes at meetings,¹¹⁴ and that no extension of Rules 44 and 45 to these other committees, such as Panels, was needed. The Committee however suggested that guidelines should be provided in the handbooks for committee chairmen on how to deal with controversies during meetings, e.g. by the suspension of the meeting.

8.75 Following the spate of incidents involving disorderly conduct of Members at Council meetings since the commencement of the 2008-2009 session, the Committee on Rules of Procedure decided to undertake another study on the disorderly conduct of Members and whether Rules 44 and 45 of the Rules of Procedure should be extended to other committees. A consultation exercise was conducted among Members, who had divergent views on the proposed extension of the two Rules.¹¹⁵ It was not until 2011 when several incidents involving the throwing of objects at public officers at meetings of the Council and committees that the Committee decided to look into the matter again. After deliberation, the Committee agreed that suspension of meeting could no longer be effective in dealing with the disorderly conduct of Members and proposed that Rules 44 and 45 of the Rules of Procedure should be extended to cover all committees of the Council. At the Council meeting of 11 May 2011, the motion to extend Rules 44 and 45(2) to all committees was approved by the Council, while the motion to extend Rule 45(1) to all committees was negatived.¹¹⁶ As a result of this decision, the power to direct a Member who persists in irrelevance or tedious repetition of arguments to discontinue his speech in the case of a committee

¹¹² Joint meeting of the Security Panel and the Administration of Justice and Legal Services Panel on 17 June 2003.

¹¹³ Rule 77(15) of the Rules of Procedure.

¹¹⁴ Progress Report of the Committee on Rules of Procedure (November 2010 to June 2011), para. 3.2.

¹¹⁵ Progress Report of the Committee on Rules of Procedure (October 2008 to June 2009), para. 3.13-3.15.

¹¹⁶ Progress Report of the Committee on Rules of Procedure (November 2010 to June 2011), para. 3.2-3.5.

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only rests with the Chairman of the committee of the whole Council, or the chairman of any standing committee or select committee, but not the chairmen of other committees.

Chapter 9

Questions on the work of the Government

9.1 The Government of the HKSAR is accountable to the Legislature under the Basic Law.¹ Some of the powers and functions of the Legislative Council under Article 73 of the Basic Law are for the purpose of enabling the Legislature to exercise its monitoring role over the Government. These include the power and function to raise questions on the work of the Government, which is underpinned by a requirement under Article 64 of the Basic Law that the Government of the HKSAR shall answer questions raised by Members of the Council.

9.2 This Chapter provides the historical background on the asking and answering of questions in the Council and explains the principles and rules behind how questions are asked by Members of the Legislative Council. In this Chapter, there are detailed explanations on the rules governing the asking and answering of questions as set out in Part E of the Rules of Procedure as well as the practices relating to the allocation of question slots, allocation of time for questions and supplementary questions at a Council meeting and the processing of questions as set out in the Rules of Procedure and the House Rules. President's rulings in respect of questions are also quoted to facilitate understanding of the principles behind the admissibility of questions as part of the mechanism for holding the Government to account.

9.3 The rules referred to in this Chapter do not apply to questions put to the Chief Executive under Rule 8 of the Rules of Procedure, except those rules relating to the contents of questions under Rule 25 of the Rules of Procedure.²

Provisions under the Basic Law

9.4 Article 73(5) of the Basic Law provides that the Legislative Council has the power and function to raise questions on the work of the Government. Rule 22(1) of the Rules of Procedure further provides that any Member may address a question to the Government on its work by either seeking information on such matter or asking for official action with regard to it.

¹ Article 64 of the Basic Law.

² Rule 27 of the Rules of Procedure.

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9.5 The Government, correspondingly, is required under Article 64 of the Basic Law to answer questions raised by Members of the Council and, under Article 62(6), to designate officials to sit in on the meetings of the Council and to speak on behalf of the Government. In this respect, Rule 9(3) of the Rules of Procedure provides that where it appears to the Clerk, when preparing the Agenda of the Council, that a particular item of business requires the attendance of a designated public officer, the Clerk shall state, in respect of that particular item, the name of the office of that public officer. In practice, as explained in Chapter 5³, the Director of Administration informs the Clerk of the name of the office of the public officer who will speak on behalf of the Government in respect of a particular item of business of a Council meeting.

Historical background

9.6 The rules on questions to the Government are set out in Part E (Questions to the Government) of the Rules of Procedure. These rules were adopted from the Standing Orders of the pre-1997 Hong Kong Legislature which were modelled on the practice and procedures commonly adopted by colonial legislatures. As an item of business, questions to the Government first appeared in the 1884 Standing Orders⁴ and were placed before the "orders of the day" of a sitting. Notice of intention to ask a question was required. The procedure was fine-tuned over the years to enable the relevant Government officials to have sufficient notice to provide a comprehensive response at a sitting and the questions were confined to matters relating to public affairs. By 1929, Unofficial Members were allowed to ask supplementary questions for the purpose of elucidating any matter relating to the answer given by an Official Member. All the restrictions relating to the asking of questions in the current Rules of Procedure began to emerge at that time although questions were still rarely asked during the first hundred years of the Legislature.

9.7 From the 1960s onwards, more questions were asked although the frequency was only about once every few months. Nevertheless, the nature of the questions asked reveals that they were usually related to the most pressing issues faced by Hong Kong at the time – e.g. the concern over the cure for

³ See Chapter 5, para. 5.81-5.87.

⁴ Questions were recorded in the minutes of sittings as early as in 1867. At that time, questions were put to the Governor who responded to the questions. Please see minutes of sitting on 15 May 1867.

pulmonary tuberculosis in 1961⁵, the rise in rice prices in 1962⁶, the spate of industrial accidents in 1963⁷, the shortage of water supply in 1964⁸, "flight of capital" and reduction in bank deposits in 1967⁹, etc. Members also took the opportunity to question Government officials in respect of their speeches at the Budget debate¹⁰ and their other public statements. It was not uncommon that questions were asked to facilitate the Government to make a statement on a policy.¹¹

9.8 By 1968, the Standing Orders on putting questions to the Government had become more comprehensive. Apart from laying down the scope of questions that could be asked at Council sittings, the Standing Orders also prescribed the maximum number of questions at each sitting, the notice requirement, restrictions on the contents of questions, etc. At that time, all questions could be oral questions¹² and no more than 15 questions could be asked at one sitting.¹³ In 1976, the number of questions that could be asked was increased to 20.¹⁴ On 10 July 1991, following the decision to hold motion debates not intended to have legislative effect at regular Council sittings, the Standing Orders were amended to provide for not more than 3 questions requiring an oral reply if there was such a motion debate at that sitting, and not more than 8 if there was no motion debate. In April 1992,¹⁵ the number of oral questions that could be asked at a sitting with a motion debate was increased to 6; and in December 1992, the number of oral questions for a sitting with no motion debate was increased to 10.

9.9 In 2011-2012, a review was conducted by the Committee on Rules of Procedure of the Fourth Legislative Council. At its meeting on 25 May 2012, the House Committee considered that with the number of Legislative Council Members to be increased from 60 to 70 in the Fifth Legislative Council, the number of oral and written questions at each regular Council meeting with a

⁵ Council sitting on 15 November 1961, *Hansard*, pp. 278-280.

⁶ Council sitting on 22 August 1962, *Hansard*, pp. 244-246.

⁷ Council sitting on 8 May 1963, *Hansard*, pp. 186-187.

⁸ Council sitting on 17 June 1964, *Hansard*, pp. 230-231.

⁹ Council sitting on 28 June 1967, *Hansard*, pp. 341-343, and on 6 September 1967, *Hansard*, pp. 393-396.

¹⁰ Council sittings on 22 April 1964, *Hansard*, pp. 175-177; and 20 May 1964, *Hansard*, pp. 209-214.

¹¹ Council sitting on 22 May 1968, *Hansard*, pp. 255-257.

¹² An "oral question" is one of which a public officer is notified in writing before the Council sitting at which he is required to give an answer orally. This is in contra-distinction to a written question in respect of which a public officer provides an answer in writing which is served on all Members shortly before a Council sitting and is recorded in the Official Record of Proceedings for that Council sitting.

¹³ 14 oral questions were asked at the Council sitting on 30 July 1969. *Hansard*, pp. 433-448.

¹⁴ Standing Orders were amended on 13 October 1976.

¹⁵ Council sitting on 29 April 1992.

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motion debate should be increased from 6 to 7 and from 14 to 16 respectively to enable each Member to have the chance to ask on average about 3 oral questions and 8 written questions in a session.¹⁶ The time for questions at each meeting would be extended from 2 hours to 2½ hours. However, as the motion to amend the relevant rules in the Rules of Procedure could not be dealt with before the Fourth Legislative Council stood prorogued on 18 July 2012, the matter was deferred to the Fifth Legislative Council which conducted a further review on the proposal. It was noted that the majority of Members of the Fifth Legislative Council were in favour of maintaining the number of oral questions at 6 for each Council meeting but Members supported increasing the total number of questions (including oral and written questions) to no more than 22. The proposal was approved by the Council on 20 March 2013 and the increase in the number of written questions from 14 to 16¹⁷ took effect on 17 April 2013. The number of oral questions that can be asked at a Council meeting remains unchanged.¹⁸

9.10 During the UMELCO days (in the 1970's)¹⁹, internal guidelines for Members were drawn up to provide an allocation system for the asking of oral and written questions. The guidelines were subsequently changed to a form of house rules similar to those currently provided in the House Rules²⁰ today. The objective of the allocation system is to ensure that Members have equal opportunity to ask questions, and where possible the questions should not be duplicated. The allocation system has been fine-tuned over the years to enable all question slots to be used up and all oral questions to be asked even in the absence of the Members concerned. These arrangements are now set out in the current House Rules.²¹ Detailed explanation of how the allocation system works is provided in this Chapter²².

¹⁶ See Progress Report of the Committee on Rules of Procedure for the period July 2011 to July 2012, para. 2.8-2.16.

¹⁷ This is on the basis that the number of oral questions to be asked at a particular meeting is 6. Where there is no debate on a motion not intended to have legislative effect at a particular meeting, the number of oral questions that can be asked at that meeting is 10 and the number of written questions is therefore no more than 12.

¹⁸ Rule 23(3) of the Rules of Procedure.

¹⁹ See Chapter 1, para. 1.25, 1.47-1.48.

²⁰ See Chapter 1, para. 1.52-1.54.

²¹ Rules 7 and 11 of the House Rules.

²² Para. 9.14-9.23.

Meetings at which questions may not be asked

9.11 There are a number of Council meetings at which no questions to the Government may be asked. These include the first meeting of a term of the Legislative Council where Members take the Legislative Council Oath and elect the President, or a meeting where the election of the President takes place, or a meeting where the Chief Executive delivers a Policy Address to the Council.²³ The House Committee may also recommend to the President that no oral question may be asked at a particular Council meeting.²⁴ Where such recommendation has been made by the House Committee and accepted by the President, all questions put to the Government for that meeting will be written questions.²⁵ In this respect, the House Committee has decided that no oral questions may be asked at meetings where a debate on the Motion of Thanks or on the Appropriation Bill, i.e. the Budget, is held. Nevertheless, the President may still permit urgent questions to be asked at these meetings.²⁶

Notice of questions

9.12 A Member who wishes to ask a question at a Council meeting must give notice to the Clerk not later than 7 clear days before the meeting. The notice period for questions to be asked at the second meeting of the first session of a term is shortened to no less than 4 clear days.²⁷ This is to enable Members to give proper notice for questions to be asked at the second meeting after they have taken their Oath at the first meeting.

9.13 Rule 24(3) of the Rules of Procedure provides that a Member may not ask more than two questions at any one meeting and not more than one of those questions shall require an oral reply. Nevertheless, the President may allow a Member to put forward an additional question if it is an important one of public concern provided that the total number of questions is not exceeded²⁸, or the question which is of an urgent character and relates to a

²³ Rule 23(1) of the Rules of Procedure.

²⁴ Rule 23(4) of the Rules of Procedure.

²⁵ Rule 23(4) of the Rules of Procedure.

²⁶ Rule 24(4) of the Rules of Procedure.

²⁷ Rule 24(2) of the Rules of Procedure.

²⁸ Rule 24(3A) of the Rules of Procedure.

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matter of public importance is permitted by the President under Rule 24(4) of the Rules of Procedure.²⁹

Allocation of question slots

9.14 The allocation system for the asking of questions aims to ensure that all Members, irrespective of their political affiliations, have equal opportunity to ask questions at Council meetings.

Registration of questions for obtaining question slots

9.15 Before the start of each term, Members are invited to note the procedure relating to the registration and processing of questions to the Government to be asked at meetings of the Council. Any Member who wishes to address a question to the Government is required to register his question with the Legislative Council Secretariat. Members are reminded of the need to conform to the relevant rules and ascertain the accuracy of any statement of facts contained in their questions.

9.16 Under the allocation system, each Member is invited to register not more than one oral and one written question or two written questions per calendar week at the start of a session.³⁰ The cut-off time for registering questions for a Council meeting is 12:00 midnight of the third Friday preceding the meeting. For example, for a meeting to be held on, say, 26 November (of any year) which is a Wednesday, the cut-off time is 12:00 midnight at the end of Friday, 7 November although the notice deadline for questions for 26 November (assuming no intervening public holidays) is in fact 10 days later, on Monday, 17 November midnight.³¹ The need to register the question in advance is to enable the Secretariat to work out the relative priorities of the questions for the allocation of question slots, and to advise the Members concerned before the deadline of the relevant notice period of any modifications to the questions considered necessary for compliance with the

²⁹ An example of the President allowing a Member to put forward an urgent oral question in addition to an oral and a written question under 24(4) of the Rules of Procedure is in the case of the 3 questions raised by Mr Ronny TONG at the Council meeting of 21 December 2011, *Hansard*, pp. 3877-3925.

³⁰ Starting from the 1996-1997 session, a starting time for the registration of questions is given for Members to register their questions.

³¹ Under Rule 24(2) of the Rules of Procedure, a member shall give notice of a question not later than 7 clear days before the meeting at which an answer is required from the Government. The expression "clear days", according to Rule 93 (Interpretation), excludes the day of the giving of a notice, the day of the relevant meeting and intervening public holidays.

relevant rules. A sample of the question registration form is attached at **Appendix 9-A**.

Slots for oral questions

9.17 Oral questions are first dealt with to work out which 6 oral questions may be asked at the Council meeting. If the number of oral questions registered before the cut-off time does not exceed 6, all the questions registered will be given a question slot. Any available slots will be allocated on a first-come-first-served basis to Members who submit questions after the cut-off time, until all slots are taken up or the deadline for giving notices of questions for the meeting expires, whichever is the earlier. If the number of oral questions registered exceeds 6, priority is given to those Members who have given the least number of notices of oral questions since the beginning of a session. If the numbers of notices given by two or more Members are equal, priority is given to the Member who has registered his question earlier.³²

Slots for written questions

9.18 Written questions are allocated according to the same method for oral questions but priority is given to those Members who have not been successful in obtaining a question slot for their oral questions for the same meeting and those who have not applied for a question slot. Members who have given the least number of notices of written questions have priority for the remaining slots. Any available slots for written questions are allocated to those who submit questions after the cut-off time for registration on a first-come-first-served basis.³³

General principle

9.19 The general principle is that where the number of questions registered for a particular meeting exceeds the quota for oral and written questions, priority will be given to those Members who have given the least number of notices of questions.³⁴ If a Member is unsuccessful in getting a slot to ask an oral question, he is given priority to ask a written question at the same meeting. This has been explained in paragraph 9.18 above. The reason why the number of notices given is used to determine the priority is that, as

³² Rules 5 and 7 of the House Rules.

³³ Rule 7 of the House Rules.

³⁴ Rule 7(c) of the House Rules.

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explained in paragraph 9.22 below, only those who are allocated a question slot will have the chance to give notice of a question. Situations arise where a Member decides not to give notice of the question after he has been allocated with a slot to ask that question. If the notice period has not expired, other Members who were unsuccessful in getting a slot will have a second chance. If a Member withdraws the notice after the notice period expires, the result would be that no other Member can have the chance to take up the slot. The Member who withdraws the question will be regarded as having taken up and used the slot. A sample of the notice of question is attached at **Appendix 9-B**.

9.20 To ensure that all question slots can be used up, all draft questions which are scheduled to be asked at a Council meeting are issued as a paper for the meeting of the House Committee on the Friday before the deadline for giving notice of questions for the Council meeting concerned. Through this arrangement, Members will know if there are any unallocated question slots for that Council meeting before the deadline and may submit their questions accordingly. The priority of the questions submitted after the cut-off time is also determined according to the same principle, i.e. first-come-first-served based on the least number of notices previously given. If any Member wishes to seek the agreement of the House Committee to accord priority to his question on grounds of topical interest, public concern and urgency, he may do so at any meeting of the House Committee.³⁵

Allocation of slots for questions with the same content

9.21 Draft wording is required for registering a question and the draft should be sufficiently clear to identify the subject matter and the scope of the question. Where two or more Members have put in questions of similar content, they will be so informed by the Secretariat and requested to reach an agreement among themselves on who will ask the question (if all of them are given question slots to ask questions at the same meeting).³⁶ Where no consensus can be reached, Rule 5(c) of the House Rules provides that the Member who has an earlier slot will ask the question. It is not uncommon that those Members who do not have an earlier slot modify their questions so that the content of their questions would not be substantially the same as the one which is given priority to be asked. Any modification of the question or submission of a new question should reach the Clerk before the deadline for giving notice of the question, i.e. 7 clear days before the meeting.

³⁵ Rule 7(d) of the House Rules.

³⁶ Rule 5(c) of the House Rules.

Questions cannot be changed after expiry of notice period

9.22 Members who have been given a question slot for the asking of an oral or written question at a particular meeting will receive from the Secretariat a notice form together with proposed amendments to the terms of the question, if any, about two to three days before the deadline for giving notice. Members are required to sign and return the notice forms to the Clerk before the deadline. In recent years, there were cases where Members submitted a new question just before the expiry of the notice period to cater for matters of topical interest. This is an acceptable practice but there will be little opportunity for the Secretariat to give advice on the possible non-compliance of the question. No changes to a question are allowed after the expiry of the notice period. All questions are submitted to the President for his agreement to their inclusion on the Agenda of that Council meeting. Where a question is found to be out of order by the President and no alteration is directed by the President under Rule 25(2) of the Rules of Procedure, the question will not be put on the Agenda but the Member will still be regarded as having taken up the question slot under the allocation system.

Oral questions cannot be changed to written questions after expiry of notice period

9.23 Prior to 2006, Members were able to change an oral question to a written question even after expiry of the notice period. The matter was studied by the Committee on Rules of Procedure of the Third Legislative Council in 2005-2006. Members considered that changing an oral question to a written one would deprive other Members of the opportunity to ask supplementary questions. Besides, as a question which has been fully answered cannot be asked again during the same session³⁷, no other Member would be able to raise an oral question on the same subject matter within the session. The Committee noted that the need for a Member to change an oral question to a written one often stemmed from the fact that the Member concerned was not able to attend the meeting to ask the question. Although the Member who was absent could ask another Member to ask the question³⁸, this was not always done. On 16 December 2005, the House Committee endorsed a series of new arrangements to facilitate the asking of the oral question at the scheduled meeting despite the absence of the Member concerned. These arrangements include the calling of the Chairman of the

³⁷ Rule 25(1)(l) of the Rules of Procedure.

³⁸ Rule 26(6) of the Rules of Procedure.

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House Committee³⁹ to ask the question if the Member has not given consent to any Member to ask the question on his behalf.⁴⁰ Those Members who have asked questions on behalf of other Members would not be regarded to have asked an oral question for the purpose of Rule 24(3) of the Rules of Procedure⁴¹ or to have used a question slot under the allocation system.⁴² However, the Member whose oral question has been asked by another Member on his behalf will be regarded as having used his question slot.

Purpose and contents of questions

Purpose of questions

9.24 The purpose of raising a question on the work of the Government⁴³ is set out in Rule 22 of the Rules of Procedure. Any Member may address a question to the Government on its work, and seek information on such matter or ask for official action with regard to it.

9.25 A question must relate to a public matter for which the Government is responsible and should not be used for a private purpose.⁴⁴ In determining whether a matter raised in a question is a public matter, it is always useful to refer to the portfolios of the principal officials of the Government, the annual reports of the Government and its departments, relevant legislation or policy papers to ascertain whether the matter falls within the work of the Government.

Contents of questions

9.26 Rules on the contents of questions are set out in Rule 25(1) of the Rules of Procedure. They were adopted from Standing Order No. 18 of the pre-1997 Legislature and are supplemented by Rules 6 and 8 of the House Rules which were originally part of the internal guidelines drawn up by

³⁹ See Rule 26(6B) of the Rules of Procedure regarding the meaning of "chairman of the House Committee" under the arrangement set out in Rule 26(6A) of the Rules of Procedure.

⁴⁰ Rules 26(6A) and 26(6B) were added to the Rules of Procedure at the Council meeting of 11 January 2006. *Hansard*, pp. 3700-3704.

⁴¹ Under Rule 24(3) of the Rules of Procedure, a Member may not ask more than one oral question at any one meeting.

⁴² Progress Report of the Committee on Rules of Procedure for the 2005-2006 session, para. 2.8-2.15.

⁴³ The raising of questions on the work of the government is a power and function of the Legislative Council under Article 73(5) of the Basic Law.

⁴⁴ This principle was reflected in the pre-1997 Standing Order No. 15 which formed the basis for drafting Rule 22 of the Rules of Procedure of the First Legislative Council.

UMELCO in the 1970s on the form of questions and supplementary questions.⁴⁵ To understand how these rules are applied, it is useful to refer to their origins which were modelled on the long-established conventions adopted by the House of Commons of the UK, and the past practices of the Hong Kong Legislature including Presidents' rulings, as well as the practices of other parliaments which have the same provisions in their standing orders or have adopted the same practices.

Origin of the rules on the contents of questions

9.27 Questions to the Government have a long history in the House of Commons of the UK. The first recorded question to Ministers was asked in 1721. The rules governing the form and subject matter of questions in the UK are based on Speakers' rulings which are collected and applied as precedents. As stated in "An Introduction to the Procedure of the House of Commons" first published in 1929⁴⁶, questions at that time were recognized as a useful method to supervise the administration of the Government.⁴⁷ The author, Sir Gilbert Campion (former Clerk of the House of Commons of the UK), grouped the rules adopted by former Speakers under three headings for easy understanding as follows:

- (a) *Information or Action*: A question should be of a genuinely interrogative character. The object of a question is to obtain information or press for action. It should not be in effect a short speech, or an argument, or limited to giving information, or framed in such a way as to suggest its own answer or convey a particular point of view. The facts on which a question is based may be set out briefly but extracts from newspapers, quotations from speeches, etc. are not admissible. Questions with a subject matter too wide, repeating in substance a question fully answered; available in accessible documents; containing epithets or rhetorical, controversial or ironical expressions; or being hypothetical in form, etc. are out of order.

⁴⁵ Rules 5-12 of the House Rules.

⁴⁶ It was in 1928 that a draft code of model Standing Orders for Colonial Legislatures was published by the UK and in 1929 that the Standing Orders of Hong Kong was substantially revised on the basis on this draft. See Chapter 1, para. 1.18-1.19.

⁴⁷ Sir Gilbert Campion (1950), *An introduction to the Procedure of the House of Commons*, 2nd Edition, pp. 145-152.

- (b) Responsibility of Minister: A question should be directed to a Minister officially responsible for the subject matter with which it deals. Questions raising matters outside the responsibilities of the Government are out of order. Seeking an expression of opinion on a question of law such as interpretation of a statute is also out of order although if a policy matter is involved, there may be a way of asking an orderly question. Asking questions to confirm the accuracy of statements in the Press or of private individuals is not allowed.
- (c) Constitutional propriety and the Rules of Order: Infringement of *constitutional propriety* refers to the use of names of, or reflections on, the Sovereign or to the influence of the Crown. It also refers to reflection on the decisions of a Court of Law or being likely to prejudice a case under trial. Constitutional propriety also refers to the seeking of information about matters which are in their nature secret, such as proceedings of the Cabinet, advice given to the Crown by Law Officers, etc. Infringement of the *Rules of Order* includes personal charges or reflections on the conduct of certain persons whose conduct may only be challenged on a substantive motion and on other persons otherwise than in a public capacity, introducing the names of persons or bodies invidiously or for the purpose of advertisement, anticipating a question or motion notice of which has already been given, etc. Such infringements are prohibited in questions.

9.28 Even up to this date, these long-standing rules on the form and contents of questions are not set out in the Standing Orders of the House of Commons of the UK. It has been regarded as impracticable and against the interests of Members to set out the many variations that would be needed to cover the scope of admissible questions although guidance on the application of the underlying principles is set out in Erskine May.⁴⁸ The Standing Orders only require Members to give notices of questions to the Clerk in a form determined by the Speaker.⁴⁹ The principle adopted by the House in 1993 was that while the Speaker should continue to have regard to these basic rules, he should not consider himself bound, when interpreting these rules, to

⁴⁸ See Erskine May *Treatise on The Law, Privileges and Usage of Parliament*, 24th Edition, pp. 352-370.

⁴⁹ Standing Order No. 22(1) of the House of Commons of the United Kingdom.

disallow a question solely on the ground that it conflicts with any previous individual ruling.⁵⁰

Adoption of Standing Order 18(1) of the pre-1997 Legislature as Rule 25(1) of the Rules of Procedure

9.29 In the case of Hong Kong, the rules governing the contents of questions first appeared in the pre-1997 Standing Order No. 11 of 1929 which was further refined to become Standing Order No. 18(1) of 1968. While some minor amendments were made to the Standing Order over the years, the wording of the various provisions in Standing Order No. 18(1) remained largely the same. Rule 25(1) of the Rules of Procedure was adopted from Standing Order No. 18(1).⁵¹ The interpretation and application of the rules on the contents of questions under Rule 25(1) of the Rules of Procedure rests with the President.

Rule 25(1)(a): shall not include names or statements not strictly necessary

9.30 A Member must be able to justify why the name of a certain person or a statement ought to be included in a question. It remains the President's discretion to decide whether the inclusion of such name or statement is strictly necessary to make the question intelligible. Where the name of the person to be included in the question is that of a public officer, the Member is often advised to include the name of the office rather than the name of the incumbent in the question unless the identity of the person involved might be mistaken by the general public if his name is not mentioned.⁵² If the person to be named in the question is someone outside the Government, particular caution is exercised to ensure that the question will not be used as a tool to attack an individual or to advertise him.⁵³

⁵⁰ See Erskine May (24th Edition), p. 359.

⁵¹ Rule 25(1)(e) of the Rules of Procedure was repealed in 2000 as the Council decided to add a new rule, i.e. Rule 25(3), to disallow anticipation and Rule 25(1)(e) became redundant.

⁵² An example is a written question raised on 13 July 2011 in relation to the engagement of multimedia production companies in undertaking government-funded projects. The question was permitted by the President after the name of the public officer was deleted. *Hansard*, pp. 14018-14020.

⁵³ Rule 25(1)(a) of the Rules of Procedure provides that a question shall not include the names of persons, or statements which are not strictly necessary to make the question intelligible.

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Rule 25(1)(b): shall not contain a statement which the Member is not prepared to substantiate

9.31 Rule 25(1)(b)⁵⁴ was originally part of Standing Order 11 of 1929 which read as "A question shall not .. contain charges which the Member who asks the question, is not prepared to substantiate." The word "charges" was replaced by "a statement" in the 1968 version of the Standing Order. The word "statement" in this context may be interpreted to also include "a charge" although in a more general sense, which is consistent with the usage in other jurisdictions.^{55 56} This is also consistent with the principle that it is the Member's responsibility to prove the authenticity of any facts to be included in a question.

Rule 25(1)(c): shall not contain arguments, inferences, opinions, imputations or epithets, or tendentious, ironical or offensive expressions

9.32 A question should aim to seek information or press for actions but should not be a platform for a debate. Where a question contains arguments, inferences, opinions, imputations or epithets, ironical or offensive expressions, it tends to invite counter arguments and provoke debate on the question which is not the purpose of the Question Time. Where such a situation arises during the asking of a supplementary question, it is the practice of the President to request the Member to rephrase his question. If the Member fails to rephrase the question, the President may request the Member to resume his seat and call upon another Member to ask the next question or supplementary question. This practice is also commonly adopted in other parliaments.⁵⁷

Rule 25(1)(d): shall not contain independent questions or be too complex

9.33 Some of the restrictions in Rule 25 of the Rules of Procedure aim to ensure that questions are put to effective use. A question is most effective if it is precise and to the point. A question should not contain independent questions or be so complex that it cannot reasonably be answered as a single question. This point is echoed in Rule 6 of the House Rules which states that

⁵⁴ Rule 25(1)(b) provides that a question shall not contain a statement which the Member who asks the question is not prepared to substantiate.

⁵⁵ Sir Gilbert Campion (1950), *An introduction to the Procedure of the House of Commons*, 2nd Edition, p. 151.

⁵⁶ In Canada, a Member cannot make a charge by way of a preamble to a question. See *House of Commons Procedure and Practice* (Canada), 2nd Edition, p. 503.

⁵⁷ See *House of Commons Procedure and Practice* (Canada), 2nd Edition, p. 497.

multiple questions within a single oral question should be avoided. By making the question too complex, the answer can also be very broad-brush, making it difficult for Members to pinpoint the crux of the matter and press for actions.

9.34 It has become a practice that Members use a preamble to put the question in context, followed by a number of specific questions. In overseas legislatures, Members are often reminded to keep the preamble as brief as possible.⁵⁸ In Hong Kong, Members are given the same advice and are requested to keep the question which follows the preamble of an oral question to not more than 3 parts, i.e. limited to 3 sub-questions. Where it is necessary to ask a question which requires statistics, Rule 6(c) of the House Rules suggests that a written question should be used.

Rule 25(1)(f): shall not seek information on matters of a secret nature

9.35 A question may not seek information about a matter which is of its nature secret. An example is the proceedings of the Executive Council. It is a long-established practice that Members cannot ask questions about the discussion at meetings of the Executive Council, the proceedings of which are classified as secret.⁵⁹ Details of investigations by the police, the Independent Commission Against Corruption or other disciplined forces are also regarded as classified information and questions seeking such information are generally not allowed. However, there have been cases where the President has ruled a question admissible when it sought to enquire about the progress of investigations and the Government's follow-up actions in relation to the matter concerned. It would be for the Government to decide how to respond to the questions.⁶⁰

⁵⁸ Mr Speaker Jerome of the House of Commons of Canada in his statement made in 1975 spoke about the use of preambles. He said, "In putting the original question on any subject, a Member may require an explanatory remark, but there is no reason for such a preamble to exceed one, carefully drawn sentence." See *House of Commons Practice and Procedure* (Canada), 2nd Edition, p. 501.

⁵⁹ An example is a written question raised at the Council meeting of 30 October 2013 on the issuance of domestic free television programme service licenses. The original question submitted by the Member contained the seeking of information on the criteria adopted by the Executive Council in rating the applications and a comparison of the capabilities, etc. of the applicants. This part of the question was subsequently amended so as to comply with Rule 25(1)(f) of the Rules of Procedure.

⁶⁰ An example is a written question raised at the Council meeting of 23 June 2010 on the investigation conducted by the Securities and Futures Commission and the Police into the leveraged foreign exchange transactions of CITIC Pacific Limited. In his written reply to the question, the Secretary for Financial Services and the Treasury stated that as the investigation was ongoing, the Police would not comment on the case.

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Rule 25(1)(g): shall not reflect on a court decision or prejudice a case pending trial

9.36 A question must not reflect on the decision of a court of law or be so drafted as to be likely to prejudice a case pending in a court of law.⁶¹ The issue of *sub judice* has always been a primary consideration when a proposed question touches upon matters before the courts although the *sub judice* rule is not explicitly spelt out in any resolution of the Council. Rule 25(1)(g) however does reflect the application of such a rule. As a matter of principle, Members should refrain from discussing cases which are still active in the courts to guard against any prejudicial effect on the outcome of a case pending before the court. Nevertheless, this does not mean that a question which relates to a case which is pending in court cannot be asked. In recent years, there have been occasions where the President has allowed questions referring to such cases to be asked in the Council. While bearing in mind the *sub judice* rule, the President is of the view that Members should not be deprived of the opportunity to call the Government to account if the question involves a matter of grave concern to the public. As such, the President may permit such a question if it is not framed in such a way as to prejudice a case pending in court. It is also the practice of the President to remind Members and public officers, at the time when the question is answered and followed up, of the need to ensure that the case is not prejudiced by their questions and answers.

Rule 25(1)(h): shall not seek to obtain an opinion or solution of an abstract legal question or an answer to a hypothetical proposition

9.37 A question which seeks to obtain an expression of opinion, a solution of an abstract legal question or an answer to a hypothetical proposition is out of order. It is an accepted practice in parliaments that opinions on a question of law, such as the interpretation of a statute, should more appropriately be dealt with by the court which is more competent in such matters than politically appointed public officers.^{62 63} Hypothetical questions are also not allowed as the purpose of a question is to find out what the Government is doing or has failed to do and not what it would likely to do in a hypothetical situation.

⁶¹ Rule 25(1)(g) of the Rules of Procedure.

⁶² It is not out of order in the UK Parliament to ask Ministers by what statutory authority they have acted in a particular instance. See Erskine May (24th Edition), p. 362.

⁶³ Also see Canada's *House of Commons Procedure and Practice*, 2nd Edition, p. 495.

Rule 25(1)(i): shall not seek to confirm accuracy of press or individuals' statements or statements of private concerns

9.38 No question is allowed to be asked about the accuracy of a statement in the press or of private individuals or private concerns. The Member asking a question is responsible for the accuracy of any facts contained in the question. It is general practice that extracts from newspapers or books or quotations from speeches are not permitted in questions.⁶⁴ There have been cases where a proposed question contains a press report or a direct quote from a speech of a private individual in the preamble to provide the context for the question to be asked. If the question does not seek to confirm the accuracy of the press report or the statement, the inclusion of a brief summary of facts or circumstances which the Member has obtained from his source as the basis for his question may be allowed.⁶⁵ How the Government responds to such a question is entirely a matter for it to decide. Generally speaking, the Government may make use of the opportunity to clarify misunderstanding of certain policies or facts which might have arisen from media reporting. This was particularly common in the pre-1997 Legislature. Whilst government statements may be used to address such misunderstanding⁶⁶, the provision of timely and useful information through responding to a question in the Council is usually regarded as an effective and interactive way to enhance the mutual understanding between the Government and the Legislature.

Rule 25(1)(j): shall not seek to ask about the character or conduct of the Chief Executive, Member of the Executive Council or Member of the Legislative Council, or any other persons except in their official and public duties

9.39 Under Rule 25(1)(j), a question may not be asked to reflect on the character or conduct of persons listed in Rule 41(7) of the Rules of Procedure, i.e. the Chief Executive, Member of the Executive Council and Member of the Legislative Council. The Rule also provides that a question shall not seek to ask about the character or conduct of any other persons unless it is related to

⁶⁴ See Erskine May (24th Edition), p. 359.

⁶⁵ An example is a written question raised on 5 December 2012 in relation to the law enforcement against unauthorized building works found in the personal property of a public officer. The parts which sought to confirm accuracy of the allegations made in media reports were deleted before the question was submitted to the President for his approval. *Hansard*, pp. 3063-3069.

⁶⁶ An example is a statement made by the Attorney General on 19 November 1969. *Hansard*, pp. 161-163. Also see Chapter 7, para. 7.72.

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their official or public duties.⁶⁷ Where these persons are allowed to be referred to in the question, the President also needs to be satisfied that the mentioning of their names are strictly necessary as required under Rule 25(1)(a).

Rule 25(1)(k): shall not seek information already in accessible documents

9.40 A question may not be asked seeking information which can be found in accessible documents or ordinary works of reference. It is not an effective use of the Question Time if questions are used to retrieve information which is already in the public domain. There may be situations where Members are not aware of the existence of the requested information or the information is not easily retrievable from open documents or information in the public domain appears to be conflicting. There are various channels to confirm the availability of such information or seek clarification, such as using the service of the Legislative Council Library or writing directly to the relevant department or Bureau in the Government.

Rule 25(1)(l): Questions already fully answered in the same session cannot be asked again

9.41 To ensure effective use of the Question Time, Members are not allowed to ask a question which has been fully answered in the same session.⁶⁸ There may be occasions where the subject matter of a question is similar to but not substantially the same as that of a question already approved by the President for an earlier meeting. If the earlier question is an oral question, there is a possibility that the Government may, in response to the question or a supplementary question to this earlier question, provide information which answers in part or in full the question proposed for the later meeting. In these circumstances, the President will still allow the question to be placed on the Agenda of the later meeting, but in the event that any part of the question has been answered, he will direct that the part which has been answered be removed from the question.

⁶⁷ The President directed the reference to the designation of a public officer to be deleted from a question raised on 5 December 2012 which sought information on the law enforcement actions taken by the Government in respect of unauthorized building works. *Hansard*, pp. 3063-3069.

⁶⁸ Rule 25(1)(l) of the Rules of Procedure.

Questions relating to the Central Government of PRC

9.42 At times, questions relating to the Central Government of the People's Republic of China or its Liaison Office in the HKSAR are proposed. The President only allows such questions to be raised if they are related to the work of the Government. All the restrictions under Rule 25(1) of the Rules of Procedure, such as names and statements not to be included unless strictly necessary, apply to these questions.⁶⁹

The President to determine the admissibility of questions

9.43 Notices of questions are given to the Clerk and it is the Clerk's office to advise the Members concerned if the questions comply with the rules governing their admissibility. The final authority to decide whether a question is admissible rests with the President.⁷⁰ The responsibility of the President is confined to the compliance of the questions with the Rules of Procedure and other practices of the Council.

9.44 The Rules of Procedure do not provide the President with any discretion for returning the question to the Member concerned for modification if found out of order after the notice period has expired, nor any power to dispense with the notice so that a fresh question can be submitted for the same meeting. Under the circumstances, if a question is found to have infringed any of the provisions of Rule 22 or Rule 25 of the Rules of Procedure, the President may direct that the Member concerned be informed that the question is out of order, or direct the question to be placed on the Agenda with "alterations".⁷¹ Such alterations include removal of words or part of the question so that the question complies with the Rules of Procedure, and also resultant editorial work to make the question readable after the removal of such words or parts.⁷²

⁶⁹ An example is an oral question raised at the Council meeting of 17 January 2007 in relation to the protection of commercial transactions from interference by Mainland officials under the Basic Law. *Hansard*, pp. 3685-3694.

⁷⁰ In the House of Commons of the UK, the Speaker is the final authority as to the admissibility of questions. The Speaker's responsibility in regard to questions is limited to their compliance with the rules of the House. Members may discuss the orderliness of proposed Questions when they table them with the Clerks in the Table Office. Responsibility in other aspects rests with the Member who proposes to ask the question, and the responsibility for answers rests with Ministers. See Erskine May (24th Edition), p. 356.

⁷¹ Rule 25(2) of the Rules of Procedure.

⁷² Examples are an oral question raised at the Council meeting of 17 December 2014 regarding additional demand for railway services, *Hansard*, pp. 3684-3694; and a written question raised at the Council meeting of 7 January 2015 regarding Asia Television Limited allegedly defaulting on payments of employees' wages, *Hansard*, pp. 4352-4355.

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Questions with notices given

9.45 For the 22 questions to be asked at a regular Council meeting, approval of the President is sought after notices are received, usually on the Wednesday or Thursday in the week before the Council meeting. All questions considered in compliance with Rule 24 (Notice of questions) and Rule 25 (Contents of questions) of the Rules of Procedure by the President are listed on the Agenda of the Council ⁷³ issued to Members on the Monday of the week of the Council meeting.

9.46 The order of the questions on the Agenda is decided according to the time the notices of the questions were received by the Clerk. If a Member has given notice of more than one question at the same time, the order of the questions will be based on the order indicated by him.⁷⁴

9.47 Any suggestion to accord priority to questions of topical interest, public concern and urgency may also be raised and decided by the House Committee for the President's consideration.⁷⁵ This may be raised before the deadline for giving notices so that the question can be listed as one of the 22 questions for the earliest possible Council meeting. Alternatively, the House Committee may recommend to the President that the question to be raised as an urgent question at the next Council meeting.

Urgent questions

9.48 Urgent questions are questions without notice. Notwithstanding the maximum number of questions permitted for each Council meeting and the requirement for notice be given, a Member may still ask permission from the President to ask a question without notice at any meeting except those meetings mentioned in Rule 23(1) of the Rules of Procedure. Questions without notice may be asked under Rule 24(4) of the Rules of Procedure on the ground that it is of an urgent character and it relates to a matter of public importance at any meeting.⁷⁶ The President considers each individual case on the basis of the grounds submitted by the Member in support of his request and the draft wording of the question and whether sufficient private notice has

⁷³ Rule 26(1) of the Rules of Procedure.

⁷⁴ Rule 26(2) of the Rules of Procedure.

⁷⁵ Rule 7(d) of the House Rules.

⁷⁶ Rule 10 of the House Rules. Examples are the question on the acceptance of passage and discounts by public officers at the Council meeting of 29 February 2012 and on West Kowloon Reclamation Concept Competition at the Council meeting of 15 February 2012.

been or will be given to the Government to enable it to answer the question. If the Member has put forward his request for asking an urgent question to the House Committee in accordance with Rule 10 of the House Rules before seeking the President's approval, the President will also take into account the views expressed by the House Committee.

9.49 The principle adopted by the President in determining if the question has met the requirements laid down in Rule 24(4) of the Rules of Procedure is whether there would be any irreversible consequences if the question is not asked at that meeting or whether the asking of the question will become meaningless or will have no effect if it were asked at a later date.^{77 78 79} The President also needs to be satisfied that the question is on a matter of public importance. He may also take into account other relevant factors.

Rule of anticipation

9.50 In addition, the President may refuse to include a question on the Agenda of the Council based on the rule of anticipation⁸⁰ as set out in Rule 25(3) of the Rules of Procedure. Under this rule, the subject matter of a question or any part thereof must not be substantially the same as that in a matter raised in an earlier question scheduled for the same meeting, or raised in a motion or bill the notice of which has been given earlier for a specific meeting⁸¹, or being considered by a standing committee or a select committee

⁷⁷ For example, an oral urgent question was asked by Mr MA Fung-kwok at the Council meeting of 19 June 2013 regarding the immediate actions to be taken in respect of the alleged hacking of the computer systems in Hong Kong by the US Government and the personal safety of Edward Snowden, Hansard, pp. 13381-13405.

⁷⁸ The President allowed 4 oral questions to be raised without notice under Rule 24(4) of the Rules of Procedure at the Council meeting of 18 June 2014. These questions were related to the emergency actions to be taken to maintain public order and protect personal safety following the incident on 13 June 2014 at the Legislative Council Complex. Hansard, pp. 15147-15197.

⁷⁹ In response to an application from Dr KWOK Ka-ki for asking an urgent question regarding an incident at the Tseung Kwan O Line of Mass Transit Railway, the President ruled that although the question concerned public interest, the subject matter was not of such urgency that would become meaningless or less effective if asked at a later meeting. See http://www.legco.gov.hk/yr13-14/chinese/pre_rul/pre1217a-ref-ec.pdf.

⁸⁰ "Rule of anticipation" refers to the principle that a matter appointed for consideration by the legislature must not be anticipated by another matter of substantially the same content but contained in a less effective form of proceedings. See Chapter 7, para. 7.98.

⁸¹ The President allowed both a written question and a motion debate on the policy of the Moral and National Education subject to be placed on the Agenda of the Council meeting of 17 October 2012 as the question was considered not substantially the same as the proposed motion. While an amendment to the motion was found substantially the same as part of the question, the notice of the amendment was received after the question had been approved. There was no issue of anticipation in this particular case. Agenda of Council meeting of 17 October 2012 at <http://www.legco.gov.hk/yr12-13/english/counmtg/agenda/cm20121017.htm>.

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or a committee authorized by the Council to conduct an inquiry into that matter. This has been explained in Chapter 7 ⁸².

Communication with the Government regarding questions

9.51 Throughout the course of the consideration of questions submitted by Members, the Secretariat keeps close contact with the Government at the working level regarding the questions that will be raised at Council meetings. House Committee papers on questions scheduled to be asked at a Council meeting are copied to the Director of Administration. The Government therefore is aware of the questions to be answered about 2 weeks before the Council meeting concerned. The President considers it important that the designated public officer responsible for answering a question should have sufficient time to prepare his answers to the question and any supplementary questions. As stated in paragraph 9.48 above, it is a requirement under Rule 24(4) of the Rules of Procedure that sufficient prior private notice should be given to the Government for asking urgent questions. There is a standing arrangement for the Government to issue the draft replies to all questions, in particular oral questions, to all Members immediately before the Council meeting to enable Members to prepare their supplementary questions.

9.52 The Secretariat also communicates with the Director of Administration on which designated public officers will answer the questions. It is the Government which decides who will be the most appropriate public officer to answer a question. If the question is related to the portfolios of more than one policy bureau, the Government may assign more than one designated public officer or the Chief Secretary for Administration, the Financial Secretary or the Secretary for Justice to respond to the question.

9.53 The Secretariat also keeps in view the provision of supplementary information promised by the designated public officer at the time he gave his oral reply at the Council meeting. Any such information is regarded as part of the reply of the designated public officer and is circulated to all Members for information.

⁸² See Chapter 7, para. 7.98-7.105.

Withdrawal of questions

9.54 As mentioned in paragraph 9.23 above, the House Committee endorsed in December 2005 a series of measures to ensure that all oral questions would be asked at the scheduled meeting. These measures include amendment to Rule 26(8) of the Rules of Procedure, which was approved by the Council on 11 January 2006. Under the amended Rule 26(8), no question for which notice has been given may be withdrawn except in the case of a written question, where notice is given to the Clerk of such withdrawal not less than 1½ hours before the Council meeting, or in the case of an oral question, where the Member has the leave of the Council for such withdrawal with no dissenting voice before he asks the question at the Council meeting. In the latter situation, no debate is allowed on the withdrawal of an oral question by a Member.

Conduct of Question Time

9.55 Under Article 73(5) of the Basic Law, it is the Legislature's constitutional power and function to raise questions on the work of the Government. Although the Rules of Procedure do not restrict the time for questions at a Council meeting, it is a convention that the Question Time will last for about 2 hours to enable 6 oral questions to be asked and answered with a reasonable number of Members to follow up with supplementary questions in relation to each of these questions. Following the live broadcasting of Council proceedings on TV, webcasts and various forms of social media, the proceedings of oral questions particularly capture the attention of the general public. Questions become an effective tool to call the Government to account and to press for Government actions. With the increase in the number of Members waiting their turns to ask supplementary questions, the control of proceedings and effective use of the limited time for questions are matters to be considered by the President.

Manner of asking and answering oral questions

9.56 When each question is reached on the Agenda, the President calls upon the Member in whose name the question stands to ask the question. The Member is not allowed to make any alteration to the question. The designated public officer is then called by the President to give his reply.⁸³ No Member

⁸³ Rule 26(3) of the Rules of Procedure.

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is allowed to address the Council on a question or use a question as a pretext for a debate.⁸⁴

9.57 If the Member is not present when the question is reached on the Agenda, with his consent, the question may be asked by another Member. If no prior notice is given to the President of whom to call to ask the question on behalf of that Member, Rule 26(6A) of the Rules of Procedure provides that the President must call upon the chairman of the House Committee to ask the question. Under Rule 26(6B) of the Rules of Procedure, "the chairman of the House Committee" also means the deputy chairman of the House Committee if the chairman of the House Committee is not present, or the Member present who has the highest precedence in the order of precedence of Members according to Rule 1A of the Rules of Procedure if both the chairman and deputy chairman of the House Committee are not present.⁸⁵

9.58 In the event that the designated public officer responsible for answering a question is not present, the President may exercise his discretion to defer the question to the end of the Question Time.⁸⁶ If the designated public officer is not present when the question has been asked, the President may suspend the meeting until the designated public officer is present or he is notified by the Government that another designated public officer who is present will answer that question.

Time limit for each oral question

9.59 As mentioned in Chapter 7, questions addressed to the Government are asked before those items of business which require a decision of the Council. This 2-hour Question Time may be extended if the President considers it appropriate to do so. For more effective control of the time used for questions, the House Committee decided at its meeting on 25 May 2012 that a time limit should be laid down for each oral question, which is now reflected in Rule 9A of the House Rules. In gist, the time taken for the asking and answering of each oral question and any follow-up or supplementary questions should not exceed 22 minutes. In order that at least four other Members would have the chance to ask supplementary or follow-up questions, the asking of the main question should be limited to 3 minutes and the main reply to 7 minutes. That will leave about 10 to 12 minutes for the asking of

⁸⁴ Rule 26(5) of the Rules of Procedure.

⁸⁵ Rule 26(6A) and Rule 26(6B) of the Rules of Procedure.

⁸⁶ Rule 12 of the House Rules.

supplementary or follow-up questions by other Members and the Government's further oral responses. The asking of each of the supplementary or follow-up questions should be confined to no more than 1 minute.

Supplementary questions

9.60 Supplementary questions are to follow up any points from the response and should be short and to the point without any preamble or statement.⁸⁷ The rules governing the asking of questions in Rule 22 and Rule 25 of the Rules of Procedure also apply to supplementary questions. In addition, Rule 8 of the House Rules also provides that a supplementary question cannot contain more than one question, and the Member asking a supplementary question which is of necessity complex should speak slowly to facilitate accurate interpretation of his question.⁸⁸

9.61 When a Member is given a question slot to ask a question, he is usually the first Member given the opportunity to ask a supplementary question after the designated public officer concerned has given his oral reply to the main question.⁸⁹ The Member is not obliged to ask a supplementary question. Neither is the chairman of the House Committee who may be called to ask a question on behalf of an absent Member. After the Member who asks the main question has asked the supplementary question or has decided not to do so, the President will invite other Members to ask supplementary questions. No notice is required for the asking of supplementary questions.

9.62 In determining which other Members should have priority in the asking of supplementary questions, the President currently makes use of an electronic queuing system to register the time a Member pressed the button to indicate his intention to ask supplementary questions.⁹⁰ The queuing list which shows the names of the Members in the order of the time they pressed the button also shows the number of supplementary questions each one of them has asked in the current session. The President accords priority to those who have asked the least number of supplementary questions within the session and, where the numbers of questions asked are equal, to those who were first registered on the queuing list.

⁸⁷ Rule 26(4) of the Rules of Procedure and Rule 8 (b) and (d) of the House Rules.

⁸⁸ Rule 8(c) and (e) of the House Rules.

⁸⁹ Rule 8(a) of the House Rules.

⁹⁰ The electronic queuing system was enhanced in January 1999 to provide information on the accumulated total number of supplementary questions asked by each Member as well as the time at which a Member pressed the "Request-to-speak" buttons to register his intention to ask question.

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Follow-up questions

9.63 Rule 9 of the House Rules provides that if a Member feels that his question has not been fully answered, he may rise on a point of order and seek to ask a follow-up question. It is for the President to rule whether a follow-up question should be allowed. Even if the President has allowed the follow-up question to be asked, the designated public officer may decide whether or not to respond to the question or how to respond to it. A follow-up question is not counted as a supplementary question for the purpose of determining a Member's priority in asking supplementary questions.

Asking of urgent questions

9.64 Urgent questions are asked before the questions for which notices have been given. The order of urgent questions, if more than one will be asked, is determined according to the time the requests to ask such questions were received by the Clerk. If more than one question are related to the same subject matter, it is the practice that supplementary questions are asked after all the main urgent questions relating to the same subject matter have been asked and answered. Necessarily in the interests of the Council, much discretion is exercised by the President in dealing with the time allowed for the asking and answering of urgent questions and their supplementaries. The time limits set out in Rule 9A of the House Rules for oral questions do not normally apply to urgent questions.

Written replies to questions

9.65 The Government is required to give written replies to the written questions raised by Members. The present practice is that the draft written replies to Members' written questions are provided by the Government for distribution to Members shortly before the Council meeting. The final version of these written replies and any written answer offered to be supplied to Members in response to a supplementary question are recorded in the Official Record of proceedings of the Council, i.e. the Hansard.⁹¹

⁹¹ Rule 26(7) of the Rules of Procedure.

Chapter 10

Motions

10.1 Matters for the decision of the Legislative Council are set out in the Agenda of each Council meeting in the order prescribed in Rule 18(1) of the Rules of Procedure as explained in Chapter 7.¹ All decisions of the Council are made through the passage of motions. This Chapter explains the successive steps by which a proposal is brought before the Council upon a motion moved by a Member or a designated public officer and, through debate on the motion, how it is deliberated and put to the Council for a decision.

10.2 In this Chapter, some background information on the various forms of motions is provided to facilitate understanding of their purposes and requirements under the Rules of Procedure. These various forms of motions include substantive motions and subsidiary motions (such as ancillary motions, dilatory motions, amendments, etc.). This Chapter also provides the historical background on the current procedures enabling issues concerning public interests to be raised for debate in the Council² through motion debates³ or adjournment debates⁴. There is also detailed explanation of the arguments over the applicability of Article 74 of the Basic Law to motions and amendments to motions and bills, as well as the principles adopted by the Presidents of the pre-1997 and HKSAR Legislature in determining whether a proposed motion or amendment is beyond the competence of the Council or has a 'charging effect' on the revenues or public moneys of Hong Kong.

Purpose of motions

10.3 A motion is a proposal submitted to the Council for its decision. It should be framed in such a way that the motion, once passed, will become a decision of the Council, which may not be discussed again in the same session unless by way of a motion to rescind that decision if permitted by the

¹ See Chapter 7, para. 7.38-7.39.

² Article 73(6) of the Basic Law.

³ Motions not intended to have legislative effect are mentioned in Rule 37 of the Rules of Procedure; the procedure for the allocation of debate slots for Members to move such motions is provided in Rules 13-14 of the House Rules.

⁴ Rule 16(2) and (4) of the Rules of Procedure.

President.⁵ Decisions of the Council vary in nature and consequences. They may be resolutions with the force of law which the Government must implement according to Article 64 of the Basic Law. Decisions may also be orders made by the Council for self-regulation, such as a motion to impose sanctions against a Member in accordance with the Rules of Procedure⁶, or a motion to make a rule or a temporary order for the regulation of its proceedings. A decision may also be an expression of views with no binding effect on individual Members but in respect of which the passage of the motion will put pressure on the Government regarding a specific position or standpoint agreed by the Council.

10.4 As a general rule, a motion for the decision of the Council is debatable. The objective is that through a process of deliberation the Council should have a better understanding of the pros and cons of the matter and therefore be in the best possible position to decide on it. Where a debate is not allowed, it should be so provided in the Rules of Procedure, e.g. no debate is allowed upon the first reading of a bill.⁷ However, even where a motion is debatable, this does not mean that there are no limits to the debate. Rules on speaking time and the number of times a Member is permitted to speak on a motion are provided to ensure the smooth conduct of debate in the Council.

10.5 A motion is usually amendable unless the motion itself is subsidiary to another motion and is not subject to amendment as a general rule.⁸ This will be explained under "subsidiary motions" below. In the Rules of Procedure, there are some motions which are not subsidiary motions but nevertheless are not subject to amendment. They are those for which the wording has been prescribed or which are specifically for the implementation of certain provisions of the Basic Law. Examples are a motion for the disqualification of a Member from office⁹, a motion for the reconsideration of a bill returned by the Chief Executive¹⁰ and a motion to take note of a report of the House Committee on consideration of subsidiary legislation and other instruments¹¹.

⁵ Rule 32(1) of the Rules of Procedure.

⁶ Rule 85 of the Rules of Procedure.

⁷ Rule 53(2) of the Rules of Procedure.

⁸ For example, the motion "That the bill be now read the second time" is an ancillary motion which is not amendable under Rule 54(6) of the Rules of Procedure.

⁹ Motions moved in accordance with Rule 49B of the Rules of Procedure (which serves to implement Article 79(6) and (7) of the Basic Law) are not subject to amendment under Rule 49B(2) of the Rules of Procedure.

¹⁰ Motions moved in accordance with Rule 66 of the Rules of Procedure (which serves to implement Article 49 of the Basic Law) are not subject to amendment under Rule 66(7) of the Rules of Procedure.

¹¹ Motions moved in accordance with Rule 49E(2) of the Rules of Procedure are not subject to amendment under Rule 49E(5) of the Rules of Procedure.

10.6 Almost all motions are to be voted on. There are however some exceptions which are set out in the Rules of Procedure. One example is an adjournment debate moved under Rule 16(4) of the Rules of Procedure where the motion has not been agreed to before the expiry of the time for the debate. Under Rule 16(7), the President will then adjourn the Council without putting any question.¹² Another example is the motion moved under Rule 49E of the Rules of Procedure to enable Members to speak on subsidiary legislation or other instruments tabled in the Council to which no amendment has been proposed. Rule 49E(9) provides that after Members and designated public officers have spoken on the motion, the debate comes to a close. The President shall not put any question to the Council for a vote and the Council will proceed to the next item of business on the Agenda. In both cases, the purpose of the motions is to facilitate a debate on a subject rather than a decision of the Council. Details on the procedures for holding these debates are provided in the latter part of this Chapter.

Types of motions

10.7 In the legislatures of other common law jurisdictions, motions are commonly classified into substantive and subsidiary motions to reflect the different nature of motions and to devise appropriate procedures to cater for the purposes each aims to serve. There is no such classification in the Rules of Procedure of the HKSAR Legislature although the motions referred to under these two categories also exist in the Rules of Procedure. It is therefore relevant to examine how the various motions contained in the Rules of Procedure are treated in other parliamentary settings in order to understand how they are related to each other in the conduct of the business of the Council.

Substantive motions

10.8 A substantive motion is a self-contained proposal framed in such a way as to be capable of expressing a decision of the Council. Examples are motions to amend subsidiary legislation or any legislative instrument as referred to in Rule 29(2) of the Rules of Procedure, motions to extend the scrutiny period of subsidiary legislation as referred to in Rule 29(3), motions to amend the Rules of Procedure, to appoint a select committee, to authorize a

¹² Rule 16(7) of the Rules of Procedure.

committee to exercise the power to summon witnesses and motions not intended to have legislative effect but moved to facilitate a debate on a public issue, as well as procedural motions. A substantive motion is subject to amendment unless otherwise provided in the Rules of Procedure.

Subsidiary motions

10.9 As noted in paragraph 10.7, the term "subsidiary motion" does not appear in the Rules of Procedure of the HKSAR Legislature but it is widely used in the practice and rules of other legislatures which adopt the Westminster model. In the House of Commons of the UK, there are the following types of subsidiary motions ¹³:

- (a) ancillary motions such as a motion that a bill be now read a second time;
- (b) dilatory motions to supersede questions, such as a motion for the adjournment of a debate;
- (c) motions dependent on other motions, such as amendments.

10.10 A similar classification has been adopted by the House of Commons in Canada. In Canada, there are also subsidiary or ancillary motions which are dependent on some other proceeding or motion, as well as privilege motions which have precedence over the original motion under debate. Amendments or superseding motions such as dilatory motions to adjourn debate or adjourn the House are privilege motions. ¹⁴

10.11 Applying the same principles, there are the following subsidiary motions in the HKSAR Legislature:

- (a) Amendment to a substantive motion under Rule 29(2) and (3) of the Rules of Procedure ¹⁵ (notice required ¹⁶, debatable, amendable), amendment to other substantive motions (notice

¹³ See Erskine May (2011), *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 24th Edition, p. 392.

¹⁴ See *House of Commons Procedure and Practice* (Canada), 2nd Edition, pp.530-532.

¹⁵ An example is the amendment proposed by Mr Andrew WONG to a resolution moved by Secretary for Constitutional Affairs to amend the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2004 (LN 84 of 2004) under the Interpretation and General Clauses Ordinance at the Council meeting of 7 July 2004.

¹⁶ Rule 29(4) of the Rules of Procedure.

required ¹⁷, debatable, amendable except in the case of motions not intended to have legislative effect ¹⁸), amendment to a bill under Rule 57 of the Rules of Procedure (notice required, debatable, not amendable);

- (b) Ancillary motion which is dependent upon another motion, e.g. "that the bill be now read the second time" under Rule 54(3) of the Rules of Procedure (debatable, not amendable ¹⁹), "that a clause [or schedule] stand part of the bill" under Rule 58(1) of the Rules of Procedure (debatable, not amendable), "that the bill be read the third time and do pass" under Rule 63(1) of the Rules of Procedure (debatable, not amendable); and
- (c) Dilatory motion which interrupts and supersedes a question under debate, e.g. adjournment of debate or of proceedings of a committee of the whole Council under Rule 40 of the Rules of Procedure (debatable ²⁰, not amendable ²¹).

Subsidiary motions in relation to the processing of a bill

10.12 When the proposal is not a single motion as in the case of a bill which contains clauses and schedules, a more sophisticated process is adopted to provide the opportunity for each and every motion within the main proposal to be proposed, debated and put to vote. A bill is a substantive proposal. Within this proposal, there are subsidiary motions to carry the bill through the three-reading process. The motions that the bill be read the second (third) time or that a clause stands part of the bill are ancillary motions which are dependent on the bill. These ancillary motions are not subject to amendment and no notice is required as they form part of the process in carrying the bill to a final decision.

¹⁷ Rule 29(6) of the Rules of Procedure.

¹⁸ Amendment to an amendment to a motion not intended to have legislative effect cannot now in practice occur following the deletion of the notice requirement of such an amendment in Rule 17(a) of the House Rules made by the House Committee on 24 January 2014. The new arrangement took effect on 19 February 2014. See Progress Report of the Committee on Rules of Procedure for the period October 2013 to June 2014, para. 2.7-2.10.

¹⁹ Rule 54(6) of the Rules of Procedure.

²⁰ Under Rule 40(1) and (4) of the Rules of Procedure, the President shall propose the question on the motion moved under these subrules. This implies that such motions are debatable.

²¹ Rule 40(5) of the Rules of Procedure.

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10.13 Amendments to the clauses and schedules are subsidiary motions which are subject to notice.²² Each of these amendments is an independent motion although they are subsidiary to the bill.²³ When the Council becomes a committee of the whole Council after passage of the second reading of a bill, ancillary motions to enable individual clauses and schedules of the bill to stand part of the bill are proposed, debated and put to vote. A Member who has given notice to amend a clause or schedule should move the amendment motion at the time he is called to speak on the relevant ancillary motion after it is proposed. The amendment motions should first be dealt with before continuing with the original ancillary motion.

10.14 Details on the three-reading process of a bill and how the ancillary motions and amendments are dealt with are provided in Chapter 11.

Motions for the adjournment of a debate or of proceedings of a committee of the whole Council

10.15 A dilatory motion interrupts the proceedings and supersedes the original motion. It must be disposed of before the debate on the original motion can be resumed. The motions under Rule 40 of the Rules of Procedure to adjourn a debate in the Council or the proceedings of a committee of the whole Council are dilatory motions aiming to provide an opportunity for the Council or the committee to consider if the debate or proceedings should be adjourned until another meeting. No notice is required for dilatory motions. Any Member who has risen to speak on a question may move under Rule 40(1) without notice in the course of a debate in the Council that the debate be now adjourned, or may move under Rule 40(4) when the Council is in committee that further proceedings of the committee be now adjourned. The effect of the passage of these motions is that the debate or proceedings are interrupted by an adjournment but may be resumed on a future date. The motions moved under Rule 40 cannot be amended or moved with any condition or qualification.

10.16 When a motion moved under Rule 40(1) of the Rules of Procedure has been agreed to, the Council shall proceed to the next item of business. The debate adjourned may be resumed at a subsequent meeting provided that

²² Rule 57(2) of the Rules of Procedure provides that notice of amendments proposed to be moved 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 except with the leave of the Chairman.

²³ Sir Gilbert Campion (1950), *An Introduction to the Procedure of the House of Commons*, p. 20.

notice is given to the Clerk to resume the debate not less than 5 clear days before the day on which the debate is to be resumed unless the President agrees to dispense with the notice.²⁴ A motion may again be moved to adjourn the debate which has been resumed.²⁵ If the motion has been negated, the Council will continue to debate the original motion and no further motion to adjourn the debate may be moved except by a designated public officer.²⁶

10.17 When a motion moved under Rule 40(4) of the Rules of Procedure to adjourn proceedings of the committee of the whole Council has been agreed to, the Council shall resume and proceed to the next item of business on the Agenda. For the resumption of the adjourned proceedings, a notice of not less than 5 clear days is required to be given to the Clerk unless the Chairman agrees to dispense with the notice. A motion to adjourn the resumed proceedings may again be moved. There is no stipulation in the Rules of Procedure that a motion to adjourn proceedings in a committee of the whole Council may not be moved again if an earlier motion to adjourn the same proceedings has been negated.

10.18 On 9 May 2012, when the Council was in committee to consider the clauses of and schedules to the Legislative Council (Amendment) Bill 2012, Ms Audrey EU moved to adjourn the proceedings of the committee. In response to her remarks that this motion, if negated, could not be moved for a second time, President Jasper TSANG clarified that as Rule 40 did not specify that such a motion could not be moved again in the same proceedings and Committee stage could be a lengthy process, he considered that different Members should be allowed to move a motion to adjourn proceedings at different times during Committee stage. Nevertheless, as President, he had the duty to consider whether the timing was reasonable.²⁷ The motion moved by Ms EU, after debate, was negated. On 16 May 2012, both Mr Alan LEONG and Mr LEE Cheuk-yan sought to move another motion to adjourn the same proceedings. After listening to their explanations, the President did not consider that there was any new development in the previous week which would have made the debate on proposed motion different from the 5-hour

²⁴ Rule 40(2), (4) and (6) of the Rules of Procedure.

²⁵ Rule 40(8) of the Rules of Procedure.

²⁶ Rule 40(3) of the Rules of Procedure.

²⁷ Council meeting of 9 May 2012, *Hansard*, pp. 9458-9464.

debate held on the motion moved by Ms EU the week before. He did not allow Mr LEONG or Mr LEE to move their motions.²⁸

10.19 Regarding the speaking time on a motion moved under Rule 40(1) of the Rules of Procedure, the usual maximum time of 15 minutes applies. However, if the motion to adjourn a debate is in respect of a motion for which a specified time recommended by the House Committee applies, such as the regular motion debates at each Council meeting, Members speaking on the motion to adjourn must limit their speeches to the recommended specified time if it is accepted by the President.²⁹

Notice requirements for motions and amendments

10.20 Rule 29(1) of the Rules of Procedure provides that the notice period for the moving of a motion in the Council and in a committee of the whole Council should be not less than 12 clear days before the day on which the motion is to be considered. As a meeting of the Council or a committee of the whole Council may last for a few days, the date used for setting the deadline for giving notice is the first day of the Council meeting concerned. Since the First Legislative Council, the date of a Council meeting is identified as the Council meeting "of " instead of "on", such as "the Council meeting of 5 November 2014". The meeting may actually last for 2 or more days but the business transacted on these days is still regarded to have taken place on 5 November 2014. This is to obviate any confusion caused to Members and the public on the date of the Council meeting concerned.³⁰

10.21 Notwithstanding the notice requirement stipulated in Rule 29(1) of the Rules of Procedure, the Rule also provides the President with the discretion to dispense with such notice. Dispensation of notice is not usually given unless there is very strong reason put forward by the Member or designated public officer to justify why the 12 clear days' notice cannot be given. Presidents of the Legislative Council have attached great importance to the need for giving proper notice of a motion for the decision by the Council so that all Members will have the chance to consult their constituencies and political bodies on the

²⁸ Council meeting of 16 May 2012, *Hansard*, pp. 9941-9952 and pp.10082-10087.

²⁹ Rule 17(c) of the House Rules.

³⁰ Using the Council meeting of 5 November 2014 as an example, the deadline for giving notice of a motion to be moved at this Council meeting was 21 October 2014. There was no intervening public holiday between 21 October and 5 November 2014.

merits and shortcomings of the motion before they decide whether or not to support it. The President may take into account the view of the House Committee if the matter has been brought to it for discussion, but the President's ruling is independent of the House Committee's view.

10.22 The notice period for an amendment to a motion is not less than 5 clear days before the day on which the motion concerned is to be considered by the Council or committee of the whole Council unless the President or Chairman gives leave to dispense with the notice.³¹ A chart showing the notice requirements for bills, motions and amendments for Council meetings is given in **Appendix 10-A**.

Motions to approve subsidiary legislation or other instruments in accordance with section 35 of Cap.1 or other Ordinance

10.23 As explained in Chapter 7³², motions may be moved to propose or amend subsidiary legislation. Where a piece of subsidiary legislation is subject to the approval of the Legislative Council, a motion (or proposed resolution) is required to be moved to seek the Council's approval in accordance with the relevant ordinance. Proposed amendments may then be moved in accordance with section 35 of the Interpretation and General Clauses Ordinance (Cap. 1). The notice period for this type of motions (or proposed resolutions) is not less than 12 clear days before the day of the meeting at which the motion is to be considered by the Council. Notice of any amendment to the motion (or proposed resolution) should be given not later than 5 clear days before the meeting concerned unless the President gives leave to dispense with the notice.

Motions to amend subsidiary legislation or other instruments subject to section 34 of Cap.1 or other Ordinance

10.24 If the making of the subsidiary legislation or other instrument is subject to intervention by the Legislative Council in accordance with section 34 of Cap. 1 or an ordinance, the subsidiary legislation or instrument made must be laid on the Table of the Council. Where an amendment to such subsidiary legislation or instrument is proposed, a motion (or proposed resolution) is required to be moved within the scrutiny period.³³ Notice of the

³¹ Rule 29(6) of the Rules of Procedure.

³² See Chapter 7, para. 7.83-7.84.

³³ See Chapter 7, para. 7.82.

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motion (or proposed resolution) should be given not less than 5 clear days before the day on which it is to be considered by the Council unless the President gives leave to dispense with the notice.³⁴ Rule 29(4) provides that the notice period for any amendment to a motion to amend subsidiary legislation or instrument is decided by the President according to his discretion.

Motions to extend the scrutiny period for amendment in accordance with section 34 of Cap. 1 or other Ordinance

10.25 Amendments to the subsidiary legislation made under section 34 of Cap. 1 should be made within 28 days after the subsidiary legislation has been laid on the Table of the Council. This 28-day scrutiny period for amendments may be extended by a motion moved for the purpose anytime during the scrutiny period. Notice of such a motion must be given not less than 3 clear days before the day on which the motion is to be considered by the Council unless the President gives leave to dispense with the notice.³⁵ Rule 29(4) provides that the notice period for any amendment to a motion to extend the scrutiny period is decided by the President according to his discretion.

Motions to take note of reports of the House Committee on consideration of subsidiary legislation and other instruments

10.26 Part JB of the Rules of Procedure provides that a report of the House Committee on the consideration of subsidiary legislation and other instruments which have been laid on the Table of the Council may be presented at the Council meeting immediately before the expiry of the period for amendment.³⁶ A Member may notify the House Committee that a debate should be held on any subsidiary legislation or instrument in that report not later than the week preceding the Council meeting at which the report will be presented or, if no House Committee meeting is to be held in the week preceding the Council meeting, the Member may notify the Clerk to the House Committee not later than 6 clear days before the Council meeting. Upon the receipt of the notification, the Chairman of the House Committee gives notice not later than 2 clear days before that Council meeting to move a motion to take note of the report. The President has the discretion to dispense

³⁴ Rule 29(2) of the Rules of Procedure.

³⁵ Rule 29(3) of the Rules of Procedure.

³⁶ Rule 49D of the Rules of Procedure.

with such notice.³⁷ Details on the procedure in Part JB of the Rules of Procedure and the background on the need for such a motion are further elaborated in the latter part of this Chapter.³⁸

Manner of giving notice

10.27 The notice of a motion or amendment must be signed by at least one Member or such number of Members as required by the Basic Law or the Rules of Procedure.³⁹ Where more than one Member has signed the notice, one of these Members should be designated as the mover of the motion. The notice of a motion may be in Chinese or English, but a notice of an amendment to a motion which is in Chinese should be in Chinese, or in English if the motion is in English.⁴⁰ The notice should be submitted to the President with a copy delivered in writing to the office of the Clerk.

10.28 Upon receipt of a notice of a motion or an amendment, the President may direct that it be printed in the terms in which it was handed in. He may also direct it to be printed with alterations which are editorial in nature. He may also direct that it be returned to the Member who signed it if it is in his opinion out of order.⁴¹

10.29 If more than one Member has given notice of the same amendment, Rule 30(4) of the Rules of Procedure provides that the Member who gave the earliest notice which has not been withdrawn shall be the mover of the amendment. Prior to 2000, only the Member who gave the earliest notice had been allowed to move the amendment, which meant that if the Member withdrew the notice before it was moved, there was no opportunity for the Council to consider the amendment. Following a review conducted by the Committee on Rules of Procedure in 1999-2000, Rule 30(4) was amended to enable the Member who gives the earliest notice which has not been withdrawn to be the one to move the amendment. Rule 35 was also amended to ensure that instructions are given to the Clerk for the withdrawal of the relevant notice.

³⁷ Rule 49E of the Rules of Procedure. See Progress Report of the Committee on Rules of Procedure for the period from July 2009 to June 2010, pp. 3.11-3.22.

³⁸ See paragraphs 10.93-10.95.

³⁹ For example, Rule 30(1A) of the Rules of Procedure provides that notice of a motion moved under Rule 49B(1A) to disqualify a Member from office should be signed by the Member wishing to move the motion and 3 other Members.

⁴⁰ Rule 30(2) of the Rules of Procedure.

⁴¹ Rule 30(3) of the Rules of Procedure.

10.30 The current practice is that all notices received by the Clerk for the same amendment are placed on the Agenda in the order in which the notices were received. The first Member on the list will be called upon to move the amendment. If he has withdrawn the notice or decides not to move the amendment, the Member next on the list will be called to move the amendment.⁴² Once the Council has decided on the amendment, no other Member may move the same amendment within the same session under Rule 32 of the Rules of Procedure.⁴³

Restrictions on motions and amendments

Applicability of Article 74 of the Basic Law to motions

10.31 As mentioned in Chapter 2⁴⁴, the question over the applicability of Article 74 of the Basic Law to motions, or amendments to motions and bills considered by the Legislative Council was raised at the time when the Members-elect of the First Legislative Council had drafted its Rules of Procedure for endorsement by the Council at its first meeting on 2 July 1998. Members-elect were aware of the restrictions of Article 74 and agreed that further deliberations on its scope would be required. For the immediate functioning of the Council, it was agreed that for the purpose of reflecting the requirements under Article 74, the provisions in Rule 51(3) and (4) governing the presentation of bills would suffice. It was also agreed that the restrictions on motions, amendments to motions and bills with "charging effect", similar to those adopted in the pre-1997 Legislature, should be included in the Rules of Procedure to achieve a proper balance in the power to initiate legislative measures without contravening the Basic Law.

10.32 On 30 June 1998, the Solicitor-General of the Department of Justice submitted his Department's view that Article 74 of the Basic Law should cover not only bills but also amendments to bills. In view of the different interpretation of the scope of Article 74, the Committee on Rules of Procedure

⁴² Rule 19A of the House Rules.

⁴³ An example is the two resolutions proposed by Mr Albert CHAN and Mr Vincent FANG under section 34(2) of Cap. 1 in relation to the Public Revenue Protection (Dutiable Commodities) Order 2011 considered by the Council at its meeting of 4 May 2011. A joint debate was held on the two proposed resolutions. As the proposed resolutions were identical and Mr Albert CHAN submitted his notice at an earlier date, the President called upon Mr CHAN to move his proposed resolution. The motion was voted upon and was negatived, Mr FANG was not called upon to move his proposed resolution.

⁴⁴ See Chapter 2, para. 2.8-2.11.

of the First Legislative Council held a series of meetings in July 1998 to consider the matter. The Committee noted the Solicitor-General's view that Article 74 should be applicable to any amendments to bills including those proposed by the Government itself, but not to motions moved under section 34 and section 35 of Cap. 1. However, in the light of the Chief Executive's power and function under Article 48(10) of the Basic Law, the Solicitor-General's view was that the Chief Executive should be the person to decide whether a motion, including one not intended to have legislative effect, falls within the ambit of "regarding revenues or expenditure" as provided in Article 48(10) and whether a bill falls within the areas relating to public expenditure, political structure or the operation of the government or government policies under Article 74.

10.33 After studying the expressions used in the Basic Law when referring to "bills", "motions" and "amendments to government bills", the Committee considered that the use of these expressions was very specific in the Basic Law. The Committee concluded that if Article 74 of the Basic Law were intended to cover amendments to government bills, there was no reason why it should not have been stated in the first place. Under the circumstances, it was inappropriate to extend the coverage of Article 74 to Members' amendments to government bills. Besides, the legislative process set out in the Rules of Procedure had allowed the Member (or public officer) in charge of a bill to withdraw the bill at the beginning of the third reading stage if he found it difficult to accept the bill in its amended form. The availability of this procedure had provided a means for the government to decide the final form of the proposed legislation introduced by it, and ensured a degree of checks and balances between the Executive and the Legislature, as well as preserving the principle of executive-led government.

10.34 The Committee also noted that it was not specified in Article 74 of the Basic Law who should be the person to decide whether a motion or bill falls within the ambit of Article 48(10) or Article 74 respectively. However, if it was the intention of the drafters of the Basic Law for such decisions to be made by the Chief Executive, such an important requirement should have been expressly provided. The Committee considered that referral to the Chief Executive for ruling on each bill, motion and amendment would not only upset the proper checks and balances between the Executive and the Legislature, but would also seriously affect the day-to-day operation of the Legislative Council. Considering the powers of and inter-relationship among the Executive, the Legislature and the Judiciary as provided in the Basic Law, the Committee was of the view that any person, including the Government, who is aggrieved by a decision of the President or perceive a breach of the law by the Legislative Council may seek judicial redress.

10.35 The above views of the Committee on Rules of Procedure were set out in a report submitted to the House Committee for its meeting on 24 July 1998. See **Appendix 10-B**. The House Committee noted this report. Although the Government did not express any comment on the report, it did reiterate its reserved position whenever its view was sought on a Committee Stage amendment which it considered to be a matter within the scope of Article 74 of the Basic Law.⁴⁵

Legal and constitutional considerations

10.36 On occasions, the Government may submit to the President, when being invited to comment on a proposed motion, that the motion contravenes the Basic Law or the laws of Hong Kong. President Jasper TSANG, in a ruling made on 8 December 2008⁴⁶, stated that the President determines the admissibility of a proposed motion in accordance with the Rules of Procedure only. President's rulings are procedural in nature. Legal and constitutional issues are only considered when they form an integral part of the procedural question under consideration.

10.37 Motions to amend subsidiary legislation tabled in the Council must not exceed the power given to the authorities in making the subsidiary legislation. This is a principle laid down in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) which provides that the manner in which the Legislative Council may amend a piece of subsidiary legislation should be consistent with the power to make such subsidiary legislation. 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, and consider whether the proposed motion has exceeded such power.

⁴⁵ The Government had reiterated its views on the interpretation of Article 74 in its submission to the Court during the application for judicial review proceedings in *Leung Kwok Hung v. President of Legislative Council* [2007] 1 HKLRD 387.

⁴⁶ See Appendix 10-C.

Employees Retraining Ordinance (Amendment of Schedule 3) (No. 2) Notice 2008

10.38 One example which illustrates how the issue of *ultra vires* is dealt with is found in President Jasper TSANG's ruling on Mrs Regina IP's proposed resolution to amend the Employees Retraining Ordinance (Amendment of Schedule 3) (No. 2) Notice 2008. The Employees Retraining Ordinance (Cap. 423) provides for a levy payable by each employer employing an imported employee in a sum specified in Schedule 3 to the Ordinance. Under section 31(1) of the Ordinance, the Chief Executive in Council may, by notice in the Gazette, amend Schedule 3.

10.39 On 11 November 2008, a Notice was gazetted to repeal an earlier Notice to reduce the levy from "\$400" to "\$0" for two years and replace it with a "\$0" levy for five years from 1 August 2013. Mrs IP's proposed resolution sought to remove the five years' period so that the new levy of "\$0" would remain effective from 1 August 2013 onwards without an end date. The Government argued that this would mean a dispensation of the levy altogether and this had exceeded the power which the Chief Executive in Council was exercising in making the Notice. The President noted that there was no expressed or implied restriction in the Ordinance on the length of period during which a specified amount of levy should apply to an amendment made to Schedule 3. Such length of period was essentially a question of policy and was within the power of the Chief Executive in Council to make. Hence, he did not find Mrs IP's proposed amendment inconsistent with the relevant provisions in law and allowed it to be moved at the Council meeting of 10 December 2008.⁴⁷

10.40 Another Member, Mr LEE Wing-tat, also proposed an amendment to the Government's amendment to Schedule 3 in the same Notice. Mr LEE proposed, on the basis of the earlier Notice, a reversion of the levy back to \$400 with effect from a date to be appointed by the Secretary for Labour and Welfare subject to the approval of the Legislative Council. The Government considered this proposed amendment *ultra vires* as it would mean that the amendment to Schedule 3 would then be subject to section 35 of Cap. 1 instead of section 34 of Cap. 1 as stipulated in the Employees Retraining Ordinance. Such a change could only be achieved through amending the

⁴⁷ Mrs Regina IP moved the amendment on behalf of the Subcommittee set up to study the Notice at the Council meeting of 10 December 2008. The amendment was negatived. *Hansard*, pp. 2812-2926.

Ordinance itself. The President accepted this view and ruled Mr LEE's proposed amendment out of order.

10.41 The President's ruling on the proposed resolutions to amend the Employees Retraining Ordinance (Amendment of Schedule 3) (No. 2) Notice 2008 proposed by Mrs Regina IP and Mr LEE Wing-tat is at **Appendix 10-C**.

Country Parks (Designation) (Consolidation) (Amendment) Order 2010

10.42 Another important ruling made by the President over the scope of power of the Legislative Council to amend (which includes "repeal") subsidiary legislation tabled in the Council concerned the proposed resolution to repeal the Country Parks (Designation) (Consolidation) (Amendment) Order 2010 ("Amendment Order") proposed by Miss Tanya CHAN. The Amendment Order sought to replace the original approved map in respect of Clear Water Bay Country Park with a new approved map for the purpose of excising a 5-hectare encroachment area to form part of a proposed landfill extension in South East New Territories.

10.43 On 25 May 2010, in accordance with section 14 of the Country Parks Ordinance (Cap. 208), the Executive Council advised and the Chief Executive ordered that the Amendment Order be made after a process of public consultation and consideration of objections to the draft map, as well as the depositing of the new approved map in the Land Registry. Miss Tanya CHAN gave notice to repeal the Amendment Order at the Council meeting of 13 October 2010. In response, the Government submitted to the President that it was unlawful for a Legislative Council Member to propose a resolution to repeal the Amendment Order as to do so would be inconsistent with the power to make the Amendment Order under section 14 of Cap. 208 which required the Chief Executive to implement the decision of the Chief Executive in Council. The fact that the Chief Executive "shall" make an order meant that nothing could lawfully be done to stop or amend the designation, including moving a motion to repeal the order.

10.44 After seeking legal advice (including an opinion from outside Senior Counsel) and referring to a previous ruling made by his predecessor

Mrs Rita FAN⁴⁸, President Jasper TSANG considered that the Legislative Council should have the constitutional duty to scrutinize subsidiary legislation and correspondingly the power to amend or repeal where appropriate to do so and that the statutory provisions in any ordinance which grants powers to make subsidiary legislation should not in the absence of clear words or manifest legislative intention be interpreted to mean that the Legislative Council has abdicated its control over the exercise of those powers. He did not find that the Chief Executive, in discharging his duty under section 14 of Cap. 208, had no power to determine when an order for the designation should be made and take effect, or to move in the Council to repeal an order he had made earlier if there were good reasons for him to do so. The President considered that neither section 14 of Cap. 208 nor Cap. 208 when read as a whole had expressed or manifested any contrary intention that the power of the Legislative Council to amend, and therefore repeal, subsidiary legislation under section 34 of Cap. 1 had been displaced. He therefore ruled that Miss Tanya CHAN's proposed resolution was in order. The President's ruling is at **Appendix 10-D**.

Charging effect

10.45 Under Rule 31(1) of the Rules of Procedure, only the Chief Executive or a designated public officer may move a motion or an amendment which, in the opinion of the President, has the object or effect to dispose of or charge any part of the revenue or other public moneys of Hong Kong. A Member who wishes to move a motion with the same object or charging effect must obtain the Chief Executive's consent in writing which will be recorded in the record of proceedings. Rule 31(1) is a self-imposed restriction to uphold the principle that any proposal with charging effect should only be introduced on the initiative or with the authorization of the Government.⁴⁹

⁴⁸ President Rita FAN, in her ruling made on 3 May 1999, in relation to a motion to repeal certain parts of an Order made under the Public Revenue Protection Ordinance, accepted Counsel to the Legislature's advice that: " In a normal case where the Legislative Council is seeking to amend a piece of subsidiary legislation under section 34(2) of Cap.1, as long as the proposed amendment conforms with requirements of the Rules of Procedure, the Legislative Council would be able to amend by way of repeal, addition or variation of the subsidiary legislation in question. However, because of the requirement in section 34(2) of Cap. 1 that an amendment to a piece of subsidiary legislation can only be made consistent with the power to make the subsidiary legislation in question, the true extent of the Legislative Council's power to amend the Order has to be examined in the context of the ... Ordinance." Having regard to the purpose of the order made under the Ordinance, Mrs FAN considered that the power of the Legislative Council in this context was limited to repealing the Order where it considers appropriate. She ruled that the proposed resolution to repeal certain clauses of the Schedule to the Order could not be moved. See http://www.legco.gov.hk/yr98-99/english/pre_rul/pre0503-ref-e.pdf.

⁴⁹ See Chapter 2, para. 2.8-2.9.

10.46 The concept of "charging effect" has developed from pre-1997 times when the Standing Orders required that any proposal which would impose a charge on public moneys of Hong Kong had to be put forward either by the Governor, or a designated public officer or a Member of the Legislative Council expressly authorized or permitted by the Governor to make such a proposal.⁵⁰ The concept was originally based on the constitutional principle of the 'financial initiative' of the Crown. That is to say, it was for the Crown to demand public monies for public expenditure, and for the legislature to grant.

10.47 In a ruling made by the then President Andrew WONG on 5 December 1995 in respect of proposed amendments to the Immigration (Amendment) (No. 2) Bill 1995, he said that this principle was reflected in the then Standing Order No. 23 which required the President to "act fairly and reasonably, and to take into account all relevant considerations, then to reach his opinion having weighed all relevant considerations in an objective way". In his ruling (attached at **Appendix 10-E**), Mr WONG also highlighted "the important balancing duty" of the President to ensure serious consideration be given to the Crown's argument for it is his duty to act in accordance with the constitutional principle of the 'financial initiatives of the Crown' and to preserve Members' rights to propose any question for debate in the Council. There was a practice at that time to seek Government's views on a Members' motion (with legislative effect) or an amendment proposed by a Member to a government motion or bill before the President made his ruling. This practice has remained the same up to this date.

10.48 Although the principle of the 'financial initiative of the Government' is not explicitly provided for in the Basic Law, the First Legislative Council made a conscious decision to preserve this principle in its Rules of Procedure by providing Rule 31(1) to govern motions and amendments to motions, and Rule 57(6) to govern amendments to bills. Nevertheless, how this principle is applied depends on the circumstances of each case. There are a number of guiding factors to which the President often refers when deciding whether there is charging effect in a proposed motion or amendment. These guiding factors include: whether the proposal 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

⁵⁰ Standing Order No. 23 and Standing Order No. 45(6).

negligible; and whether the proposal will have the effect of forgoing revenue which may be collected under statutory authority.

A new and distinct statutory function

10.49 One common feature in proposed motions or amendments which may give rise to charging effect is the creation of a new and distinct statutory function. The most common argument put forward by Members who insist that their proposals do not have any charging effect is that the additional expenditure arising from their proposals is merely an "incidental consequence" of their proposals or that such proposals are simply putting in specific terms something which is already being done in existing law or in practice.

10.50 In March 1999, Ms Cyd HO proposed an amendment to the District Council Bill to add a new category of function to enable District Councils to "receive and handle complaints from Hong Kong residents". Although the "meet the public scheme" was already a current activity and the proposed amendment was to formalize it and make it a function of the District Councils, President Mrs Rita FAN ruled that she needed to consider the difference in Government's obligations between an administrative scheme and a statutory function. The principle adopted by Presidents of the Hong Kong Legislature is that where a new function is imposed upon a body created by statute in terms which require that it must do a certain thing, the inevitable consequence is that there will be a charge on the public revenue if the doing of that act requires the spending of public money. The applicable test is whether the proposed statutory function is one already provided for under existing law. If not, and if the President considers that the performance of the new function will require the spending of public money, it may be held to have a charging effect. In Ms HO's case, Mrs FAN considered that the proposed amendment incurred a new statutory function for which the Government had the obligation to devote resources and therefore it required the authorization of the Chief Executive. President's ruling is attached at **Appendix 10-F**.

10.51 In another case, three Members proposed amending the United Nations (Anti-Terrorism Measures) Bill in July 2002 by providing a statutory compensation scheme in the proposed legislation to enable persons to claim compensation from the Government for loss due to a "wrong" specification which was not done in good faith or was done negligently. Although the schemes proposed by the three Members were slightly different, President Mrs Rita FAN considered that all the proposed amendments sought to introduce a statutory compensation scheme which was different from the redress available under the common law. Government's liability under the common law to pay compensation would be increased through the operation

of any of the three schemes and this would therefore constitute a charge on the revenue.⁵¹

Government's statutory duty to shoulder additional expenditure

10.52 Whether the Government would have the statutory obligation to shoulder the additional expenditure is another guiding factor to determine whether there is any charging effect. President Mrs Rita FAN's ruling in July 1998 on Mr LEE Cheuk-yan's proposed amendment to the Government's resolution under the Pneumoconiosis (Compensation) Ordinance (Cap. 360) illustrates this point. Whilst Mr LEE's proposed amendment would have the legal effect of increasing the amount of compensation for bereavement and the payment of compensation was a statutory obligation imposed on the Pneumoconiosis Compensation Fund ("the Fund"), the President noted that there was no requirement in the Ordinance that the Government needed to provide money to the Fund, nor was there any statutory mechanism to peg the amounts of compensation to the level of levy payable by construction works contractors and quarry operators to finance the Fund. Since the Fund is a statutory fund and not the revenue of the Government, any consequence on the Fund would not have any charging effect on general revenue. The President ruled Mr LEE's proposed amendment admissible. President's ruling is attached at **Appendix 10-G**.

10.53 The same principle was also applied to Mr Albert HO's proposed amendments to the Securities (Amendment) Bill 1998. President Mrs Rita FAN ruled Mr HO's amendments admissible on grounds that the Unified Exchange Compensation Fund in question was not funded by general revenue and the Government had no statutory obligation to pay money into the Fund or inject money into the Securities and Futures Commission's reserves for financing the Fund if required.⁵² In her response to the Government's appeal, Mrs FAN reiterated that it was clear in the Securities and Futures Commission Ordinance (Cap. 24) that the Compensation Fund was intended to be a self-financing fund. There was no guarantee that any claims from the Fund could be satisfied. The Commission had the discretion to decide how far the claims should be met.⁵³

⁵¹ See President's ruling at http://www.legco.gov.hk/yr01-02/english/pre_rul/pre0710cb3-ref-e.pdf.

⁵² See President's ruling at http://www.legco.gov.hk/yr98-99/english/pre_rul/981117.pdf.

⁵³ See President's reply to the Secretary for Financial Services at http://www.legco.gov.hk/yr98-99/english/pre_rul/981118.pdf.

10.54 In considering the extent of Government's statutory obligations, the President also takes into account the "remoteness" of the Government's liability to utilize revenues or other public moneys to meet the statutory obligations, and also whether the amount involved is so nominal or negligible that it can easily be absorbed within the existing budget of the Government, and so can be ignored for the purpose of the "charging effect" under Rule 31(1) or Rule 57(6) of the Rules of Procedure.^{54 55}

Loss of revenue on the part of the Government

10.55 The ruling made by President Mrs Rita FAN on 23 July 1998 in respect of Mr LEUNG Yiu-chung's proposed amendment to the Holidays (Amendment) Bill 1998 also carries significance in determining whether loss of revenue is a "charge on revenue". Mr LEUNG proposed to amend the Bill by making the Sino-Japanese War Victory Day an additional general holiday in Hong Kong. One of the arguments put forward by the Government was that the Government would incur a resultant loss of productivity or revenue earning capacity which would not be a minor charge on the revenue and therefore could not be ignored. To establish this claim, the President considered that she had to be satisfied that the revenue in question was authorized by law and the loss was due to the proposed amendment. As the Holidays Ordinance (Cap. 149) did not impose on the Government an obligation to pay its civil servants for working on a general holiday, nor was it legislation to enable the Government to collect revenue, the claim of the Government that loss of revenue would be incurred could not be established.⁵⁶

10.56 In a further ruling made on 19 November 2001, President Mrs Rita FAN recapitulated the advice of Counsel to the Legislature that as a matter of general principle, the "charging effect" restriction provided in Rule 31(1) and Rule 57(6) of the Rules of Procedure applies to revenue which may be collected under statutory authority. A proposal which will have the legal effect of reducing Government revenue would have a charging effect for

⁵⁴ An example is the President's ruling on the amendment proposed by Mr Andrew CHENG to the Road Traffic Legislation (Amendment) Bill 1999.

⁵⁵ Another example to illustrate the consideration of the amount of spending incurred is the President's ruling on the amendment proposed by Mr LEE Cheuk-yan to advance the commencement date of the Minimum Wage Ordinance (Commencement (No. 2) Notice 2010 at http://www.legco.gov.hk/yr10-11/english/pre_rul/pre0103-ref-e.pdf.

⁵⁶ See President's ruling at http://www.legco.gov.hk/yr98-99/english/pre_rul/980723.pdf and reply to the Secretary for Education and Manpower at http://www.legco.gov.hk/yr98-99/english/pre_rul/980729.pdf.

reason that the clear prospect of reduction of revenue would amount to disposal of revenue in the context of Rule 31(1) and Rule 57(6).⁵⁷

Expression of views on matters relating to the NPC, Central Government of the People's Republic of China or other jurisdictions

10.57 From time to time, Members may wish to move a motion debate to express views on certain topical issues which relate to the NPC, the Central Government or any local authorities in Mainland China. In a ruling made by President Mrs Rita FAN in April 2004, certain principles have been established as to how far the Legislative Council in the HKSAR may debate a motion relating to the NPC and its Standing Committee ("NPCSC"). Mrs FAN referred to various provisions in the Basic Law, namely Articles 1, 5, 12, 17, 57, 73(1) and 73(6), to recapitulate the constitutional relationship between the NPC/NPCSC and the HKSAR Legislature and their relevant powers, as well as Members' freedom of speech and debate in the Council under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382). In the President's opinion, it was her duty to act as guardian of the rights and privileges of Members including their freedom of speech, but such freedom was not without bounds. Depending on the specific terms of a proposed motion, it would not be entirely impossible for a motion relating to a state organ to be admitted for debate in the Council, provided that it met the requirements of the relevant instruments and rules. She considered it out of order for the Legislative Council to debate a motion involving accusatory expressions against the character of NPCSC or the acts of NPCSC according to law, which would be likely to degrade it in the public estimation.⁵⁸ In a separate ruling made in May 2004, President Mrs Rita FAN returned a proposed motion to a Member as out of order on the same grounds. However, in this ruling, she stated that it would not be out of order to seek to criticize the NPCSC's decision as having the effect of indicating that the NPCSC has ignored people's aspirations, as that would not amount to making an accusatory expression against the character of NPCSC or its acts undertaken according to law.⁵⁹

⁵⁷ See President's ruling at http://www.legco.gov.hk/yr01-02/english/pre_rul/r011119e.pdf.

⁵⁸ See President's ruling at http://www.legco.gov.hk/yr03-04/english/pre_rul/pre0430cb3-ref-e.pdf.

⁵⁹ See President's ruling at http://www.legco.gov.hk/yr03-04/english/pre_rul/pre0507cb3-ref-e.pdf.

10.58 In a ruling made by President Mrs Rita FAN on 7 May 2007, she applied the same principles to a proposed motion involving the Central People's Government on the basis that there is a constitutional relationship between the Central People's Government and the HKSAR in the context of the Constitution of the People's Republic of China and the Basic Law. She considered it out of order for the Legislative Council to make accusatory expressions or expressions of condemnation against the Central People's Government or to demand it to act contrary to the Constitution of the People's Republic of China.⁶⁰ The same principle was adopted by President Jasper TSANG in ruling against a proposed amendment to a motion relating to a decision of the NPCSC on 31 August 2014.⁶¹

10.59 As regards motions (not intended to have legislative effect) relating to matters that may concern places outside Hong Kong, there has not been any rulings disallowing the moving of such motions provided that they are in compliance with the Rules of Procedures. On occasions, where it is considered by the House Committee that the moving of a debate in the Council on a matter which involves foreign affairs may not be appropriate, it is usual practice that a letter expressing concern of Members, if there is a consensus, is sent to the relevant authorities by the President^{62 63} or the Chairman of the House Committee.^{64 65}

⁶⁰ See President's ruling at http://www.legco.gov.hk/yr06-07/english/pre_rul/pre0507-ref-e.pdf.

⁶¹ See President's ruling at http://www.legco.gov.hk/yr14-15/chinese/pre_rul/pre20150126-ref-ec.pdf.

⁶² After the Council held an adjournment debate under Rule 16(4) of the Rules of Procedure on 19 June 2013 on the issue of cyber security following Mr SNOWDEN's allegations of the hacking into the computer systems in Hong Kong by the US Government, at the request of the House Committee, the President wrote to the US Administration and the US Congress in July 2013 to denounce the alleged hacking into Hong Kong's communications networks by the US Administration, and to request the US Congress to call on the US Administration to give a full account of the matter.

⁶³ In October 2013, at the request of the House Committee, the President wrote to the Congress of the Philippines to convey Members' concerns about the Philippine Government's handling of the hostage incident and urge the Congress of the Philippines to call on the Philippine Government to respond positively to the requests of the victims and the bereaved families.

⁶⁴ At its meeting on 24 July 1998, the House Committee agreed that a letter signed by all Members should be sent to the President of the Republic of Indonesia to express their grave concern about the alleged human rights violations against ethnic Chinese in Indonesia. It was also agreed that the Chairman of the House Committee should write to the President of the People's Republic of China, copied to the Chief Executive, about Members' concern.

⁶⁵ Following the bombing of the Chinese Embassy in Yugoslavia by the North Atlantic Treaty Organization ("NATO"), the House Committee decided at its meeting on 10 May 1999 to hold a motion debate "Condemning NATO" at the Council meeting of 12 May 1999 and to write to the, Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in HKSAR to express Members' concerns over the bombing.

Appeals to the public for undertaking unlawful acts are out of order

10.60 Although not stated in the Rules of Procedure, it is out of order for Members to make appeals to the public through the moving of a motion debate in the Council to undertake any acts which are unlawful. Examples are appeals to take part in public processions for which notices of no objection by the Police⁶⁶ have not been issued. In various rulings made on motions relating to appeals to take part in the 1 July March or other marches, President Mrs Rita FAN reiterated that the Legislative Council should not appeal to members of the public to take part in activities that do not comply with legal requirements. She returned the affected motions to Members and allowed the motions to be reworded.

10.61 The same principle was upheld by President Jasper TSANG who, in his ruling on 17 June 2009, stated that he should not allow the Legislative Council to appeal to the public to participate in a forthcoming activity the holding of which was still subject to confirmation that it met the necessary legal requirements. In his ruling, he also pointed out that it was inappropriate for him to speculate either how the Police would deal with the issuance of a notice in respect of every activity, or to assume that the Police would certainly issue a notice of no objection for the relevant activity on the ground that it had been held for a number of years.⁶⁷

Rule of anticipation

10.62 As a general rule, a motion intended to have legislative effect must not be anticipated by a non-legislative motion on substantially the same subject matter. This is set out in Rule 31(2) of the Rules of Procedure and explained in Chapter 7.⁶⁸

Form of amendment

10.63 In making amendment to a motion, a Member may delete one or more words of the motion, insert one or more words in the motion or at the end of the motion, or both.⁶⁹ In the course of the proceedings on the motion, the President may allow a Member who has given notice to move an amendment

⁶⁶ See sections 13, 13A and 14 of the Public Order Ordinance (Cap. 245).

⁶⁷ See President's ruling at http://www.legco.gov.hk/yr08-09/english/pre_rul/pre0617-ref-e.pdf.

⁶⁸ See Chapter 7, para. 7.98.

⁶⁹ Rule 34(2) of the Rules of Procedure.

to revise the wording of his proposed amendment in order to make it compatible with any earlier amendment(s) passed by the Council, by waiving the notice for making such amendments under Rule 29(6) of the Rules of Procedure.

Process of a debate on a motion

10.64 The procedure adopted by the Hong Kong Legislative Council to deal with a motion is similar to that adopted by other legislatures which follow the Westminster parliamentary model. The purpose is to provide Members with the opportunity for debate before coming to a decision. Under the normal rules for debating a motion, the process involves the moving of a motion, the proposing of a question which repeats the terms of the motion for debate by the Council, and the putting of the question to the Council for decision. In this process, amendments to the motion, if such are allowed under the rules, are dealt with during the debate on the original motion. As each amendment is an independent motion subordinate to the original motion, a separate debate may be held on each amendment when the mover of the amendment proposes it at the time he speaks on the original motion.

10.65 Under Rule 29 of the Rules of Procedure, notices are required for all motions and amendments to motions; hence Members are informed in advance what amendments will be dealt with when debating a motion. Joint debates are often held ⁷⁰ so that Members may speak on the motion and the amendments at the same time. The mover of the motion has the opportunity to speak again on the amendment(s) and to make his reply. If a joint debate is not ordered, each amendment will be debated and voted on individually in the course of the debate on the original motion until all amendments have been disposed of. When all Members who wish to speak on the original motion have spoken, the Council will vote on the original motion or the motion as amended.

10.66 To facilitate a better understanding of the flow of debate, the successive steps illustrating how a motion and its amendments are proposed, debated and voted on are set out in the flow-charts at **Appendix 10-H** and **Appendix 10-I**, based on two scenarios:

⁷⁰ Under Rule 34(4) of the Rules of Procedure, the President may allow a joint debate on a motion and its amendments.

10. Motions

- (a) A debate on a motion which is not subject to amendment or to which no amendment is proposed (with 15-minute speaking time limit); and
- (b) Separate debates on a motion with one or more amendments (with 15-minute speaking time limit)

10.67 Another example is provided in **Appendix 10-J** to illustrate the process of a debate on a motion not intended to have legislative effect. It has been the practice that for this type of motions, joint debates are held if amendments are to be proposed and the speaking time limits set out in Rule 17 of the House Rules based on the recommendation of the House Committee will apply.⁷¹

Debates initiated by Members for the purpose of speaking on a matter of public interest

Historical background

Before 1968

10.68 The first time an Unofficial Member of the pre-1997 Legislature was enabled to hold a debate in the Council was on 23 November 1966 when the then President, who was the Governor, permitted the holding of an adjournment debate which was not yet provided for in the then Standing Orders. The debate took place after the Colonial Secretary moved that the Council be adjourned. Mr P C WOO, an Unofficial Member who had obtained permission from the President to initiate this debate, spoke for about 10 minutes on the manner in which the Police Force carried out its duties, followed by another Member who spoke for a few minutes before the Attorney General was called to reply. At that time, this kind of adjournment debate was expected to last for half an hour to enable Members to "initiate a brief debate on some matter of general public interest or concern without the formality of a substantive motion and without the rigidity that is required in

⁷¹ Under Rule 37 of the Rules of Procedure, the House Committee may recommend to the President a specified time limit for speaking on a motion or amendment to a motion other than one intended to have legislative effect.

the asking and answering of questions." ⁷² During the two years from November 1966 to 9 October 1968 before provisions for adjournment debates were included in the Standing Orders ⁷³, 17 adjournment debates were held with the permission of the President to enable Members to speak on matters of public interest.

1968 - 1991

10.69 The new Standing Order No. 9 in the 1968 Standing Orders provided that a motion that the Council do now adjourn might be moved by an *ex officio* Member for debating a matter or matters between two items of business or for enabling an Unofficial Member, at the conclusion of all business, to raise any public matter for which the Government was responsible. Whilst the first type of adjournment debate noted above could only be moved by an *ex officio* Member, the second type was restricted to a total speaking time of 20 minutes for Unofficial Members. Throughout the two decades from 1971 onwards, there were around 2 to 6 adjournment debates held in each session and many were used to follow up on issues discussed by the UMELCO ad hoc groups or raised at meetings under the redress system. At the same time, Unofficial Members also used Members' motions to hold debates on Government's Green Papers and White Papers. In the 1977-1978 session alone, four such motion debates were held. These motion debates also provided an opportunity for Unofficial Members to express views on Government policies and actions in particular in relation to matters of wide public concern. The more significant examples are the two motions moved by Senior Member Mr R. H. LOBO in 1983-1984 over the future of Hong Kong ⁷⁴ and a motion moved by Senior Member Miss Lydia DUNN in 1987-88 on the draft Basic Law of the HKSAR. ⁷⁵

10.70 On the other hand, adjournment debates continued to play an important role in facilitating Members to speak on matters of public interest and general topical concern although they were more often used to debate Government's consultation documents starting from the mid-1980s. ⁷⁶ As a

⁷² See Colonial Secretary's speech when he moved the motion at the Council sitting on 23 November 1966, *Hansard*, pp. 425-431.

⁷³ Standing Order No. 9 of the 1968 Standing Orders.

⁷⁴ Council sittings on 14 March 1984, *Hansard*, pp. 702-758; and on 15, 16, 18 October 1984, *Hansard*, pp. 60-176.

⁷⁵ Council sittings on 13 July 1988, *Hansard*, pp. 1829-1869 and on 14 July 1988, *Hansard*, pp. 1873-1928.

⁷⁶ Examples are the adjournment debates held at the Council sittings on 29 October 1986, 21 January 1987, 18 February 1987, 8 April 1987.

10. Motions

result, more Members wished to speak at adjournment debates and the President needed to exercise his discretion to extend the time of adjournment debates on almost every occasion.⁷⁷ The total speaking time for adjournment debate was extended from ½ hour to 1 hour in July 1983.⁷⁸ Subsequently, there was a standing arrangement that an ad hoc group was normally formed to co-ordinate preparation for an adjournment debate or a motion debate, and if there was consensus among some Members on certain points, one of them would speak on those points and state that they were shared by certain other Members, so as to save time.⁷⁹

1992 - 1997

10.71 Starting from October 1992, the House Committee decided that no more than two debates (either two motion debates, two subjects for an adjournment debate or one motion debate and one adjournment debate on one subject) should be held at each regular Council sitting. An allocation system was also devised to facilitate each Member (who was no longer addressed as an Unofficial Member) to move either a motion debate or one adjournment debate within a session. For the motion debates allocated under this system, a shorter speaking time was adopted.⁸⁰

July 1998 - present

10.72 When the First Legislative Council made its Rules of Procedure and House Rules in July 1998, it adopted the same arrangements for holding adjournment debates (Rule 16 of its Rules of Procedure) as well as the practice of allowing not more than two debates initiated by Members at each regular Council meeting (Rule 13 of its House Rules). The same methods of allocation of debate slots to individual Members and chairmen of committees were also adopted in Rule 14 and Rule 14A of the House Rules respectively. In the early version of Rule 13 of the House Rules, the nature of the two debates was specified and they were similar to the requirement in the pre-1997

⁷⁷ For example, in July 1986 alone, the President exercised his discretion to extend the total speaking time on three occasions: 21 Members to speak at the adjournment debate on 9 July 1986 on triad problem; 27 Members to speak on 16 July 1986 on The Hong Kong and Daya Bay Nuclear Power Project; 12 Members to speak on 23 July 1986 on Laws in Chinese.

⁷⁸ Council sitting on 27 July 1983, *Hansard*, p. 1151.

⁷⁹ OMELCO House Rules (1988), pp. 15-16. The practice that a Member may indicate in his speech that his views are shared by another Member who is not present at the meeting is reflected in Rule 16 of the House Rules.

⁸⁰ Details were provided in the OMELCO House Rules (October 1992), pp. 4-6.

Legislature (see paragraph 10.71). In November 2012⁸¹, this requirement was changed to two motion debates since very few Members chose to use their allocated debate slots for the purpose of holding an adjournment debate while more were giving notice to move to adjourn the Council under Rule 16(4) of the Rules of Procedure without using the allocated slots, as explained below.

Adjournment debates under Rule 16 of the Rules of Procedure

Motions moved under Rule 16(2)

10.73 Under Rule 16(2) of the Rules of Procedure, a Member or a designated public officer may move without notice that an adjournment debate on a specific issue of urgent public importance be held between two items of business at a Council meeting. Such a motion requires the permission of the President and it may only be moved if the President is satisfied that the specific issue concerned is both urgent and important. While notice is not required for the moving of an adjournment motion under Rule 16(2), it has been an established practice that Members who wish to move such a motion should, as far as possible, inform the President in writing and seek his approval before the Council meeting.

10.74 In considering the urgency of an application for holding an adjournment debate under Rule 16(2) of the Rules of Procedure, the President gives regard to the following questions:

- (a) If the debate is not carried out at the Council meeting specified by the Member making the application, whether there will be any irreversible consequences; and
- (b) If the issue is not debated at that meeting, whether the Council will not debate the issue in the foreseeable future.

10.75 There have been a few cases in which the President refused to grant permission to applications for moving a motion under Rule 16(2) of the Rules of Procedure after considering these questions. An example is an application made by Ms Cyd HO who proposed to move an adjournment debate at the

⁸¹ On 23 November 2012, the House Committee endorsed the proposal of the Committee on Rules of Procedure to amend, among others, Rule 13 of the House Rules to specify that slots for debates at each Council meeting should be all for motion debates, and that such debates should not include debates on motions for the adjournment of the Council.

Council meeting on 17 November 2010 on the concern over the resite policy for Choi Yuen Tsuen and non-indigenous inhabitants villages. President Jasper TSANG, in his reply to Ms HO, recognized that the subject matter had been of great concern to Members of the Council. However he also noted that the land resumption and demolition work in Choi Yuen Tsuen had commenced in phases since October in the previous year and the resiting had been in progress for quite some time and was in further progress. He believed that Members would still have opportunities to debate the issue in the future.⁸² Another example is Dr Priscilla LEUNG's application for an adjournment debate at the Council meeting on 7 July 2010 over the threat to public health and hygiene posed by the successive occurrence of incidents of persons being bitten by rodents. President Jasper TSANG, in his reply, recognized that the issue was of public importance but it was not so urgent that it had to be debated at the meeting concerned, since even if it was not debated at that meeting, there would not be irreversible consequences and Members would not lose the opportunity to express views on that issue at Council meetings.⁸³

10.76 Rule 16(3) of the Rules of Procedure provides that if a motion moved under Rule 16(2) is agreed to, the Council shall stand adjourned. As this kind of motions is moved between two items of business, the motions were invariably negated in the past so that the Council may continue to deal with the remaining items on the Agenda.

Motions moved under Rule 16(4)

10.77 Adjournment debates moved under Rule 16(4) of the Rules of Procedure are held at the conclusion of all business on the Agenda of the Council. Notice is required for this type of adjournment debates. Rule 16(5) provides that a Member who wishes to move such a motion should give notice of the issue in writing to the Clerk not less than 7 clear days before the date of the Council meeting concerned unless the President in his discretion dispenses with such notice.

10.78 The President's discretion under Rule 16(5) relates to whether the 7 clear days' notice should be waived. Even if the issue raised in the motion is

⁸² President's ruling on Ms Cyd HO's application for moving an adjournment debate at the Council meeting on 17 November 2010 under Rule 16(2) of the Rules of Procedure.

⁸³ President's ruling on Mrs Priscilla LEUNG's application to move an adjournment debate at the Council meeting on 7 July 2010 under Rule 16(2) of the Rules of Procedure. See http://www.legco.gov.hk/yr09-10/english/pre_rul/pre0706-ref-e.pdf

generally recognized as a matter of wide public concern, the President may not dispense with the notice requirement if he is not satisfied that the debate ought to be held at the particular Council meeting. He asks the same questions for determining the urgency of applications for adjournment debates under Rule 16(2), i.e. whether there will be irreversible consequences and whether the Council will still have the opportunity to debate the issue concerned in the future. He also gives regard to the reasons put forward by the applicant for not being able to give the required notice and whether it would be fair to other Members and the designated public officer concerned as they need to prepare for the debate. The same principles are adopted when the President considers requests to waive notice for motions.⁸⁴ The following example illustrates this point.

10.79 On 9 March 2011, Mr James TO applied to President Jasper TSANG for moving an adjournment debate under Rule 16(2) of the Rules of Procedure at the Council meeting that day in order to debate the refusal of Philippine government officials and the rescue crew involved in the Manila hostage incident⁸⁵ to come to Hong Kong to testify in the Coroner's Court. The President recognized that the Manila hostage incident was a matter of great concern to Hong Kong people, but as the application was based on the speculation that the Coroner's Court would close the case if witnesses from overseas refused to testify in Hong Kong, the President considered that there were no sufficient grounds for him to establish the urgency of the issue and allow the debate under Rule 16(2) to be held.⁸⁶

10.80 On 16 March 2011, Mr TO submitted two applications to the President on the same issue for debate in the Council on that day: one under Rule 16(2) and the other under Rule 16(4). In his reply, the President said that although the Coroner's Court had entered into the 22nd day of the inquest which was originally scheduled for 25 days, there was no provision in law which required that the inquest ought to be completed within this timeframe and the Coroner's Court had the power to take other appropriate actions to discharge its statutory functions. The President concluded that Mr TO's request could not meet the requirement under Rule 16(2) of the Rules of

⁸⁴ See President's ruling at the Council meeting of 20 June 2012, *Hansard*, p. 15908.

⁸⁵ The Manila hostage incident occurred on 23 August 2010 when a tour bus carrying 25 tourists from Hong Kong was hijacked in Rizal Park, Manila by a former police officer of the Philippines, resulting in 8 of the hostages killed and 13 injured.

⁸⁶ See President's ruling on Mr James TO's application for moving an adjournment debate at the Council meeting on 9 March 2011 under Rule 16(2) of the Rules of Procedure at http://www.legco.gov.hk/yr10-11/english/pre_rul/pre0309-ref-e.pdf

Procedure. However, in considering Mr TO's application for the dispensation of notice for holding an adjournment debate under Rule 16(4), he noted that Mr TO needed to closely monitor the development of the situation and could not submit the application until he was certain that the overseas witnesses would not come to Hong Kong. The President accepted the grounds he put forward and noted that Mr TO had made known to all Members and the relevant public officers of his intention to move an adjournment debate as early as 9 March 2011, which was close to the requirement of 7 clear days' notice for moving a motion under Rule 16(4). He then agreed to dispense with the notice for the motion and allowed a debate on it to be held on 16 March 2011.⁸⁷

10.81 As there is an understanding among Members that only two motion debates not intended to have legislative effect may be moved by Members at each regular Council meeting, a Member who wishes to move an adjournment motion under Rule 16(4) of the Rules of Procedure still needs to seek the support of the House Committee even if he is able to give the 7 clear days' notice for the motion. In considering whether support should be given to a Member for raising an issue for debate under Rule 16(4), the House Committee will have regard to whether the issue should have been or could be raised by the Member in a motion debate under the allocation system, and whether it is of such an urgent, important and topical nature⁸⁸ that a reply from a designated public officer is necessary at the specified Council meeting.⁸⁹ Once agreed, the subject matter and scope of debate specified at the time of application must not be changed.⁹⁰

10.82 On the basis of the House Committee's recommendation and the notice received from the Member, the President will consider the inclusion of the Member's motion for the adjournment of the Council in the Agenda of the Council. Where two or more Members indicate their intention to raise issues for debate at the same Council meeting and they all have the support of the House Committee, the motion to adjourn the Council will be moved by the Chairman of the House Committee with separate debates to be held on each issue. The sequence of the issues in the motion is based on the dates (and

⁸⁷ See President's ruling on Mr James TO's applications for moving an adjournment debate at the Council meeting on 16 March 2011 under Rule 16(2) and Rule 16(4) of the Rules of Procedure at http://www.legco.gov.hk/yr10-11/english/pre_rul/pre0316-ref-e.pdf

⁸⁸ On 7 October 1992, the House Committee decided that for motion and adjournment debates, the House Committee may accord priority to debates on urgent, important and topical issues.

⁸⁹ See House Committee meetings on 16 December 2011, 12 October 2012 and 13 December 2013.

⁹⁰ Rule 18(a) of the House Rules.

time) on which the relevant applications to the House Committee were received. The Member who raises the issue is the first Member called by the President to speak on it during the respective debate.

10.83 For adjournment motions moved under Rule 16(4) of the Rules of Procedure, the duration of the debate has been extended to last up to 1½ hours or such longer period as the President may determine for any meeting.⁹¹ Speaking time for Members is up to 75 minutes or such longer period as determined by the President. At the expiry of the speaking time for Members, if the designated public officer has not yet been called to make his reply, the President will then call upon him. If after 1½ hours or such period as extended by the President the motion has still not been agreed to, the President shall adjourn the Council without putting any question.⁹²

Replies by designated public officers

10.84 There have been questions on whether a reply from a designated public officer is required in the case of an adjournment debate moved under Rule 16(2) of the Rules of Procedure. Rule 16(2) was adopted from Standing Order No. 9(2) of the pre-1997 Legislature.⁹³ In the early version of this Standing Order, only an *ex officio* Member could move a motion that the Council do now adjourn for the purpose of holding a debate on a matter or matters between two items of business. In November 1971, this Standing Order was amended to require that the issue raised for debate between two items of business by an *ex officio* Member, without notice, should be an issue of urgent public importance. As the *ex officio* Member was the one to move the motion, he was also the one to give the reply at the end of the debate. The situation had remained basically unchanged until 1994.

10.85 In 1994, Standing Order No. 9 was amended to provide that a Member other than an *ex officio* Member could also move a motion under Standing Order No. 9(2) with the permission of the President. From then onwards, any Member or designated public officer may seek to move adjournment debates under Standing Order No. 9(2). As the debates are held on issues of urgent public importance, there had not been any arguments over the attendance of the relevant public officers at the debates for the purpose of responding to

⁹¹ On 4 June 2008, the Council approved the amendment to Rule 16 of the Rules of Procedure to extend the duration of the debate from 1 hour to 1½ hours as part of the arrangements to allow Members to move motions on topical issues promptly.

⁹² See Rule 16(5), (6) and (7) of the Rules of Procedure and Rule 18(b) of the House Rules.

⁹³ See Chapter 1, para. 1.20.

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Members' speeches. This in fact has been the practice up to this date. The question of the attendance of designated public officer does not arise in the case of adjournment debates under Rule 16(4) of the Rules of Procedure as the purpose of the debate is to elicit a reply from a designated public officer.

Motion debates (not intended to have legislative effect)

10.86 Motion debates not intended to have legislative effect generally refer to the motion debates set out in Rule 13 of the House Rules. Although reference is made in the Rules of Procedure to these motion debates as regards speaking time, no specific procedure is considered to be necessary for this type of debates. In other words, all rules governing motions also apply to these motions the purpose of which is to enable Members to hold a debate on a public matter with specific terms. Rule 13(b) of the House Rules has differentiated this type of motion from other motions which, if passed, will empower the Council, a committee, the President or other person(s) to do a certain act or invoke certain provisions under the laws or the Rules of Procedure.

10.87 Rule 13(a) of the House Rules provides that not more than two motion debates initiated by Members should be held at each regular Council meeting.⁹⁴ However, the President may allow the holding of more than two such motion debates, or an adjournment debate pursuant to Rule 16(4) of the Rules of Procedure in addition to not less than two such motion debates, under special circumstances upon the recommendation of the House Committee. Generally speaking, the additional motion debates supported by the House Committee are those initiated by Panels for the purpose of expressing views on a Government consultation paper, which should be no more than one at each meeting, or by other committees at the conclusion of their specific tasks such as the conduct of an enquiry.

Allocation of debate slots to individual Members

10.88 The method of allocation of debate slots to individual Members is set out in Rule 14 of the House Rules. Each Member may be allocated no less than 3 slots in a term. At the start of each session, a circular is issued by the Secretariat to notify Members of the dates of Council meetings at which time slots are available for holding debates. Members are requested to apply for a

⁹⁴ The limiting of motion debates to no more than two at each regular meeting is provided in the House Rules and not in the Rules of Procedure. It was an agreement reached at the House Committee.

debate slot with the subject and the wording of the motion not later than 14 clear days before the Council meeting concerned although the deadline for giving notice of the motion is 12 clear days before the Council meeting. A sample of the application form is at **Appendix 10-K**. Applications received after the cut-off date will not be accepted. If the subjects of two or more proposed motions submitted by Members are substantially the same, the Member who first secures a debate slot has priority to move that subject for debate.

10.89 In allocating debate slots to individual Members, the Secretariat prioritizes the applications according to the number of debate slots each Member has been allocated in the term and the number of unsuccessful bids in previous applications. Once a Member has been allocated one debate slot, all his previous unsuccessful applications will be disregarded. He will have a lower priority when compared to a Member who has not been allocated any debate slot. The order of priority is set out in Rule 14(d) of the House Rules. If the number of Members who are of equal priority for allocation exceeds the number of slot(s) available for allocation, a ballot will be conducted by the Chairman of the House Committee for determining who should be allocated the slot(s) for that Council meeting. The drawing of lots is usually conducted one day before the deadline for the giving of notice of motions for that Council meeting.

10.90 There is also a standing arrangement under Rule 14(e) to (i) of the House Rules to facilitate Members who have been unsuccessful in obtaining a debate slot for a particular meeting to use the debate slot allocated to another Member provided that the request for transfer is made and agreed to by that other Member not later than 12 clear days before that meeting and that the Member who makes the request has not been allocated 4 or more debate slots in the term. There should be no further transfer of that slot. Although the Member who has transferred his debate slot to another Member will not be regarded to have been allocated a debate slot after the transfer, all the unsuccessful applications that were taken into account when his application was considered will be disregarded in his next application. The Member to whom a debate slot has been transferred is regarded to have been allocated a debate slot. A priority debate slot given to a Member under Rule 14(i) of the House Rules, as explained below, is not subject to transfer.^{95 96}

⁹⁵ Rule 14(e) to (i) of the House Rules.

⁹⁶ Also see Progress Report of the Committee on Rules of Procedure (12 July 2007 to 9 July 2008), para. 2.4-2.9.

10.91 Under Rule 14(i) of the House Rules, the House Committee may agree to give priority to a Member in respect of the allocation of debate slots for debates on urgent, important and topical issues. Where the request is made to the House Committee before the deadline for application for slots for that particular Council meeting, the House Committee may allocate one of the two debate slots to the Member and only one other debate slot will be subject to allocation. If the request is made after the debate slots for the particular Council meeting have been allocated and if it is considered that the debate ought to be held at that meeting, the House Committee may suggest to the two Members who are successful in the allocation if either one of them may be prepared to defer his debate.⁹⁷ If neither is prepared to defer his debate, the House Committee may recommend to the President that a third motion debate should be held at that Council meeting.⁹⁸

10.92 The mover of a motion may withdraw his notice of the motion at any time before it is moved. He will be regarded as having used his debate slot as no other Member will be able to move a motion for debate at the same Council meeting. However, if there is agreement of the House Committee for the withdrawal of his motion or if it is the House Committee which suggests that his debate be deferred, he may move the withdrawn or deferred motion at the first available slot at a subsequent Council meeting provided that the number of debates at that Council meeting should not exceed two. If the mover of the motion withdraws during the Council meeting, his debate slot will be regarded as having been used.⁹⁹

Motions to take note of Government consultation papers or committee reports

10.93 Any committee may move a motion for debate on a specific matter in the Council. The specific role of Panels, however, is reflected in Rule 14A of the House Rules which provides that if the motion is on a consultation

⁹⁷ On 10 May 1999, the House Committee decided that its Chairman should move a motion at the Council meeting of 12 May 1999 to condemn the bombing of the Chinese Embassy in Yugoslavia by the North Atlantic Treaty Organization. The two Members who were allocated debate slots for that meeting indicated that they would withdraw their respective notices and the House Committee agreed that both Members would not be regarded as having used their debate slots.

⁹⁸ At its meeting on 28 November 2003, the House Committee supported a request from Dr YEUNG Sum for holding a debate on appointed membership of District Councils at the Council meeting of 3 December 2003. Noting that both Members who were allocated with debate slots for that Council meeting would proceed with their debates, the House Committee agreed to recommend to the President for holding a third motion debate in addition to the two scheduled motion debates.

⁹⁹ Rule 14(j) to (l) of the House Rules.

document published by the Government and will be debated before the expiry of the consultation period, a slot will automatically be allocated to the chairman of the relevant Panel in accordance with the Panel's decision.¹⁰⁰ The motion should be neutrally worded without stating any stance and no amendment to the motion will be proposed. A request from a Panel for moving such a motion should reach the Secretariat together with the wording of the motion before the cut-off date for applications for debate slots, i.e. 14 clear days before the Council meeting. Except with the agreement of the House Committee, each Panel will not be allocated more than one such slot in a session. The slot so allocated will not be regarded as a slot allocated to an individual Member.

10.94 In the event that there is more than one application from Panels for debate at the same Council meeting, priority is given to the debate on the consultation document with the earliest deadline for concluding the consultation. Where the deadlines are the same, allocation will be determined by balloting. The Panel(s) which is not successful in obtaining a debate slot at the desired Council meeting may be allocated one at the next or any subsequent Council meeting(s), depending on the number of Panels making the applications and the order of priority as determined by the ballot.

10.95 If the request for a debate slot by a Panel or any committee or subcommittee is for a purpose other than a debate on a Government consultative document or for the Chairman of the House Committee to move such a motion, the automatic allocation of slots will not apply. It has been a practice in recent years for committees which have been appointed by the Council to carry out a task, such as an inquiry or an investigation, to table their reports in the Council. Where it is considered by the committee that a debate to take note of the report should be held, the request for the priority allocation of a debate slot for the motion should be put forward to the House Committee for consideration as soon as practicable.¹⁰¹ All such requests are considered on a case-by-case basis, and should the House Committee accede to such a request, the debate slot will not be counted as the mover's own slot.¹⁰² Otherwise, the Member who intends to move the motion on behalf of the Panel or committee/subcommittee concerned will have to apply for a

¹⁰⁰ The Panel may decide to have any member of the Panel to move the motion on behalf of the chairman.

¹⁰¹ At its meeting on 21 April 2006, the House Committee supported the request of the Panel on Welfare Services for priority allocation of a debate slot for a motion debate on "Financial Assistance to patients of Severe Acute Respiratory Syndrome" at the Council meeting of 17 May 2006. As a result, only one debate slot was subject to allocation for that Council meeting.

¹⁰² Rule 14A(h) of the House Rules.

debate slot under the normal allocation arrangement. This type of debates is held before the regular motion debates not intended to have legislative effect, and the normal 15-minute speaking time will apply unless recommended otherwise by the House Committee in accordance with Rule 37 of the Rules of Procedure.

Motions to take note of reports of the House Committee on consideration of subsidiary legislation or other instruments tabled in the Council

10.96 There was a long history in the pre-1997 Hong Kong Legislative Council and the post-1997 HKSAR Legislature seeking a procedure to enable Members to speak on subsidiary legislation or instruments tabled in the Council to which no amendment is to be proposed. Prior to July 1986, Members could only speak on a motion to amend subsidiary legislation under the scrutiny of the Council or, subject to the allocation of a debate slot, move a motion or adjournment debate on subsidiary legislation to which no amendment would be proposed. In July 1986, following a study of these arrangements by an ad hoc group set up to study an item of subsidiary legislation, a recommendation was made to allow Members to address the Council on subsidiary legislation. On 9 July 1986, the Council added Standing Order No. 14(4), under Presentation of Papers, to provide that Members could address the Council at any sitting during the scrutiny period. It was considered appropriate to do so as Members could "draw attention to the implications of such subsidiary legislation; or to explain the necessary balance struck between protecting the sectoral interest and public interest".¹⁰³ However, even with this new procedure, there were still complaints among Members over the difficulty to speak on subsidiary legislation as their addresses could not give rise to debate. Further amendments to Standing Order No. 14 were made in the 1990s to allow short questions to be put for elucidation but this still did not meet Members' need for timely speaking on some items of subsidiary legislation.

10.97 In the 2008-2009 session, the subject was reviewed by the Committee on Rules of Procedure of the Fourth Legislative Council. It was considered by the Committee that there should be a procedure in the Rules of Procedure for holding debates on subsidiary legislation or other instruments tabled in the Council to which no amendment has been proposed. On 2 December 2009, the Council approved the inclusion of a new Part JB in the Rules of Procedure.

¹⁰³ Council sitting on 9 July 1986, *Hansard*, pp. 1463-1464.

Under the new arrangement, there is a report of the House Committee on its consideration of the items of subsidiary legislation and instruments tabled at each Council meeting. The report, which is prepared by the Chairman of the House Committee, will summarize the outcome of the scrutiny of all the subsidiary legislation and instruments including those to which no amendment has been proposed. This report is then presented at the Council meeting immediately before the expiry of the scrutiny period and is issued to Members approximately one week before the Council meeting. Any Member who wishes to raise any of the items of subsidiary legislation (for which no notice of amendment has been received) for debate should notify the Clerk to the House Committee. Where a meeting of the House Committee will be held before the Council meeting, the notification of the debate will be placed on the agenda of the House Committee meeting. Where there is no such meeting of the House Committee, the notification will be referred to the Chairman of the House Committee.¹⁰⁴

10.98 Upon the receipt of the notification that a debate on an item of subsidiary legislation or instrument should be held, the Chairman of the House Committee will give notice of a motion in the Council to take note of the relevant report.¹⁰⁵ If the Chairman of the House Committee will not be present at the Council meeting to move the motion, the Deputy Chairman of the House Committee or, if he also will not be present, the Member who will be present and has the highest precedence¹⁰⁶ will give notice and move the motion. The wording of the motion is prescribed in Rule 49E(4) of the Rules of Procedure. No amendment may be moved to the motion. If the motion relates to more than one item of subsidiary legislation or instrument, the debate on that motion may be divided into sessions with each relating to one or more items. A Member may speak once in each of the sessions for not more than 15 minutes. After Members and designated public officers have spoken on the motion, the debate comes to a close with no question put to a vote.¹⁰⁷

Other motions

10.99 There are some other motions provided in the Rules of Procedure relating to the control of the proceedings of the Council. While these are

¹⁰⁴ Rule 49E(1) of the Rules of Procedure.

¹⁰⁵ Rule 49E(2) of the Rules of Procedure.

¹⁰⁶ The order of precedence of Members is determined in accordance with Rule 1A of the Rules of Procedure.

¹⁰⁷ Rule 49E(9) of the Rules of Procedure.

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substantive motions, they are procedural in nature and are given well defined terms in the Rules of Procedure to set out the scope of the motions. They are subject to debate but not amendable. These motions include:

- (a) a motion under Rule 49(4) of the Rules of Procedure to shorten the duration of division bell to one minute (without notice);
- (b) a motion under Rule 49B(2A) of the Rules of Procedure to enable the Council to order that a motion moved under Rule 49B(1A) for the disqualification of a Member from office under Article 79(7) of the Basic Law not be referred to an investigation committee (without notice);
- (c) a motion under Rule 54(4) of the Rules of Procedure to enable a bill not to be adjourned and referred to the House Committee after the Member in charge of the bill has spoken at the start of the second reading debate on the bill (without notice);
- (d) a motion under Rule 66(4) of the Rules of Procedure to enable the Council to order that a bill returned to the Council for reconsideration shall not be referred to the House Committee and that the bill shall be deemed to have been ordered for immediate reconsideration under Rule 66(5) of the Rules of Procedure (without notice); and
- (e) a motion under Rule 91 of the Rules of Procedure to suspend a Rule (with notice or with consent of the President).

10.100 There is also a motion under Rule 32(1) of the Rules of Procedure to rescind a decision of the Council. This motion is a substantive motion which requires the permission of the President and is subject to debate.

Order of debates on motions

10.101 The order of debates on motions is guided by Rule 18 of the Rules of Procedure with priority given to Government motions. The order of those initiated by Members is set out in Rule 15 of the House Rules. In principle, the Non-Government motions which are intended to have legislative effect will be placed on the Agenda of the Council before those not intended to have legislative effect. In the latter category, those which are initiated by a committee will take place before those initiated by individual Members. For those initiated by individual Members, the order is determined by the drawing of lots unless otherwise agreed among those concerned.

**President's ruling on closing the joint debate at the Committee stage
of the Legislative Council (Amendment) Bill 2012**

At the Council meeting of 16 May 2012, when the Council was in committee of the whole Council holding a joint debate on the clauses in and proposed amendments to the Legislative Council (Amendment) Bill 2012 ("the Bill"), I noted Members' sentiments on the progress of the joint debate which I also found to be much protracted. The joint debate started on 10 May 2012. By 4:30 am on 17 May 2012, as the meeting of 16 May 2012 continued to be held overnight, I noted that the joint debate had lasted for over 33 hours but I could not see any end to this debate due to the filibustering by a few Members. One of these Members, Hon WONG Yuk-man, made a declaration at the start of the joint debate of their filibustering on the Bill. In the 33 hours that followed, which spanned over seven meeting days, three Members persisted in making speeches: Hon WONG Yuk-man spoke for 20 times, Hon Albert CHAN spoke for 28 times, and Hon LEUNG Kwok-hung spoke for 27 times. These Members persisted in irrelevance or tedious repetition of their own or other Members' arguments in their speeches, resulting in my drawing to their attention on over 75 occasions the need to comply with Rule 45(1) of the Rules of Procedure ("RoP"). Upon the raising of a point of order by Dr Hon Philip WONG, I indicated to the Council that the debate should be about to conclude and that I was inclined to allow the two Members and the public officer proposing amendments to the Bill to give concluding speeches and then end the debate. In response to Dr Hon Margaret NG's request, I suspended the meeting to allow a private discussion to be held among Members before I made my ruling. The meeting was attended by me and some 30 Members coming from all parties and affiliations. I also had a separate meeting with Hon WONG Yuk-man and Hon Albert CHAN immediately following that meeting.

2. When the Council meeting resumed at 9:00 am, I gave my ruling as follows: Having heard Members' views and following discussions with them, I decided that I would invite the two Members and the Secretary for Constitutional and Mainland Affairs ("the Secretary"), who were movers of the proposed amendments to the Bill, to speak within the period up to 12:00 noon, at which time I would end the joint debate. In response to Hon Andrew CHENG's point of order, I agreed that I would also call on other Members to speak within the same period but priority would be given to those proposing amendments.

3. I agreed at the meeting that I would put my ruling into writing and provide the background and the considerations which had led to my ruling.

Background

4. The Bill was introduced into the Legislative Council (“LegCo”) for First Reading on 8 February 2012. The Bill consists of three clauses. Clause 1 deals with the short title and commencement. Clause 2 stipulates that the Legislative Council Ordinance is amended as set out in section 3. Clause 3 amends section 39 of the principal ordinance to the effect that a person who has resigned as a Member of LegCo is prohibited from standing for a by-election to be held within the six months after the resignation in the same term of office of LegCo. After the Second Reading of the Bill was moved, it was adjourned under Rule 54(4) of RoP. The Bill was then referred to the House Committee, which set up a Bills Committee to study it.

5. On 13 April 2012, the Bills Committee reported its deliberations to the House Committee (“HC”). Members noted that the Administration intended to resume the Second Reading debate on the Bill at the Council meeting of 2 May 2012 and raised no objection.

6. By the deadline for giving notice of amendment to the Bill, a total of 1 307 proposed Committee stage amendments (“CSAs”) were received - one from the Secretary which seeks to make a drafting improvement to clause 3 of the Bill, 74¹ from Hon WONG Yuk-man which seek to make improvements to the Chinese language used in the Bill, and 1 232 from Hon Albert CHAN, which can be grouped into six themes as follows:

- (a) that the disqualification does not apply if the resigning Member agrees to pay a certain percentage of the cost of the by-election;
- (b) that the disqualification does not apply if the Member has resigned because he is held in custody in a foreign country;
- (c) that the disqualification provision will expire after a certain period of time;
- (d) that the disqualification period is reduced from six months to a lesser period;
- (e) that the disqualification does not apply if the Member has resigned because he is diagnosed as suffering from a

¹ Hon WONG Yuk-man withdrew one of his 74 CSAs on 16 May 2012.

certain disease but is found later to have been wrongly diagnosed; and

- (f) that the disqualification does not apply if only a certain number of functional constituency/geographical constituency Members resign.

7. Hon WONG Yuk-man and Hon Albert CHAN had made it very clear that the purpose of their proposing such a large number of CSAs is to prolong the proceedings of the Committee stage of the Bill so as to force the Administration to shelve the Bill. However, as none of the CSAs proposed by them has, in my opinion, breached the relevant rules (i.e. Rule 57) of RoP, I ruled that all their 1 306 CSAs are admissible under RoP and may be moved to the Bill.

Joint debate on clauses 1, 2 and 3

8. The Second Reading debate on the Bill resumed at the Council meeting of 2 May 2012 and the motion for Second Reading was passed. The proceedings on the Bill then entered into the Committee stage. At the start of the Committee stage, Hon Audrey EU moved to adjourn the proceedings of the committee of the whole Council under Rule 40(4) but the motion was negatived. At this juncture, Hon WONG Yuk-man declared that the filibuster would begin.

9. The committee of the whole Council considered all the three clauses and 1 307 proposed amendments in a joint debate. The repetitive and irrelevant speeches made by three Members in the filibuster effectively prolonged the proceedings, hence causing the mounting up of unfinished business of the Council standing over from previous meetings and cancellation of numerous committee meetings scheduled for those days when the Council needed to continue to meet because of this Bill. Without seeing any prospect of the joint debate coming to an end, I consulted Counsel to the Legislature on the power of the President (and as Chairman of the committee of the whole Council) in conducting meetings. I also consulted the Clerk to LegCo on the usual ways to end a filibuster in other jurisdictions. Details of the advice given to me are set out in paragraphs 10 to 19 below. In reaching my decision, I had borne in mind my duty to strike a balance between the protection of the rights of individual Members to speak in the Council and the efficient conduct of business of the Council as a law making institution.

Functions and Powers of the President to conduct Council meetings

10. As President of LegCo, I understand that I have the duty to ensure the efficient conduct of meetings. There is no procedure in RoP to deal with filibustering. Under Rule 38 of RoP, a Member may not speak more than once on a question, but committee of the whole Council is one of the excepted occasions. If any Member(s) persists in irrelevance or tedious repetition of arguments in committee of the whole Council, the Member can only be directed to discontinue under Rule 45(1) of RoP.

11. Regarding the power of the President to conduct meetings, Counsel to the Legislature has drawn my attention to the powers and functions of the President of LegCo under Article 72 of the Basic Law ("BL") which includes to preside over meetings and to exercise other powers and functions as prescribed in RoP of LegCo. BL 75 provides that RoP of LegCo shall be made by LegCo on its own, provided that they do not contravene BL. I was advised by Counsel that as a matter of principle a person who is given the power and function to preside over a meeting he should also be vested with powers which are reasonably incidental to and necessary for the efficient conduct of business at the meeting unless there are clear provisions which circumscribe those incidental powers. However, each situation has to be considered on its own merits when it becomes necessary to invoke these incidental powers. Counsel also drew my attention to Rule 92 of RoP which suggests that, should I consider invoking any powers not provided for in RoP, I may consider practice and procedure of other legislatures for guidance before I decided what would be reasonably appropriate for LegCo.

12. I understood from the above advice that should I have difficulty in conducting a LegCo meeting in a reasonably efficient manner in accordance with BL 72 and where I considered that there was a matter which should have been provided for in RoP but had not been so provided, it would be for me to decide what practice and procedure should be followed. When making the relevant decision, I may be guided by the practice and procedure in other legislatures which are relevant to the matter under my consideration if I should think fit.

13. Counsel has also advised me that although there are no specific provisions on how that decision should be arrived at, it would be advisable for me to follow the normal principles of fairness which apply to the exercise of statutory powers. These principles include the taking into account only of all relevant considerations, but not those which are not relevant. What is relevant and what is not will depend on the particular circumstances before me, but there are two important principles

which should help me make that judgment. They are my power and function to preside at a meeting which should be carried out reasonably efficiently but without acting contrary to RoP, and my duty to protect the interests of Members, especially those in the minority.

14. Of course, I always bear in mind the pledge that I made when I ran for the office of President of LegCo that I shall act impartially, and that I would strike a balance between maintaining order in meetings and the right of all lawmakers to speak when performing my duties as the President of LegCo.

15. Hon Alan LEONG has asked me to explain what the word “matter” in Rule 92 of RoP has meant to me when I applied this rule in my work. I must admit that I did not have the opportunity to study the scope of the word “matter” in Rule 92, nor had I sought specific advice of Counsel to the Legislature on the meaning of this word before I made my ruling on 17 May 2012. I recall that on two occasions recently, I had been advised about the application of Rule 92: one was on the procedure adopted for holding joint debates; and the other in the course of considering the admissibility of the 1 306 CSAs to the Bill as proposed by Hon WONG Yuk-man and Hon Albert CHAN. The procedure we now adopt for holding joint debates is not provided for in RoP but has been followed and developed over the years by practice as decided by former Presidents. In the latter case, when considering the admissibility of the CSAs proposed by the two Members, I had studied how far “an amendment” in the context of Rule 57(4)(d) where it is provided that “[an] amendment which is in the opinion of the Chairman frivolous or meaningless may not be moved” could also apply to “an amendment which forms part of a series of amendments” or “a series of amendments”, I noticed that in Canada, “a series of motions” appears alongside with “a motion”. That to me was a clear example that if it was the intention of RoP to apply Rule 57(4)(d) to “a series of amendments” it would have so provided accordingly. I agreed with the advice that it would not be right to expand the clearly defined scope of application of Rule 57(4)(d) to include “a series of amendments” by invoking Rule 92.

16. On the question of whether Rule 92 of RoP also applies to the Chairman of the committee of the whole Council, I note that under Rule 3 of RoP, the President, when present at a meeting of a committee of the whole Council, shall be the Chairman of the committee of the whole Council. I therefore consider that while I am chairing a meeting of a committee of the whole Council, the power given to me as President under Article 72(1) and thereby Rule 92 of RoP also applies.

Practice and procedure to deal with filibustering in other legislatures

17. The Clerk to LegCo has referred to me a paper presented to the Committee on Rules of Procedure (“CRoP”) for its meeting on 8 May 2012. The paper entitled “Handling of voluminous amendments to bills in selected overseas Parliaments” provides information on the relevant rules and practices of the parliaments in the United Kingdom (“UK”), Canada, Australia and New Zealand for the purpose of assisting members of CRoP in considering whether, and if so how, a situation where the number of CSAs proposed by Members is so large that it is creating practical difficulties in dealing with these amendments should be dealt with.

18. I note that the measures to handle voluminous amendments in these places cannot be applied by me without adaptation as the Speakers of these parliaments have the power to select amendments, which I do not have under RoP. Other measures such as closure motions to curtail debates are also not applicable as such motions, if allowed to be moved without the Chair being given the power not to allow such motions to be moved, may lead to abuse and may deprive Members in the minority of the opportunity to speak in the Council. Allocation of time orders (commonly known as “guillotines”) have been used by the UK Government since the 1880s to speed up a bill’s passage when it is unable to reach voluntary agreements through the usual channels² or when the Opposition engaged in what the Government perceived to be “blocking” tactics. I am aware of the different political structure in UK and a direct transfer of the concept to the Hong Kong setting may not be appropriate. These overseas practices may be useful for our future reference. I am aware that CRoP is currently studying the procedure of closure motions but it also appears to me that consensus on the subject is not likely to be achieved within the short timeframe I have in dealing with the present situation, noting the escalating time pressure to complete the legislative process of the large number of outstanding bills and motions before the Council prorogues on 18 July 2012.

19. The Clerk to LegCo had the benefit of seeking advice from Sir Malcolm JACK, former Clerk to the House of Commons of UK who was conducting a series of seminars for Members and staff of LegCo during the weeks when the filibustering was in action in the Council. Sir Malcolm JACK also found the situation most difficult as the provisions in our RoP do not cater for filibustering and considered that the ultimate

² The term “usual channels” describes the working relationship of the whips from the different parties and the leaderships of the Government and Opposition parties. The term refers to arrangements and compromises about the running of parliamentary business that are agreed behind the scenes.

decision on how to deal with the situation rest with the President, who has the duty to protect the Legislature as an institution.

My opinion

20. Having taken into account the advice given to me by Counsel to the Legislature and Clerk to LegCo, I am convinced that I have the power to conduct the meeting of the committee of the whole Council in a manner which ensures the efficient conduct of business and is also consistent with the general principles of protecting Members' rights to speak in the Council. This power given to me comes from BL 72, which includes RoP.

21. In curtailing a protracted debate, I consider that I must be satisfied that:

- (a) a wide and protracted debate has been allowed based on a liberal reading of rules on amendments;
- (b) all Members have been given the opportunity to speak; and
- (c) it is clear that certain Members will not stop the filibuster and will thereby bring Council business to a standstill.

In this respect, I consider that I have adopted the most tolerant way to allow those Members who took part in the filibuster to continue to speak and protract the debate to over 33 hours. I am convinced that there are reasonable grounds for me to put an end to the joint debate.

22. In determining the manner to end the joint debate at the Committee stage of the Bill, I consider it necessary to allow all Members who have not yet had the chance to speak at Committee stage to have the opportunity to speak, and to allow a reasonable timeframe for those Members who propose amendments to the Bill to round up their arguments. As regards the timeframe for the concluding speeches, it was my original intention to take into account the views of Members at the moment when the decision to end the debate was to be made.

Ruling made at the Council meeting of 16 May 2012

23. I have been reminded by Counsel to the Legislature and Clerk to LegCo of the need to take into account the views of Members before putting in place any arrangements which are not provided for in RoP and

which may have an impact on the future operation of the Council. I agree that this is the best way to exercise the power given to me under Rule 92 of RoP if circumstances permit.

24. The Council meeting of 16 May 2012 has developed to a point that, in my opinion, did not allow me to stall a decision from the chair any further. The raising on a point of order by Dr Hon Philip WONG and his proposal to stop the debate and put the clauses and amendments to vote at 4:30 am on 17 May 2012 made it necessary for me to come to a decision on how the protracted debate should be ended. I am grateful to the Members who attended the private meeting held during the suspension of the meeting in that morning for their views on the matter. It was through the open and frank dialogue with these 30 Members (who came from various political parties and affiliations in the Council) that I had come up with the final three-hour debating time for the Members and the Secretary to speak on the clauses and amendments before closing the debate. No objection was heard at the meeting. After this meeting, I had another private meeting with Hon Albert CHAN and Hon WONG Yuk-man to explain the reasons for my decision.

25. I understand that my action to end the filibuster at the Committee stage of the Bill at the Council meeting of 16 May 2012 has caused Members' concern. I believe that my decision to do so has achieved my objective to strike a balance between safeguarding Members' right to express their views and ensuring the smooth conduct of Council meetings. There is definitely room for improvement in the way I have consulted Members on the best way forward in dealing with matters not provided for in RoP. I understand that CRoP is currently conducting a study on the procedure to deal with filibuster and the President's power to invoke Rule 92. I am happy to attend a meeting of CRoP to exchange views with CRoP members as well as other Members on these subjects.

(Jasper TSANG Yok-sing)
President
Legislative Council

22 May 2012

**President's ruling on allocation of time for the
remaining proceedings on the Appropriation Bill 2013**

The meeting of the Legislative Council ("LegCo") of 8 May 2013 spanned over several days to 14 May 2013. On the morning of 13 May 2013, I ordered that a timeframe should be set for the remaining proceedings on the Appropriation Bill 2013 ("the Bill") so as to complete them before the meeting of 22 May 2013. I have undertaken to provide in writing the considerations for my decision.

The Bill

2. The Bill, which was presented to LegCo pursuant to Rule 52(2) of the Rules of Procedure and received its First Reading at the meeting of 27 February 2013, sought appropriation of \$356,140,198,000 for the services of the Government in the financial year ending on 31 March 2014. The Second Reading debate on the Bill was then adjourned and the Estimates were referred by me to the Finance Committee before examination by the committee of the whole Council pursuant to Rule 71(11) of the Rules of Procedure. The Council passed at the meeting of 20 March 2013 a Vote on Account ("VoA") resolution moved by the Administration under the Public Finance Ordinance (Cap. 2) allowing funding for the expenditure of a sum not exceeding \$75,545,010,000 on the services of the Government. According to the Administration, the provision would roughly be sufficient to meet about two months' Government recurrent expenditure.

3. Appropriation bills go through a scrutiny process unlike any other legislative proposal. Before the Bill was considered by committee of the whole Council, 20 sessions of special meetings of the Finance Committee lasting 31.5 hours altogether had been held, and a total of 5 471 initial written questions and 277 supplementary questions had been raised by Members seeking information on the details of public expenditure.

Debates on amendments at Committee stage

4. I ruled admissible 710 Committee stage amendments ("CSAs") to the Bill proposed by five Members. Seven of the CSAs were proposed by Hon Gary FAN while all the others were proposed by

Hon LEUNG Kwok-hung, Hon Albert CHAN, Hon WONG Yuk-man and Hon CHAN Chi-chuen (“the four Members”). In order to save time and avoid repetition of arguments, I directed under Rule 58(2) of the Rules of Procedure that interdependent CSAs to a particular Head of Expenditure (“Head”) should be grouped for joint debates. A total of 148 debates comprising 113 joint debates on interdependent CSAs and 35 debates on individual CSAs were arranged. The 710 CSAs would be put to vote one by one after all debates had been held. The CSAs were issued to Members on 22 April 2013. Members were notified in writing of the debate and voting arrangements on 23 April 2013, before the Council continued the Second Reading debate on the Bill at the meeting of 24 April 2013.

5. The Bill received its Second Reading after 19 hours’ debate during which all the 69 Members spoke. The Council proceeded to committee of the whole Council at 7:53 pm on 24 April 2013 to consider first the 26 Heads to which no amendments were proposed and then the 710 CSAs to the other 57 Heads. The general rule that a Member may not speak more than once on a question does not apply in committee of the whole Council, as stipulated in Rule 38(1)(a) of the Rules of Procedure. As at 1:00 pm on 10 May 2013 when the Council meeting of 8 May 2013 was suspended, the committee of the whole Council had spent 55 hours during which 17 debates on CSAs were completed. The debating time was mainly taken up by the four Members making one or more speeches at each debate: Hon LEUNG Kwok-hung spoke for 59 times, Hon Albert CHAN 39 times, Hon WONG Yuk-man 27 times and Hon CHAN Chi-chuen 42 times. In their speeches, these four Members stated unequivocally that their purpose of proposing a large number of CSAs was to filibuster the Bill and force the Administration to accede to their demands which included, among other things, the Government taking definite steps to introduce a universal retirement protection scheme and handing out \$10,000 to every local resident. On 99 occasions in their speeches I found them persisting in irrelevance or tedious repetition of their own or other Members’ arguments, and had to remind them of the need to comply with the Rules of Procedure. In addition to the four Members, 13 other Members spoke at the 17 debates.

6. On 10 May 2013, after the Council meeting of 8 May 2013 was suspended, the Financial Secretary held a meeting with Hon LEUNG Kwok-hung, Hon Albert CHAN and Hon CHAN Chi-chuen to discuss their demands. These Members proclaimed afterwards that because the Administration was not acceding to their demands, they were determined to continue with their filibuster.

7. When the Council meeting of 8 May 2013 resumed on 13 May 2013, I ordered that the debates on the CSAs would continue until 1:00 pm on 14 May 2013 and then the CSAs would be put to vote, so that all the proceedings on the Bill could be completed before the Council meeting of 22 May 2013.

My opinion

8. Under Article 73(2) of the Basic Law (“BL”), LegCo has the power and function to examine and approve budgets introduced by the government. Debate on an appropriation bill and the relevant estimates of expenditure which are subject to LegCo’s examination is part and parcel of the legislative process for enacting the bill. The funds authorized by LegCo in the VoA resolution represent about 20% of the total expenditure for the financial year 2013-2014, and are for the purpose of enabling the Government to carry on its services between the start of the financial year on 1 April 2013 and the enactment of the Bill. It is incumbent upon LegCo to complete examining and voting on the Bill within a reasonable time at the start of the financial year in order to discharge its power and function under BL 73(2).

9. As President of LegCo, I have the constitutional power and function to preside over meetings under BL 72(1). It has all along been my understanding that such power must include the power and function to exercise proper authority or control over meetings. This understanding 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). I note that in considering the nature and scope of the power provided under BL 72(1), the Court of Appeal held that:

- (a) so far as controlling meetings is concerned, the President’s right to preside over and to exercise proper authority or control over meetings is constitutionally stipulated, whereas the rules of procedure of LegCo are, by definition, subject to BL including BL 72(1)¹;
- (b) the powers given to the President in the Rules of Procedure are supplementary to his power given under BL 72(1) to preside over meetings, i.e. the Rules of

¹ See paragraph 59 of CACV 123/2012

Procedure are there to give the President additional powers, rather than to take away from him his power given under BL to preside over meetings²; and

- (c) 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), which must include the power to end debates in appropriate circumstances and put matters to vote³.

10. The four Members proposed a total of over 700 CSAs with the express purpose to filibuster the Bill. As stated in my ruling⁴ on the admissibility of these CSAs, in deciding whether a CSA is in order, the motive of the Member proposing it should not be a relevant consideration. Nor should the merits of a proposed CSA and its possible impact if passed be taken into account. This notwithstanding, I have stated categorically that should a possibility emerge in the course of the proceedings on the Bill that the legislative process is prolonged to the extent of preventing LegCo from properly exercising and discharging its powers and functions under BL, I will not hesitate to exercise my power under BL 72(1) to ensure the orderly, fair and proper conduct of meetings, including the taking of necessary steps to end debates, and enabling the proposed CSAs to be voted upon by the committee of the whole Council.

11. I noted that the progress of debates on the CSAs to the Bill had been very slow. Also, there had been little interaction among Members at debates in Committee stage as very few Members other than the four Members would speak. As at 10 May 2013 at 1:00 pm, a total of 55 hours had been spent on the first 17 debates (including almost 17 hours used in quorum calls). At this rate, the Council would need another 390 hours to conclude the debates, before the 710 amendments were to be voted upon one by one. Assuming that Members would agree to shorten the duration of the division bell from five minutes to one minute, the voting would take another 21 hours. Then the Council would need several more hours to complete all remaining proceedings on the Bill. In all, probably over 30 meeting days running from 9:00 am to 10:00 pm each weekday would be needed. Based on the above, it would be well past the middle of June before all the proceedings on the Bill could be completed.

² See paragraph 53 of CACV 123/2012

³ See paragraphs 45 and 66 of CACV 123/2012

⁴ President's ruling on Committee stage amendments proposed by six Members to the Appropriation Bill 2013

12. However, the Financial Secretary's meeting with the filibustering Members had failed to give any productive result and the Members avowed to continue with the filibuster. My assessment was that in order to achieve the intended purpose of the filibuster, the Members would need to sustain it for an inestimable period of time. This would result not only in the undue delay of LegCo's decision on the Bill, but also serious obstruction to the Council from conducting other business.

13. I noted with grave concern the impact of the protracted debates on the Bill on the transaction of other Council business. Since the commencement of the Committee stage of the Bill on 24 April 2013, Members had been barred from raising oral questions at Council meetings, as well as from moving a motion to extend the scrutiny period of two pieces of subsidiary legislation. A Government motion scheduled to be moved at the Council meeting of 24 April 2013 had been held up. A total of 16 committee meetings had been cancelled or rescheduled. Furthermore, the Government had decided not to introduce subsidiary legislation unless strictly necessary before the completion of the proceedings on the Bill. The functioning of the Council had been seriously disrupted. In the circumstances, I consider it appropriate to exercise my 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 BL.

14. I am aware that any steps I should take to end a filibuster must be in accordance with BL and LegCo's Rules of Procedure. Counsel to the Legislature drew to my attention that according to the Court of Appeal judgment, 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), and any constitutional right of Members to participate in the legislative process cannot possibly include the right to filibuster⁵. Counsel to the Legislature also advised me that based on the Court of Appeal judgment, I may invoke the powers under the Rules of Procedure to supplement my power to preside over meetings under BL 72(1). According to Rule 92, where there is no provision provided in the Rules of Procedure to deal with a certain situation in relation to the conduct of a meeting, I may decide the practice and procedure that should apply for dealing with that situation, and before making such decision, I may consider the practice and procedure of other legislatures for guidance.

⁵ See paragraphs 44 and 45 of CACV 123/2012

15. I note that measures such as closure motions to curtail debates and allocation of time orders are expressly provided for in the rules of procedure of some overseas legislatures. I understand that the Committee on Rules of Procedure is currently examining issues relating to the number of times Members may speak and curtailment of debates at Committee stage of a bill. Before relevant amendments are made to our Rules of Procedure, however, there is no rule to follow as regards the procedure of ending a debate which is subject to filibustering at the Committee stage of a bill. I therefore decided, in exercising my power under BL 72(1), to apply Rule 92 of the Rules of Procedure to set a timetable for the rest of the proceedings on the Bill to be completed.

16. In allocating the time for the remaining proceedings on the Bill, I had taken into account the time spent at Committee stage on appropriation bills in the past and had duly considered the need to allow sufficient time for the four Members as well as other Members to speak on the CSAs if they wished. I noted that the debating time at Committee stage of appropriation bills had never been over 20 hours in the past. In the case of the Bill, allowing the debate to continue until 1:00 pm on 14 May 2013 meant allocating approximately 14 additional hours for Members to speak on the CSAs on top of 55 hours already spent. In the end, I allowed all 24 Members who had indicated intention to speak to join the debate, which ended at 1:27 pm.

17. Members have asked me to take into account their views before I make any decision on procedural matters that are not expressly provided for in the Rules of Procedure. Besides taking procedural and legal advice from the Clerk and Counsel to the Legislature, I met Members twice in private on 3 and 13 May 2013 to hear their views.

18. I had considered a number of alternatives on how best to deal with the remaining proceedings on the Bill which included, among others:

- (a) There was a view that the debates on the CSAs should be allowed to carry on as the proceedings on the Bill could be expected to be completed by the middle or end of June 2013 the latest. I could not agree. As I have stated above, the filibuster had to be sustained for an inestimable period of time for it to work. But meanwhile, the normal transaction of LegCo business would be seriously obstructed. I could not allow the filibuster to continue indefinitely at the expense of the

smooth conduct of Council meetings and proper functioning of this law-making institution.

- (b) Another proposal was to allow committee meetings to convene in parallel with Council meetings to minimize the disruption. But this too could not resolve the matter as other business of the Council, such as the raising of oral questions, the resumption of Second Reading debate on other bills and the moving of Government motions and Members' motions, could not be transacted until after the proceedings on the Bill had been completed.
- (c) Some proposed to move a Member's motion to end the debates on the CSAs. In the absence of such a provision in the Rules of Procedure, I could not find this proposal to be in order.
- (d) There was also a suggestion of resolving the filibuster through a tripartite discussion among the four filibustering Members, the Administration and me. I considered it inappropriate for me as President of LegCo to step in what amounts to political bargaining between the Members and the Administration.

19. In my view, the only appropriate course of action in accordance with BL and the Rules of Procedure was to set a timetable for the rest of the proceedings on the Bill to be completed. In reaching this conclusion, I believe I have struck a balance among all relevant factors, including the right of Members to participate in the legislative process, the use of filibuster by Members as a tactic to bargain with the Administration, the smooth conduct of Council meetings and the proper functioning of this law-making institution.

(Jasper TSANG Yok-sing)
President
Legislative Council

16 May 2013

**President's ruling on allocation of time for
the remaining proceedings on the Appropriation Bill 2014**

At the start of the Council meeting of 21 May 2014, I ordered that a timeframe should be set for the remaining proceedings on the Appropriation Bill 2014 ("the Bill") so as to complete them on the first day of the meeting of 4 June 2014. I have undertaken to provide in writing the considerations for my decision.

The Bill

2. The Bill, which sought appropriation of \$335,848,320,000 for the services of the Government in the financial year ending on 31 March 2015, was presented to the Legislative Council ("LegCo") pursuant to Rule 52(2) of the Rules of Procedure and received its First Reading at the meeting of 26 February 2014. The Second Reading debate on the Bill was then adjourned and the Estimates were 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 Rules of Procedure. The Council passed at the meeting of 19 March 2014 a Vote on Account ("VoA") resolution moved by the Administration under the Public Finance Ordinance (Cap. 2) allowing funding for the expenditure of a sum of not exceeding \$78,677,470,000 on the services of the Government. According to the Administration, the provision would be sufficient to enable the Government to meet its recurrent obligations and discharge its public functions until the end of May 2014.

3. Before the Bill was considered in committee of the whole Council, 20 sessions of special meetings of the Finance Committee lasting 31 hours in total had been held, and a total of 6 660 initial written questions and 232 supplementary questions had been raised by Members seeking information on the details of public expenditure.

Debates on amendments at Committee stage

4. The Bill received its Second Reading after 17 hours of debate at the Council meeting on 9 and 10 April 2014. The Committee stage of the Bill was originally scheduled to commence at the Council meeting of 16 April but I rescheduled it to the Council meeting of 30 April to allow time for me to consider the 1 917 Committee stage amendments ("CSAs")

proposed by 14 Members. I ruled admissible 1 192 CSAs to 69 Heads of Expenditure (“Heads”) of which 1 163 CSAs were proposed by four Members, namely Hon Albert CHAN, Hon LEUNG Kwok-hung, Hon CHAN Chi-chuen and Hon WONG Yuk-man. In accordance with the grouping on policy areas proposed by the Administration for the debate on the Motion of Thanks on the Policy Address 2014, I allow five joint debates for the consideration of the CSAs.

5. On 30 April, the Bill stood committed to the committee of the whole Council, which first considered the 14 Heads to which there were no amendments. The general rule that a Member may not speak more than once on a question does not apply in committee of the whole Council, as stipulated in Rule 38(1)(a) of the Rules of Procedure. The debate on the Heads without CSAs lasted almost seven hours. The first joint debate on CSAs commenced at 2:06 pm on 7 May, and I noted after some 25 hours of the debate that Hon Albert CHAN, Hon LEUNG Kwok-hung and Hon CHAN Chi-chuen (“the three Members”) still indicated intention to speak. I met in private Members of different political groupings and affiliation separately on 14 and 15 May to hear their views on the estimated debate time on CSAs they would need. I sought in particular the views of the four Members who proposed a total of 1 163 CSAs. Other than Hon LEUNG Kwok-hung who could not tell how much more time he would need to speak further as it was his avowed intention to filibuster the Bill, other Members had led me to believe that all the proceedings on the Bill could be completed by the end of May 2014.

6. As it transpired, the first joint debate on CSAs did not end until 7:22 pm on 15 May bringing its total debate time to 45 hours. During the debate, the three Members successively requested to speak and repeatedly asked for quorum calls. When the Council was adjourned on 16 May 2014, the second joint debate on CSAs which had continued for 11 hours had not finished. As in the first joint debate on CSAs, the three Members again successively requested to speak and repeatedly asked for quorum calls in the second joint debate on CSAs. As at 16 May, in the 63 hours of debate in Committee stage of the Bill, the three Members had spoken 161 times in total, and on at least 47 occasions I reminded them of the need to comply with the Rules of Procedure and not to persist in irrelevance or tedious repetition of their own or other Members’ arguments. Furthermore, about 25% of the time in Committee stage was spent on quorum calls requested mostly by them.

7. I sought Members' view on increasing the meeting hours of the Council to deal with the Bill. However, most Members objected to any increase in meeting hours for various reasons. Having regard to the progress of the debates, I considered it highly unlikely that all the proceedings on the Bill could be completed by the end of May 2014.

8. At the start of the Council meeting of 21 May 2014, I ordered that the second joint debate on CSAs would continue for no more than two hours, the remaining three joint debates on CSA would last no more than 24 hours with roughly eight hours for each debate, and then the CSAs would be put to vote, so that all the proceedings on the Bill could be completed on the first day of the Council meeting of 4 June 2014.

My opinion

9. Under Article 73(2) of the Basic Law ("BL"), LegCo has the power and function to examine and approve budgets introduced by the government. Debate on an appropriation bill and the relevant estimates of expenditure which are subject to LegCo's examination is part and parcel of the legislative process for enacting the bill. I fully respect the right of Members to participate in the legislative process by proposing amendments to the Bill and debating amendments in accordance with the Rules of Procedure.

10. The first joint debate on CSAs went on for 25 hours before I met in private Members of different political groupings and affiliation separately to gauge the time they would need in debating the CSAs. Based on the estimated time required for debate on CSAs as indicated by Members, I assessed that all the proceedings on the Bill could be completed by the end of May 2014. Therefore, I stated in public my intention to allow the debates to run their natural course as far as possible, provided that there was adequate meeting time, and that no Member would seek to prolong the debates interminably.

11. I allowed the first joint debate to continue for 45 hours until no Member requested to speak. I noted, however, that the meeting time was not fully and effectively utilized for the purpose. Frequent requests were made by the three Members for quorum calls under Rule 17(3) of the Rules of Procedure, and such requests became more frequent over time. At the same time, Hon LEUNG Kwok-hung proclaimed in public his intention to filibuster the Bill in an attempt to force the Administration to accede to his demand for implementing universal retirement protection.

The same tactic was used by him on the Appropriation Bill 2013 last year without achieving the intended result. The Member repeatedly said during the first two joint debates on CSAs to the Bill that the Financial Secretary did not even bother to contact him to discuss his demand. The use of filibuster by the Member as a means to bargain with the Administration could apparently lead to no consequences other than prolonging Council proceedings.

12. I note from the Court of Appeal judgment 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) that 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), and any constitutional right of Members to participate in the legislative process cannot possibly include the right to filibuster¹.

13. As President, it is incumbent upon me to protect LegCo as a law-making institution. The serious disruption of other Council business arising from the protracted debate on the Bill had caused me grave concern. Since the commencement of the Committee stage of the Bill on 30 April, Members had not been able to raise oral questions on the work of the Government at Council meetings. Two motions to respectively extend the scrutiny period of a piece of subsidiary legislation and amend another could not be dealt with before the expiry of the statutory deadlines. A total of 11 Members' motions and the resumption of Second Reading on a bill to give effect to a proposal in the Budget were held up. The consideration by the Finance Committee of three financial proposals related to the Budget was deferred pending the passage of the Bill. A number of committee meetings had to be rescheduled because of the continuation of the Council meetings held weekly from Wednesday to Friday to deal with the Bill. I could understand Members' reasons for not agreeing to increase the meeting hours of the Council so as not to affect the work of committees further.

14. Against the above background and given the progress of the debates on CSAs, it became apparent not only that the proceedings of the Bill could not be completed by the end of May 2014 as assessed earlier by Members, but such completion date had become inestimable. As such, I became increasingly concerned that the Council may not even complete all its outstanding business at the last meeting of 9 July 2014 scheduled for this legislative session. As President, I could not allow the protracted

¹ See paragraphs 44 and 45 of CACV 123/2012

debates on the Bill to sustain to the extent of preventing LegCo from properly exercising and discharging its powers and functions under the Basic Law. I therefore consider it appropriate to exercise my power under BL 72(1) to ensure the orderly, fair and proper conduct of meetings, which includes the power to end debates in appropriate circumstances and put matters to vote².

15. I have repeatedly stressed the need for express provisions in the Rules of Procedure to deal with filibusters. I have exchanged views with Members of the Committee on Rules of Procedure (“CRoP”) on different options to deal with filibusters including allocating time to debates at Committee stage of bills and moving closure motions to curtail debates. I note that CRoP has decided to consult Members on these and other proposed procedures to deal with filibusters and voluminous amendments to bills and motions, and I look forward to the formulation of a mechanism agreeable to Members. However, consensus is unlikely to be reached by Members in the immediate future, and in the absence of procedure to deal with filibusters in the Rules of Procedure, I was left with no alternative but to invoke the power under Rule 92 of the Rules of Procedure to decide on the practice and procedure that should apply in dealing with the present situation. Pursuant to Rule 92, I decided to set a timetable for the rest of the proceedings on the Bill to be completed.

16. In allocating the time for the remaining proceedings on the Bill, I had taken into account the need for the Council to resume the transaction of other Council business in early June 2014 in order that all the outstanding business could be dealt with in the current legislative session. The scrutiny process of the Bill had lasted almost three months since its presentation to the Council in late February 2014. Members had opportunities to seek information on the details of public expenditure at the special meetings of the Finance Committee. Given the additional 26 hours for the remaining joint debates on CSAs to the Bill allowed by me, a total of 83 hours would be made available for debate solely on CSAs. In my view, Members should be able to articulate their views within a specified time limit unless they intend to prolong the proceedings. The setting of a time limit for debates does not deprive Members of the right to monitor the work of the Government. On the other hand, allowing the debates on the Bill to be protracted without any time limit would definitely deprive Members of opportunities to monitor the Government by various effective means in the Council.

² See paragraphs 52 and 66 of CACV 123/2012

17. In making my decision to set a timeframe for the rest of the proceedings on the Bill, I have struck a balance among all relevant factors, including the right of Members to participate in the legislative process, the use of filibuster by Members as a tactic to bargain with the Administration, the smooth conduct of Council meetings and the proper functioning of this law-making institution.

(Jasper TSANG Yok-sing)
President
Legislative Council

23 May 2014

**Expressions which have been ruled to be offensive
and insulting language about Members or public officers
attending the relevant meeting¹ or unparliamentary in the context
in which the expressions were used**

(as at 4 August 2014)

(a) Expressions which have been ruled to be offensive and insulting language about Members or public officers attending the relevant meeting¹

“as the saying goes, ‘foul grass grows out of a foul ditch’. The Chinese Government had hand-picked the members of the Preparatory Committee, who then selected the 400 members of the Selection Committee. This same group of people will then nominate candidates for the Chief Executive.”	13 November 1996 ²
“You are all stupid. Who are you trying to fool?”	27 September 1997 ²
“they have a sufficient number of rubber stamps here”	16 July 1999 ²
Member A ³ “has acted impudently and shamelessly”	13 October 2004 ²
Member B ³ “delivered his speech, he was so shameless as to insist that there were justifications”	16 March 2005 ²
people like Member C ³ “among the ‘dog class’ are helping the tyrant in his evildoing.....”	8 November 2006 ²
“that is the two so-called proverbs I said yesterday— ‘stumbling to death on the street’ and.....”	27 March 2009 ⁴
“some Members of this Council sought to realize their personal desires under the banner of justice especially the Members representing the legal profession”	9 December 2009 ²
“It is those ‘castrati’, like ‘Eunuch LAM’, Stephen LAM, who are obstructing constitutional development”	9 June 2010 ²
“Lackey”	26 January 2011 ²
Member D ³ has “kissed the wrong ass”	9 January 2013 ²
Member E ³ was “like a dog running around, snapping at people”	7 May 2014 ²

¹ By virtue of Rule 10(2) of the Rules of Procedure (“RoP”), the scope of prohibition against the use of offensive and insulting language about Members under Rule 41(4) of RoP is expanded to cover the use of such language about public officers attending the meeting concerned for the relevant item of business.

² Date of the relevant Council meeting.

³ ‘A’, ‘B’, ‘C’, ‘D’ and ‘E’ represent the names of the Members concerned.

⁴ Date of the relevant Finance Committee meeting.

(b) Expressions which have been ruled to be unparliamentary

“these two words ‘仆街’ (stumbling to death on the street) are certainly not foul language, it is just that you twisted (*The buzzer sounded*)” 1 April 2009²

“especially a so-called teacher of ‘dog shit’ law” ⁵ 13 January 2010²

⁵ The President stated at the Council meeting that such remarks were offensive and insulting and were inappropriate. However, as these remarks were not specifically about Members of this Council, he therefore could not rule that the remarks were in breach of Rule 41(4) of RoP.

立法會
Legislative Council

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

(傳真號碼 Fax No : 2489 0288)

登記立法會質詢

Registration of LegCo Questions

倘獲編配質詢時段，本人擬在 ____ 年 ____ 月 ____ 日/最近期*
的立法會會議上提出以下質詢：

Subject to a question slot being available, I would like to ask the following
question at the Legislative Council meeting to be held on _____/ a.s.a.p. * :

要求口頭/書面*答覆的質詢措辭初稿（如空間不足，請在白紙上書寫
並一併提交）

Draft wording of oral/written* question (if space is insufficient, please write on a white
sheet and hand it in together)

簽署

Signature:

姓名

Name:

聯絡人姓名及電話號碼

Name and tel. no. of contact person:

日期

Date:

* 請刪去不適用者
Please delete as appropriate

如欲秘書處以傳真確認收到是項登記，請提供傳真號碼：
If you want to receive a fax confirmation from the Secretariat,
please provide your fax number:

**Notice requirements for Bills, Motions and Amendments
for Council meetings**

(A) Bills

Bill and Committee stage amendments	Minimum notice required	Relevant Rules
Presentation of bill in the Council	at any time subject to the requisite gazettal requirement	Rule 51(1) of the Rules of Procedure ("RoP")
Resumption of Second Reading debate	12 clear days subject to other provisions in Rule 54(5) of RoP	Rule 54(5) of RoP <i>[Note]</i>
Amendment to bills (to be considered at Committee stage)	7 clear days	Rule 57(2) of RoP

(B) Subsidiary legislation under section 34 of Cap. 1

Motion and amendments	Minimum notice required	Relevant Rules
Motion to amend subsidiary legislation or other instrument	5 clear days	Rule 29(2) of RoP
Motion to extend scrutiny period	3 clear days	Rule 29(3) of RoP
Amendment to the above motions	President's discretion	Rule 29(4) of RoP

(C) Subsidiary legislation under section 35 of Cap. 1 and other motions with legislative effect

Motion and amendments	Minimum notice required	Relevant Rules
Motion	12 clear days	Rule 29(1) of RoP
Amendment to motion	5 clear days	Rule 29(6)(a) of RoP

(D) Motion to take note of reports of the House Committee on consideration of subsidiary legislation and other instruments

Motion	Minimum notice required	Relevant Rules
Notification to the Chairman of House Committee of the need to speak on the House Committee's report	At the meeting of House Committee not later than the week preceding the Council meeting at which the report will be tabled or 6 clear days before that Council meeting if there is no House Committee meeting in the week preceding the Council meeting	Rule 49E (1)(a) & (b) of RoP
Motion to take note of reports of the House Committee	2 clear days	Rule 49E(2) of RoP

(E) Motion of Thanks

Motion and amendments	Minimum notice required	Relevant Rules
Motion of Thanks	7 clear days	Rule 13(1) of RoP
Amendment to motion	5 clear days	Rule 13(4)(a) of RoP

(F) Motions not intended to have legislative effect

Motion and amendments	Minimum notice required	Relevant Rules
Application for allocation of a debate slot	14 clear days	Rule 14(b) of House Rules
Motion	12 clear days	Rule 29(1) of RoP
Amendment to motion	5 clear days	Rule 29(6)(a) of RoP

(G) Adjournment debate under Rule 16 of the Rules of Procedure

Motion	Minimum notice required	Relevant Rules
Adjournment debate under Rule 16(2)	Nil (subject to President's permission)	Rule 16(2) of RoP
Adjournment debate under Rule 16(4)	7 clear days	Rule 16(4) & (5) of RoP

(H) Motion to adjourn the proceedings of the Council or a committee of the whole Council

Motion	Minimum notice required	Relevant Rules
Motion to adjourn a debate in the Council	Nil	Rule 40(1) of RoP
Resumption of debate adjourned under Rule 40(2) of RoP	5 clear days	Rule 40(6) of RoP
Motion to adjourn further proceedings of a committee of the whole Council	Nil	Rule 40(4) of RoP
Resumption of the proceedings adjourned under Rule 40(4) of RoP	5 clear days	Rule 40(7) of RoP

Note: Under Rule 75(4) and (9) of the Rules of Procedure, the House Committee has a role to decide on the manner in which a bill is to be considered and to prepare the bill for resumption of debate. As the Member in charge of a Bill may resume the second reading debate by giving 12 clear days' notice, Rule 54(5) also provides a timeframe to ensure that the resumption has been discussed by the House Committee before the relevant notice is given. Rule 54(5) requires that resumption of debate cannot take place earlier than 9 clear days after the meeting of the House committee. This means the resumption of debate may, at the earliest, take place in the second Wednesday after the House Committee meeting at which the matter was discussed. If a period longer than 9 clear days is recommended, the resumption cannot take place earlier than 12 clear days after the meeting of the House Committee, i.e. no sooner than the Council meeting held in the third week after the House Committee meeting. If the resumption is to take place at the next Council meeting, i.e. the Wednesday immediately after the House Committee meeting, the notice of resumption of debate should be given no later than 2 clear days after that meeting of the House Committee.

立法會
Legislative Council

LC Paper No. CB(1) 45/98-99

Ref: CB1/R/1/1

**Paper for the House Committee meeting
on 24 July 1998**

Committee on Rules of Procedure

**Procedure in dealing with the introduction of Members' Bills
as provided in Article 74 of the Basic Law and
the interpretation of Article 48(10) of the Basic Law**

Purpose

This paper outlines the deliberations of the Committee on Rules of Procedure on the Department of Justice's opinion that certain provisions in the Rules of Procedure of the Legislative Council contravene Article 74 of the Basic Law. It also provides background information on the issues considered when formulating rules governing the presentation of bills by Members and the moving of motions and amendments by them.

Background

2. Article 74 of the Basic Law provides that Members of the Legislative Council may introduce bills in accordance with provisions in the Basic 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.

3. The requirements in Article 74 are reflected in Rule 51 (Notice of Presentation of Bills) in particular subrules (3) and (4) of the Rules of Procedure of the Legislative Council, as reproduced in Appendix I.

4. The Rules of Procedure, made by the Council on 2 July 1998, were drawn up after a series of discussions by Members (then Members-elect) in June 1998. During the discussions, Members were aware that further deliberations on the scope of restrictions arising from Article 74 on Members' Bills, motions and amendments were required. However, in order to provide a set of procedures for the immediate functioning of the Council, Members agreed that for the purpose of reflecting the requirements under Article 74, the provisions in Rule 51 (3) and (4) would suffice. Members also agreed to adopt the same requirements, being self-imposed restrictions to govern motions, amendments to bills and amendments to motions with "charging effect", as those applied to the former legislatures of Hong Kong in order to achieve a proper balance in the power to initiate legislative measures without contravening the Basic Law. The relevant rules, namely Rules 31, 57(6) and 69 are reproduced in **Appendix II**.

5. When the Council considered the Rules of Procedure on 2 July 1998, Members noted that the Solicitor-General of the Department of Justice had written to the Legal Adviser of the Legislative Council Secretariat on 30 June 1998 expressing the opinion of the Department of Justice on the scope of Article 74 and the relevance of Article 48(10) in restricting Members' motions. The letter is attached in **Appendix III**. Members also noted that the subject would be referred to the Committee on Rules of Procedure for further study.

6. In view of the urgency to deal with the points raised by the Solicitor-General, Members agreed at the House Committee meeting on 6 July 1998 that, pending the appointment of the Committee on Rules of Procedure, the Solicitor-General be invited to brief Members on his letter of 30 June 1998. A briefing was held on 9 July, and continued on 15 July at the first meeting of the Committee on Rules of Procedure (the Committee).

7. Members also took note of the views of the Legal Adviser of the Legislative Council Secretariat in his advice given in LC Paper No. LS6/98-99. The paper is attached in **Appendix IV**.

Views of the Department of Justice

8. In the opinion of the Department of Justice, a generous and purposive interpretation should be given to Article 74. The Article should cover not only bills but also Committee Stage amendments. Under the circumstances, any amendments moved by Members, whether to a bill introduced by a Member or by the Government, should also be subject to Article 74.

9. When asked by Members as to whether resolutions made under Sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap 1) to amend subsidiary legislation should also be subject to Article 74, the Solicitor-General's view is that Article 74 would not apply to such resolutions.

10. The Department of Justice is of the view that Article 48(10) should cover motions moved by Members. The Article, which spells out the powers and functions of the Chief Executive, states in (10) that one of his powers and functions is to approve the introduction of motions regarding revenues or expenditure to the Legislative Council. According to the Solicitor-General, Members may only introduce such motions, including those without legislative effect, with the Chief Executive's consent. He also argues that Rule 31, which confines the requirement for obtaining the Chief Executive's consent to motions or amendments with "charging effect", is inconsistent with the Basic Law as such a formulation is narrower than that of "regarding revenues or expenditure" as specified in Article 48(10).

11. The Department of Justice stresses that decisions as to whether certain proposals are subject to Articles 48(10) and 74 must be made by the Chief Executive. The Department takes the view that although neither article expressly identifies the decision-maker, such decisions must be made by the Chief Executive by necessary implication. For example, the question whether a bill relates to Government policies can only be decided by the very Government which formulates these policies, and the Chief Executive is best placed to decide these questions. The Solicitor-General adds that since the purpose of the articles is to restrict the powers of Members of the Legislative Council in certain specified areas falling within the purview of the Executive, this purpose would be defeated were the President given the power to make such decisions, particularly when such decisions might differ from those of the Chief Executive.

12. In conclusion, the Department of Justice is of the view that Rules 31, 51(3), 57(6), and 69 contravene the Basic Law and require amendment.

The Committee's Views

13. Regarding the interpretation of Article 74 to cover Committee Stage amendments, the Committee is of the view that nothing is written in the Article which suggests that the Article is meant for anything other than bills introduced by Members. The Basic Law is very specific in making reference to bills, motions and Members' amendments to Government bills, as illustrated in the voting procedures provided in Annex II of the Basic Law. If Article 74 were intended to cover Members' amendments to Government bills, there is no reason why it was not stated in the Article in the first place. The Committee considers it inappropriate for the Department of Justice to extend the coverage of Article 74,

which governs only Members' bills, to Members' amendments to Government bills.

14. The Committee is aware of the concern of the Executive, as reflected in the Solicitor-General's opinions, that proposals in relation to those areas mentioned in Article 74 should come from the Executive instead of from Members of the Legislative Council. This principle has been spelt out in Article 74 and also reflected in the Rules of Procedure of the Council. The Basic Law has not specified detailed procedure of the legislative process, but it is clear that amendments to Government bills moved by Members are anticipated, as shown in the bicameral voting procedure in Annex II of the Basic Law and references to introduction, amendment and passage of bills in various provisions. The Committee considers it important to maintain a legislative process which allows every bill or motion before the Council to be fully debated and all aspects of the bill or motion thoroughly considered. The legislative process which the Council has now put in place is a three-reading process which has worked well in Hong Kong and which people of Hong Kong are familiar with. This process provides a stage between the second and third readings during which the Committee of the Whole Council discusses the detailed provisions of proposed amendments to a bill. A Member (including a public officer) in charge of a bill can withdraw the bill at the beginning of the proceedings for the second or third reading of the bill. If the Government finds difficulty in accepting a Government bill in its amended form, the public officer in charge of the bill may withdraw the bill before the third reading stage. The availability of the procedure to withdraw a bill provides a means for the Government to decide the final form of the proposed legislation introduced by it. Under the circumstances, it is not logical, nor reasonable, to regard arbitrarily the word "bills" in the context of Article 74 to mean also "amendments to bills" as this would deprive the Council of the opportunity to discuss and agree to proposals alternative to those proposed in a bill. The mechanism under the Rules of Procedure ensures a degree of checks and balances between the Executive and the Legislature, and preserves the principle of executive - led Government.

15. As for Article 48(10), the Committee considers that the Article, which comes under a dedicated section on the Chief Executive, is stating the powers and functions of the Chief Executive. Article 48(10) therefore refers to introduction of motions regarding revenues or expenditure to the Legislative Council by the Government, rather than those by Members of the Legislative Council. The only restrictions on Members in respect of introduction of business in the Legislative Council are provided in Article 74 which comes under the section on the Legislature. Besides, it would be illogical if the Legislative Council, with one of its functions being to debate any issue concerning public interests under Article 73(6), was disallowed to debate a motion regarding revenues or expenditure without the Chief Executive's approval.

16. On the view that the Chief Executive should be the person to decide on whether any bills are subject to Article 74, the Committee considers that since it is not specified in Article 74 as to who should be the person to decide on such matters, and since Article 75 provides the Legislative Council with the power to make its own rules of procedure, that view does not stand. It is for the Legislative Council to draw up its own procedures which on the one hand satisfy the requirements under the Basic Law, and on the other, facilitate the conduct of business of the Council in the most effective manner. The Rules as they stand do not contravene the Basic Law. If it was the intention of drafters of the Basic Law for such decisions to be made by the Chief Executive, such an important requirement would have been expressly provided. The Committee considers that referral to the Chief Executive for ruling on every bill, motion and amendment would not only upset the proper checks-and-balances between the Executive and the Legislature, but would also seriously affect the day-to-day functioning of the Legislative Council. It should also be pointed out that if the Department of Justice's arguments were to be accepted, then Article 48(10) and Article 74 would become contradictory in that the former authorizes the Chief Executive to "approve the introduction of motions regarding revenues or expenditure to the Legislative Council" while the latter prohibits the introduction of bills which relate to "public expenditure or political structure or the operation of the government".

17. The Committee has studied the powers of and inter-relationship among the Executive, the Legislature and the Judiciary as provided in the Basic Law. The provisions in the Basic Law enable the Executive and the Legislature to regulate and monitor the activities of each other, as illustrated in the functions of the two bodies and Articles 49, 50, 51 and 52. Under the Rules of Procedure, the President is empowered to take decisions on whether bills, motions and amendments to bills may be introduced into the Council. These rules are in support of the power of the President to decide on the agenda and to exercise other powers and functions as prescribed in the Rules of Procedure under Article 72(2) and (6). Any person, including the Government, who is aggrieved by a decision of the President or perceives a breach of the law by the Legislative Council may seek judicial redress.

18. The Committee has also noted that the procedure which enables the President to form an opinion as to whether a bill falls within the particular areas under Article 74 is similar to Standing Order provisions of the former Legislative Council under which the President ruled on the "charging effect" of a proposed bill or proposed amendments to a bill. These Standing Order provisions governing charging effect were made to implement Clause XXIV of the Royal Instructions, where no person was named as the authority to decide on such matters. The Committee also notes that before the President was elected by and from among Members, the Governor of Hong Kong was making the relevant rulings in his capacity as President of the Legislative Council rather than as head of the Administration. The procedure of having the President to rule on whether

a question can be put at a meeting is a practice widely adopted in other common law jurisdictions. For reference purposes, the practice and procedure in other jurisdictions and in the former Legislative Council of Hong Kong are given in **Appendix V**.

19. The Committee affirms that Rule 51(3) and (4) does not contravene Article 74. The procedure for the President to decide whether any bills introduced by Members are related to the specific areas under Article 74 is in order. The Committee considers that the procedure should also be spelt out clearly in Rule 51(4).

20. 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, as illustrated in **Appendix V**. 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.

Conclusion

21. The Committee has come to the unanimous conclusion that the Rules of Procedure do not contravene Articles 48(10) and 74 of the Basic Law and do not require amendments. Specifically, the Committee is of the view that:

- (a) Article 48(10) (the Article being on the powers and functions of the Chief Executive) only governs the introduction of motions regarding revenues or expenditure by the Government to the Council, and not motions introduced by Members of the Council;
- (b) the restrictions in Article 74 apply only to Members' bills, and not Members' Committee Stage amendments to Government bills;
- (c) decisions on whether bills introduced by Members fall within the confines of Article 74 should be made by the President; and
- (d) the self-imposed restrictions governing motions and Committee Stage amendments with charging effect moved by Members should continue.

22. Although the Committee has not yet completed its deliberation on all the points raised by the Department of Justice, e.g. voting procedure, members of the Committee consider it necessary to provide an interim report on the issues relating to Article 74, for the information of all Members of the Legislative

Council. If Members have any views on the subject, they are invited to direct them to the Committee.

Legislative Council Secretariat

22 July 1998

51. Notice of Presentation of Bills

(1) A Member or a designated public officer may at any time give notice of his intention to present a bill; such notice shall be sent to the office of the Clerk and shall be accompanied by a copy of the bill and memorandum required by Rule 50 (Form of Bills), and in the case of a Member, also by a certificate signed by the Law Draftsman pursuant to subrule (2).

(2) In the case of a bill to be presented by a Member, the Law Draftsman, if satisfied that the bill conforms to the requirements of Rule 50 (Form of Bills) and the general form of Hong Kong legislation, shall issue a certificate to that effect.

(3) Members may not either individually or jointly introduce a bill which, in the opinion of the President, relates to public expenditure or political structure or the operation of the Government.

(4) In the case of a bill relating to Government policies, the notice shall be accompanied by the written consent of the Chief Executive in respect of the bill.

(5) In the case of a bill presented in one official language in pursuance of a direction under section 4(3) of the Official Languages Ordinance (Cap. 5), the notice shall be accompanied by a certificate stating that the Chief Executive in Council has directed that the bill should be presented in the Chinese language or, as the case may be, the English language.

(6) In the case of a bill presented by a Member having any intention such as is described in Rule 50(8) (Form of Bills), the notice shall be accompanied by a certificate signed by the Member, stating that the bill has been published in two successive publications of the Gazette and that notice of the bill has been given by two advertisements in each of two daily newspapers published in Hong Kong, one being a Chinese language newspaper and another being an English language newspaper.

(7) (a) Except as otherwise provided in Rule 66 (Bills Returned for Reconsideration), a bill which, in the opinion of the President, contains substantially the same provisions as another bill on which the Council has already taken a decision at second reading shall not be further proceeded with in the same session and shall be withdrawn.

- (b) If a bill which has been read for the second time is subsequently withdrawn another bill with substantially the same provisions may be presented in the same session, subject to the provisions of Rule 50 (Form of Bills), this Rule and Rule 52 (Presentation and Publication of Bills).

(8) A Member presenting a bill shall be known throughout the subsequent proceedings on the bill as the Member in charge of the bill. In the case of a bill introduced jointly by more than one Member, these Members shall designate among themselves a Member as the Member in charge of the bill at the time of presenting the bill and the Member so designated shall signify himself as such in the notice for presentation.

(9) A public officer presenting a bill shall be known throughout the subsequent proceedings on the bill as the public officer in charge of the bill; and references in these Rules of Procedure to a Member in charge of a bill include a public officer in charge of a bill.

31. Restriction on Motions and Amendments

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. Amendments to Bills

(1) The provisions of this Rule shall apply to amendments proposed to be moved to bills in committee of the whole Council, in a select committee, and on recommitment.

(2) Notice of amendments proposed to be moved to a bill shall be given not less than 7 clear days before the day on which the bill is to be considered in committee; and except with the leave of the Chairman no amendment of which notice has not been so given may be moved to a bill.

(3) The provisions of Rule 30 (Manner of Giving Notice of Motions and Amendments) shall apply to notice of amendments to bills with the substitution of the word "Chairman" for "President" in subrule (3) of that Rule.

(4) The following provisions shall apply to amendments relating to bills:

- (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) An amendment must not be inconsistent with any clause already agreed to or with any previous decision of the committee upon the bill.
- (c) An amendment must not be such as to make the clause which it proposes to amend unintelligible or ungrammatical.

- (d) An amendment which is in the opinion of the Chairman frivolous or meaningless may not be moved.
- (e) 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 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.

(5) If an amendment refers to, or is not intelligible without, a subsequent amendment or schedule, notice of the subsequent amendment or schedule must be given before the first amendment is moved so as to make the series of amendments intelligible as a whole.

(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.

69. Amendments to Heads of Estimates in Committee of the Whole Council on Appropriation Bill

(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 amendment 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).

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30 June, 1998

Mr Jimmy Ma
Legal Adviser
Legislative Council Secretariat
8 Jackson Road
Hong Kong

Dear Jimmy,

Draft Rules of Procedure

This Department has considered very carefully the draft Rules of Procedure of the Legislative Council (LegCo). It is our opinion that certain draft rules contravene the Basic Law. We are therefore drawing those parts of the draft to your attention so that you may take appropriate remedial action.

Article 74

Article 74 of the Basic Law prohibits certain bills from being introduced by members of the Council (viz. those relating to public expenditure or political structure or the operation of the government) and requires the written consent of the Chief Executive before other bills (viz. those relating to government policies) are introduced. You will appreciate from the authorities that, since the Basic Law is a constitutional instrument, it must be given a generous and purposive interpretation as opposed to a narrow and literal one which generates anomalies: per Lord Wilberforce in Minister of Home Affairs v. Fisher [1980] AC 319, at 328; per Chan CJHC in HKSAR v. David Ma [1997] HKLRD 761, at 772.

The clear intent underlying Article 74 is to prevent members from introducing certain types of legislative proposals and to require the written consent of the Chief Executive before legislative amendments relating to government policies are introduced. Giving the article a generous and

purposive interpretation, it must cover not only bills but also committee stage amendments (CSAs). Any other interpretation would create the anomaly that members might achieve by way of a CSA that which they could not attain by way of a bill.

We note that draft Rules 57(6) and 69 do not reflect the correct interpretation of Article 74 of the Basic Law, but refer instead to the charging effect test (elaborated below), an irrelevant consideration for present purposes. These rules are inconsistent with the Basic Law and should be amended accordingly.

Application of Articles 48(10) and 74

Articles 48(10) and 74 of the Basic Law contemplate decisions being taken as to whether certain proposals are subject to those articles. Whilst neither article expressly identifies the decision-maker, it is clear by necessary implication that such decisions must be made by the Chief Executive. We understand the purpose of the articles is to restrict the powers of LegCo members in certain specified areas falling within the purview of the Executive. It would defeat this very purpose were the LegCo President given the power to decide whether the Articles applied, particularly where, in doing so, he or she might differ from the Chief Executive.

It is clear that the Chief Executive is best placed to decide these questions. For example, the final sentence of Article 74 provides that the written consent of the Chief Executive shall be required before bills relating to government policies are introduced. The question whether a bill relates to government policies can only be decided by the very government which formulates those policies. This being so, it follows that it must be the Chief Executive who decides the question.

As we shall indicate below, draft Rule 31 does not reflect Article 48(10) of the Basic Law. When it is amended to do so, it must avoid providing for the President or Chairman to decide whether a motion falls within the rule. Similarly, when draft Rules 51(3) and 57(6) are amended to reflect Article 74 of the Basic Law, they should likewise avoid providing for the President to decide whether proposals fall within that article.

Article 48(10)

Article 48(10) of the Basic Law stipulates that the Chief Executive shall "approve the introduction of motions regarding revenues or expenditure

to the Legislative Council". Thus, members may only introduce such motions with the Chief Executive's consent.

We notice that a requirement of the Chief Executive's consent appears in Rule 31 of the draft Rules of Procedures. However, that rule is confined to motions or amendments "the object or effect of which may, in the opinion of the President or the Chairman, be to dispose of or charge any part of the revenue or other public moneys of Hong Kong" (emphasis supplied). This formulation, which is generally referred to as the "charging effect" test, is identical to that adopted by the Provisional Legislative Council and in LegCo prior to 1 July 1997. Its genesis lie in Clause XXIV of the Royal Instructions which stipulates that "every ordinance, vote, resolution, or question, the object or effect of which may be to dispose of or charge any part of Our revenue arising shall be proposed by the Governor, unless the proposal of the same shall have been expressly allowed or directed by him.". Such a formulation is clearly much narrower and more specific than "regarding revenues or expenditure" specified in Article 48(10) of the Basic Law.

"Charging effect" covers only those motions or amendments which would have the effect of reducing revenue or increasing expenditure. In other words, motions which have the effect of increasing revenue or reducing expenditure will not be subject to it. However, "regarding revenues or expenditure" clearly has a wider ambit. It covers motions which have any effect on revenue or expenditure (that is, increases or decreases in revenue as well as increases or decreases in (expenditure) as well as motions which are related to any other aspects of revenue or expenditure. Rule 31, as currently drafted, is accordingly inconsistent with the Basic Law.

Voting procedures

We note that draft Rule 47 provides for decisions to be made according to whether or not the majority of members present are in favour of the question. We agree that the passage of private members' bills and members' CSAs require the support of a majority of members present in the council. However, we are of the considered opinion that the passage of government bills requires the majority vote of members present, and that abstentions cannot be counted in determining the voting outcome. The reason for the difference arises from Annex II of the Basic Law which stipulates that:-

"The passage of bills introduced by the government shall require at least a simple majority vote of the members of the Legislative Council

present.

The passage of motions, bills or amendments to government bills introduced by individual members of the Legislative Council shall require a simple majority vote of each of the two groups of members present : members returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee."

"政府提出的法案，如獲得出席會議的全體議員的過半數票，即為通過。

立法會議員個人提出的議案、法案和對政府法案的修正案均須分別經功能團體選舉產生的議員和分區直接選舉、選舉委員會選舉產生的議員兩部分出席會議議員各過半數通過。"

For members' proposals, although the English text of the voting arrangement refers to a simple majority vote of each of the two groups of members present, the crucial word "票" (votes) does not appear the Chinese text. The Chinese words "過半數" (more than half or majority) therefore qualify "出席會議議員" (members present at a meeting). This does not refer to the majority vote but rather the majority of those present. According to established authorities, "those present" include those who are present but who abstain. Given the discrepancy between the English and Chinese texts, the Chinese original, being the language of authorship, must prevail.

For government proposals, the Chinese words "過半數" (more than half or majority) appear immediately before the word "票" (votes). They therefore qualify "票", effectively making "過半數" (majority votes) a technical expression standing by itself. The "majority vote" referred to in the provision is to be given its normal meaning of the greater number of votes. An abstention is not a vote. The fact that the provision refers to "members present" does not displace that normal meaning. It merely indicates that one does not count the votes (e.g. proxy votes) of those who are not present.

Position of the President

We understand that you consider that the President of LegCo should be politically neutral and should therefore abstain from voting. As the draft rules stand, however, the President will presumably be regarded as 'present'

for the purpose of deciding whether a majority of those present are in favour of a proposal. If so, this would mean that, by not voting, the President would be counted as one of those present who is not in favour of the proposal. Such a result would render nugatory the proposed neutrality of the President.

One way to avoid such an anomalous outcome would be for the Rules of Procedure to provide that, if the President does not vote, he or she is not to be regarded as present for the purposes of deciding whether a majority of those present support the proposal. Such a provision would be consistent with the Basic Law. The President would not be denied the right to vote, and the provision would reflect the special position occupied by the President under Article 72 of the Basic Law. Since the President is required to 'preside over meetings', he or she does not have the option of being absent during the voting process. It would clearly be absurd to regard his or her presence as tantamount to a permanent, immutable, in-built opposition to every single proposal requiring the support of the majority of members present.

We request, therefore, that consideration be given to the inclusion of such a provision in the rules. The relevant provisions of the draft Rules of Procedure should be amended to reflect this Basic Law requirement.

The way forward

We feel sure that LegCo members will wish to ensure that their Rules of Procedure are consistent with the Basic Law. You will no doubt agree that seeking a broad constitutional consensus as between the Executive and the Legislature is the best way forward. Before you give further advice to members, therefore, we trust you will give careful consideration to the points made above. We hope also that you will revert to us on the outcome. We shall be glad to discuss these issues further if necessary.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Daniel', with a stylized flourish underneath.

(Daniel R. Fung, QC, SC, JP)
Solicitor-General

立法會
Legislative Council

LC Paper No. LS 6/98-99

Rules of Procedure
Legal Adviser's comments on
the Solicitor General's letter of 30 June 1998

At the House Committee meeting held on 6 July 1998, Members agreed to invite the Solicitor General to a meeting to be held on 9 July 1998 to brief them on the opinion of the Department of Justice on the Rules of Procedure of the Legislative Council. The opinion is contained in the Solicitor General's letter of 30 June 1998 addressed to Legal Adviser. In order to assist Members in preparation for the meeting Legal Adviser has been requested to comment on the opinion of the Department of Justice.

2. Legal Adviser would like to point out that the issues involved are by no means simple and Members have agreed that the Committee on Rules of Procedure should start its review on the Rules of Procedure as soon as its members are appointed by the President.

Article 74

3. The Solicitor General is seeking to argue that by giving the article a generous and purposive interpretation the meaning of the word "bill" in Article 74 should include Committee Stage amendments (CSAs) to a bill. He suggests that "any other interpretation would create the anomaly that Members might achieve by way of a CSA that which they could not attain by way of a bill."

4. In Legal Adviser's view, the principle of interpretation referred to by the Solicitor General may be understood more easily by following the approach adopted by Mortimer VP in the case of Director of Immigration v Chan Kam Nga (an infant) [1998]2 HKC 405 at 422 to 423: "The first task is to decide whether the words of the article bear a clear and plain meaning which involves neither anomaly nor absurdity. If so, that meaning must prevail and it is unnecessary to fall back upon other aids to construction."

5. The plain reading of Article 74 does not give rise to any anomaly or absurdity. Article 74 authorizes Members to introduce bills in accordance with the provisions of the Basic Law and legal procedures. Exceptions under this authorization are bills relating to public expenditure or political structure or the operation of the government which Members are not allowed to introduce. The other exception is in

respect of bills relating to government policies for which the written consent of the Chief Executive is required for introduction. It is clear that Article 74 is directed at the procedure of introduction of a bill as opposed to other possible procedures in the legislative process. The Basic Law contemplated that there would be amendments by Members to government bills, as evidenced by such reference in Annex II to the Basic Law. However, the details of procedures on amendment of bills are left to the Legislative Council to determine by way of rules of procedure.

6. On the suggested anomaly raised by the Solicitor General, it could be argued that it would be equally, if not more, anomalous if the same exceptions applied to CSAs because (given that most of the bills introduced by government would fall within one or more of the exceptions) it would deprive the Council of the opportunity to discuss and agree to proposals alternative to those proposed by government in a bill. This would raise serious doubt as to whether the Legislative Council was properly performing its constitutional function of enacting, amending or repealing laws under Article 73 of the Basic Law. The anomaly perceived by the Solicitor General may be seen as reflecting the intention of the Basic Law to leave open the question on proposed amendments to bills so that the Legislature may determine the proper checks and balances between the Executive and the Legislature through its rules of procedure.

Rules 57(6) and 69

7. In the first paragraph on page 2 of the Solicitor General's letter, it is said that Rules 57(6) and 69 do not reflect the correct interpretation of Article 74 of the Basic Law and are inconsistent with the Basic Law.

8. Rule 57(6) provides for the "charging effect" restriction on CSAs. Under that restriction any CSA which may have the object or effect of disposing of or charging any part of the revenue of Hong Kong can only be proposed by the Chief Executive (the CE), a designated public officer or a Member who has obtained the CE's consent in writing to the proposed CSA. Rule 69(3) provides for a procedure under which a Member may move an amendment to an appropriation bill by taking the form of reducing the amount allotted to a head of expenditure.

9. Rule 57(6) was not made to apply Article 74. In the Standing Orders of the previous Legislative Council, a standing order of substantially the same wording was made to implement the restriction imposed by the Royal Instructions. In the Rules of Procedure of the Provisional Legislative Council, the same provision was adopted as a 'self-imposed' restriction which Members found necessary because, in their view, which was never challenged by the Government, Article 74 did not apply to CSAs and no restriction on the moving of CSAs was found in the Basic Law.

10. As regards Rule 69, it is not clear in the Solicitor General's letter in what way it should be amended. If the suggested amendment would result in removing the procedure under which Members may amend an appropriation bill by way of reducing a proposed amount, it would mean the Legislative Council could only pass or not pass an appropriation bill (with or without amendments proposed by the Government only) when performing its function to examine and approve budgets and to approve taxation and public expenditure. This way of defining the role of the Legislative Council would be very different from that for the previous legislatures including the Provisional Legislative Council which had the same task as the current Legislative Council of examining and approving budgets, and approving taxation and public expenditure as provided in section 5(2) and (3) of the Preparatory Committee's decision to establish the Provisional Legislative Council. It may raise doubt as to whether it would upset the checks and balances between the Executive and the Legislature in the area of public financial control which have been in place for many years, both before and after the Reunification.

Application of Articles 48(10) and 74

11. The Solicitor General is suggesting that decisions as to whether a motion falls within the ambit of "regarding revenues or expenditure" as provided in Article 48(10) of the Basic Law and whether a bill falls within the areas relating to public expenditure, political structure or the operation of the government or government policies should be for the Chief Executive.

12. Under Rules 31 (relating to 'charging effect' restrictions on motion), 51(3) (relating to Article 74 restrictions) and 57(6) (relating to 'charging effect' restrictions on CSAs) of the Rules of Procedure, it is for the President to form an opinion as to whether a proposed motion, bill or CSA falls within the relevant restriction.

13. In Legal Adviser's view, even assuming that the Solicitor General's opinion as to the effect of Articles 48(10) and 74 is accepted by Members, a procedural rule which requires the President to form an opinion on the question is quite in order and would not contravene the Basic Law. The President is empowered by Article 72(2) of the Basic Law to decide on the Agenda of the Legislative Council. The power is subject only to the condition that government bills are to be given priority on the Agenda. It would, therefore, be the President's duty to determine whether a proposed motion, bill or CSA falls within the Basic Law restrictions in order to decide whether it could be printed on the Agenda.

14. While acknowledging that neither Article 48(10) nor Article 74 expressly identifies the decision-maker, the Solicitor General argues that it is by necessary implication that such decisions must be made by the CE.

15. The same argument of necessary implication could be applied in support of the requirement in the Rules of Procedure that it is for the President to form the relevant opinions. These Basic Law restrictions are imposed as part of the scheme of checks and balances between the Executive and the Legislature. Bearing in mind that the Legislative Council is specifically authorized to make its own rules of procedure, the requirement that the President form the relevant opinions could not reasonably be seen as contravening the Basic Law.

16. In terms of checks and balances, public officers may make representations to the President when there is a need for her to make a ruling and they may raise a point of order at a meeting of the Council.

17. Although not directly relevant, it should be noted that under Standing Order No. 23 of the Standing Orders of the previous Legislative Council, the President was given the authority to form an opinion as to whether a motion would have charging effect. That Standing Order was for the purpose of implementing Clause XXIV of the Royal Instructions which also did not specify the identity of the “decision-maker”.

Article 48(10)

18. The Solicitor General is of the opinion that Article 48(10) of the Basic Law applies to all kinds of motions which have any effect on revenues or expenditure as well as motions which are related to other aspects of revenue or expenditure.

19. Although the Solicitor General has suggested that the formulation in Rule 31 (the ‘charging effect’ restriction) is much narrower and more specific than “regarding revenues or expenditure” specified in Article 48(10), Legal Adviser would like to point out that despite the textual difference it does not necessarily follow that Rule 31 contravenes Article 48 (10). The issue for consideration is whether the rule accurately implements the rather vague expression of “regarding revenues or expenditure”.

20. Since all businesses of the Council are conducted by way of motion and because of the Council’s functions under the Basic Law many of the motions moved by Members might fall within the ambit of “regarding revenues or expenditure”. For example, a motion urging the Government to reduce tax or a motion to amend a piece of subsidiary legislation on increase of government fees. Members may wish to seek clarification from the Solicitor General as to how his opinion referred to in paragraph 19 above (see second paragraph on page 3 of the Solicitor General’s letter) would reflect the proper checks and balances between the Executive and the Legislature as intended by the Basic Law.

Voting Procedure

21. Legal Adviser has provided Members with his advice on the issue. In Legal Adviser's view, the voting procedure provision in Annex II of the Basic Law has to be read as a whole. Simply singling out a certain phrase in the provision and ignoring its interaction with others could easily produce a distorted meaning.

22. In Legal Adviser's view, the wording of the provision in Annex II of the Basic Law is so clear that it would not be necessary to resort to other aids to interpretation. Nevertheless, it would be useful for Members to take note of the attached part of the speech on voting procedure given by the Mr Ji Peng-fei at the National Peoples's Congress meeting held on 28 March 1990 when moving for the adoption of the draft Basic Law. Mr Ji's explanation of the rationale and operation of the relevant provision in Annex II of the Basic Law confirms that the Rules of Procedure are not in contravention with it.

Position of the President

23. Members are aware of the so-called "anomalous outcome" described by the Solicitor General and have decided that the neutrality or impartiality of the President could only be judged by the President's own conduct. The need for counting the presence of the President under the voting procedure is dictated by the Basic Law.

24. The Solicitor General's proposal is to provide in the Rules of Procedure that the presence of the President could be discounted for the purpose of vote counting in respect of bills or motions introduced by Members if the President decided not to vote. In Legal Adviser's view, the Solicitor General's proposal should be given more thought by Members. However, there may be problems concerning the quorum requirement under Article 75 of the Basic Law if a meeting is marginally quorate with 29 Members and the President when a vote is being taken.

Encl.

Prepared by

MA Yiu-tim, Jimmy
Legal Adviser
Legislative Council Secretariat
8 July 1998

關於《中華人民共和國香港特別行政區基本法 (草案)》及其有關文件的說明

——1990年3月28日在第七屆全國人民代表大會
第三次會議上

中華人民共和國香港特別行政區
基本法起草委員會主任委員 姬鵬飛

各位代表：

中華人民共和國香港特別行政區基本法起草委員會經過四年零八個月的工作，業已完成起草基本法的任務。全國人大常委會已將《中華人民共和國香港特別行政區基本法（草案）》包括三個附件和香港特別行政區旗幟、區徽圖案（草案），連同為全國人大代擬的《中華人民共和國全國人民代表大會關於香港特別行政區第一屆政府和立法會產生辦法的決定（草案）》和《香港特別行政區基本法起草委員會關於設立全國人民代表大會常務委員會香港特別行政區基本法委員會的建議》等文件提請全國人民代表大會審議。現在，我受香港特別行政區基本法起草委員會的委託就這部法律文件作如下說明。

根據《第六屆全國人民代表大會第三次會議關於成立中華人民共和國香港特別行政區基本法起草委員會的決定》，第六屆全國人大常委會第十一次會議任命了起草委員。1985年7月1日，起草委員會正式成立並開始工作。在制定了工作規劃，確定了基本法結構之後，起草委員會設立了五個由內地和香港委員共同組成的專題小組，即中央和香港特別行政區的關係專題小

組，居民的基本權利和義務專題小組，政治體制專題小組，經濟專題小組，教育、科學、技術、文化、體育和宗教專題小組，負責具體起草工作。在各專題小組完成條文的初稿之後，成立了總體工作小組，從總體上對條文進行調整和修改。1988年4月，起草委員會第七次全體會議公佈了《中華人民共和國香港特別行政區基本法（草案）》徵求意見稿，用五個月的時間在香港和內地各省、自治區、直轄市及有關部門廣泛徵求了意見，並在這個基礎上對草案徵求意見稿作了一百多處修改。1989年1月，起草委員會第八次全體會議採取無記名投票方式，對準備提交全國人大常委會的基本法（草案）以及附件和有關文件逐條逐件地進行了表決，除草案第十九條外，所有條文、附件和有關文件均以全體委員三分之二多數贊成獲得通過。同年2月，第七屆全國人大常委會第六次會議決定公佈基本法（草案）包括附件及其有關文件，在香港和內地各省、自治區、直轄市以及中央各部門，各民主黨派、人民團體和有關專家、人民解放軍各總部中廣泛徵求意見。經過八個月的徵詢期，起草委員會各專題小組在研究了各方面的意見後，共提出了專題小組的修改提案二十四個，其中包括對第十九條的修正案。在今年2月舉行的起草委員會第九次全體會議上，對這些提案採取無記名投票的方式逐案進行了表決，均以全體委員三分之二以上多數贊成獲得通過，並以此取代了原條文。至此，基本法（草案）包括附件及其有關文件的起草工作全部完成。

香港特別行政區旗幟、區徽圖案的徵集、評選工作，由起草委員五人以及內地和香港的專家六人共同組成的香港特別行政區旗幟區徽圖案評選委員會負責。在評委會對717件應徵稿進行初選和複選後，起草委員會對入選的圖案進行了審議、評選，由於未能選出上報全國人大審議的圖案，又由評委會在應

第四章政治體制主要規定了香港特別行政區的行政、立法以及司法機關的組成、職權和相互關係，規定了香港特別行政區行政長官、主要官員、行政會議和立法會成員、各級法院法官和其他司法人員以及公務人員的資格、職權及有關政策，還規定了香港特別行政區可設立非政權性的區域組織等等。

香港特別行政區的政治體制，要符合“一國兩制”的原則，要從香港的法律地位和實際情況出發，以保障香港的穩定繁榮為目的。為此，必須兼顧社會各階層的利益，有利於資本主義經濟的發展；既保持原政治體制中行之有效的部分，又要循序漸進地逐步發展適合香港情況的民主制度。根據這一原則，本章以及附件一、附件二對香港特別行政區政治體制有以下一些主要規定：

(一) 關於行政機關和立法機關的關係。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：為了保持香港的穩定和行政效率，行政長官應有實權，但同時也要受到制約。草案規定，行政長官是香港特別行政區的首長，對中央人民政府和香港特別行政區負責。行政長官領導香港特別行政區政府；簽署法案並公佈法律，簽署財政預算案；行政長官如認為立法會通過的法案不符合香港特別行政區的整體利益，可將法案發回立法會重議，如行政長官拒絕簽署立法會再次通過的法案，或立法會拒絕通過政府提出的預算案或其他重要法案，經協調仍不能取得一致意見，行政長官可解散立法會。草案又規定，政府必須遵守法律，向立法會負責；執行立法會制定並已生效的法律，定期向立法會作施政報告，答覆有關質詢，徵稅和公共開支需經立法會批准；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，必須徵詢行政會議的意見。同時又規定，如立法會以不少於全體議員三分

之二多數再次通過被行政長官發回的法案，行政長官必須在一個月內簽署公佈，除非行政長官解散立法會；如被解散後重選的立法會仍以三分之二多數通過有爭議的原法案或繼續拒絕通過政府提出的財政預算案或其他重要法案，行政長官必須辭職；如行政長官有嚴重違法或濫職行為而不辭職，立法會通過一定程序可提出彈劾案，報請中央人民政府決定。上述這些規定體現了行政和立法之間相互制衡、相互配合的關係。

(二) 關於行政長官的產生辦法。草案規定，行政長官在當地通過選舉或協商產生，報中央人民政府任命。行政長官的產生辦法要根據香港的實際情況和循序漸進的原則而規定，最終達到由一個有廣泛代表性的提名委員會按民主程序提名後普選的目標。據此，附件一對行政長官的產生辦法作了具體規定，在1997年至2007年的十年內由有廣泛代表性的選舉委員會選舉產生，此後如要改變選舉辦法，由立法會全體議員三分之二多數通過，行政長官同意並報全國人大常委會批准。行政長官的具體產生辦法由附件規定比較靈活，方便在必要時作出修改。

(三) 關於立法會的產生辦法和立法會對法案和議案的表決程序。草案規定，立法會由選舉產生，其產生辦法要根據香港的實際情況和循序漸進的原則而規定，最終達到全體議員由普選產生的目標。據此，附件二對立法會的產生辦法作了具體規定，第一、二屆立法會由功能團體選舉、選舉委員會選舉和分區直接選舉等三種方式產生的議員組成。在特別行政區成立的首十年內，逐屆增加分區直選的議員席位，減少選舉委員會選舉的議員席位，到第三屆立法會，功能團體選舉和分區直選的議員各佔一半。這樣規定符合循序漸進地發展選舉制度的原則。附件二還規定，立法會對政府提出的法案和議員個人提出

的方案、議案採取不同的表決程序。政府提出的法案獲出席會議的議員過半數票即為通過；議員個人提出的法案、議案和對政府的法案的修正案須分別獲得全體選舉的議員和分區直接選舉、選舉委員會選舉的議員兩部分出席會議的議員的各過半數票，方為通過。這樣規定，有利於兼顧各階層的利益，同時又不至於使政府的法案陷入無休止的爭論，有利於政府施政的高效率。在特別行政區成立十年以後，立法會的產生辦法和對法案、議案的表決程序如需改進，由立法會全體議員三分之二多數通過，行政長官同意並報全國人大常委會備案。立法會的具體產生辦法和對法案、議案的表決程序由附件規定，也是考慮到這樣比較靈活，方便必要時作出修改。

(四) 關於香港特別行政區行政長官、行政會議成員、立法會主席、政府主要官員、終審法院和高等法院首席法官以及基本法委員會香港委員的資格。草案的有關條文規定，擔任上述職務的人必須是在外國無居留權的香港特別行政區永久性居民中的中國公民。這是體現國家主權的需要，也是體現由香港當地人管理香港的原則的需要，只有這樣才能使擔任上述職務的人切實對國家、對香港特別行政區以及香港居民負起責任。也正是基於這一考慮，有關條文還規定，特別行政區立法會必須由在外國無居留權的香港特別行政區永久性居民中的中國公民組成。但照顧到香港的具體情況，允許非中國籍的香港特別行政區永久性居民和在外的有居留權的香港特別行政區永久性居民可以當選為立法會議員，但其所佔比例不得超過立法會全體議員的20%。

(五) 關於香港特別行政區第一屆政府和立法會的產生辦法。根據體現國家主權、有利平穩過渡的原則，香港特別行政區的成立須由全國人大設立的香港特別行政區籌備委員會負責主持。考慮到籌備工作須在香港特別行政區第一屆政府和立法會成

立之前進行，而基本法要到1997年7月1日才開始實施，起草委員會建議，全國人大對第一個政府和立法會的產生辦法作出專門決定，此項決定與基本法同時公佈。起草委員會為此起草了有關決定的代擬稿。規定香港特別行政區第一任行政長官，由香港人組成的推選委員會負責產生，報請中央人民政府任命；原香港最後一屆立法局的組成如符合全國人大關於特別行政區第一屆政府和立法會產生辦法的決定中的規定，其議員擁護基本法，願意效忠香港特別行政區並符合基本法規定條件者，經籌委會確認後可成為香港特別行政區第一屆立法會議員。這樣安排，是為了保證香港在整個過渡時期的穩定以及政權的平穩銜接。

此外，還規定行政長官、主要官員、行政會議和立法會成員、各級法院法官和其他司法人員在就職時必須宣誓擁護基本法，效忠中華人民共和國香港特別行政區。

五、關於經濟和教育、科學、文化、體育、宗教、勞工和社會服務。

第五章主要從財政、金融、貿易、工商業、土地契約、航運、民用航空等八個方面，就香港特別行政區的經濟制度和政策作了規定，這些規定對於保障香港的資本主義經濟機制的正常運行，保持香港的國際金融中心地位和自由港地位很有必要。如在金融貨幣方面規定，香港特別行政區不實行外匯管制政策，繼續開放外匯、黃金、證券、期貨等市場；保障一切資金的流動和進出自由；保障金融企業和金融市場的經營自由；確定港幣為特別行政區法定貨幣，可自由兌換，其發行權在特別行政區政府等等。又如在對外貿易方面規定，一切外來投資受法律保護；保障貨物、無形財產和資本的流動自由；除法律另有規定外，不徵收關稅；香港特別行政區為單獨的關稅地

Rulings on Members' Bills

This note provides information on the practices in common law jurisdictions, and in the former Legislative Council of Hong Kong, with regard to rulings over Members' bills.

Practice and Procedure in other common law jurisdictions

United Kingdom

2. In the House of Commons of the United Kingdom, any Member may, having given notice and subject to being given time on the specific days allotted each session for debate on private Members' bills, present a bill. Those Members (about 20 in each session) who are successful in getting a place in an annual ballot would have their bills put down for second reading on a day of their own choice and have the bills printed. Apart from those falling within the scope of financial procedures (explained in paragraph 3 below), any Member may move any bill including one directly in conflict with some aspect of Government policy. However, a bill introduced by an Opposition Member and which does not have the support of the Government would not be expected to be given a second reading and is often designed to give publicity to a political issue. It is nevertheless one way for back-benchers to initiate debates on matters of their choice.

3. The introduction of bills or motions by Members is subject to the fundamental principle governing the financial relationship between the Crown and the Parliament: the Crown demands money, the Commons grant it, and the Lords assent to the grant; but the Commons do not authorize expenditure or seek to impose taxes unless required by the Crown. These requirements are more specifically stated in two financial rules applying to the Parliament as a whole. First, that all charges (proposals for expenditure or taxation) must be demanded or recommended by the Crown before they can be considered. Second, all charges must first be considered by the House of Commons but must also be embodied in legislation for approval by both Houses.

4. The Parliament authorizes the various objects of expenditure and the sums to be spent on each; it also authorizes the levying of taxes. The authorization of public expenditure is often referred to as "charges upon the public revenue or upon public funds", while authorization of taxation is referred to as "charges upon the people". A charge of either kind must first be considered in the form of a resolution which, when agreed to by the House,

forms a necessary preliminary to the bill or clause by which the charge is authorized.

5. The rules of financial procedure are strictly observed by the House of Commons. Matters of interpretation are decided by the Speaker, or if they arise in committee of the whole House, by the Chairman. In discharging his duty to disallow any proceedings which would infringe the rules of financial procedure, the Chair relies in the last resort upon his power to decline to propose the necessary questions.

Canada

6. In Canada, the Standing Orders of the House of Commons also lay down procedures to regulate the financial relationship between the Parliament and the Crown. In gist, the relationship is as follows: “ the Crown demands money and Parliament grants it but the Commons do not vote money unless such taxation be necessary for the public service, as declared by the Crown through its constitutional advisers.”

7. In the Canadian system of parliamentary government, the Sovereign, as represented by the Governor General, and acting on the advice of His or Her responsible ministers, is charged with the management of all revenues of the State and the payment of all public expenditures. The Standing Orders of the Commons require that “ This House shall not adopt or pass any vote, resolution, address or bill for the appropriation of any part of the public revenue, or of any tax or impost, to any purpose that has not been first recommended to the House by a message from the Governor General in the session in which such vote, resolution, address or bill is proposed. The message and recommendation of the Governor General shall be printed with or annexed to any bill for the appropriation of any part of the public revenue or of any tax or impost.

8. Before legislation can be brought in to implement taxation measures, a Ways and Means motion must be concurred in. Such a motion shall be forthwith decided without debate or amendment. If there is a breach of these procedures, the Speaker can decide on the matter. The Speakers of the Commons have ruled many times in the past on the “charging effect”. In the case of Private Members’ Bills, the Speaker sometimes takes the initiative at the time of introduction of the bill and rules the bill out of order, or the Speaker may rule the bill out of order at the later part of the proceedings, e.g. upon third reading if there has been no “Royal Recommendation”, again on his own initiative or when a point of order is raised that the bill is not correctly before the House.

Australia

9. In Australia, the Parliament has the ultimate control over Government finances in that taxes are imposed and Government expenditure authorized by legislation which must be agreed to by the Parliament.

10. The Constitution stipulates that bills appropriating revenue or moneys or imposing taxation must originate in the House of Representatives (House); the Senate may not amend such bills. However, the Senate may request the House to make such amendments as the Senate itself is unable to make, and the House may, if it thinks fit, then make the amendments. The question of whether a request may be acceded to is not a strict law on which the courts will pronounce. It is a matter of constitutional propriety between the Houses themselves. If the House refuses to accede to a request, the Senate can refuse to pass the bill as a matter of law.

11. A private Member of the House may not initiate a bill imposing or varying a tax or requiring the appropriation of revenue or moneys as this would also be contrary to the constitutional and parliamentary principle of the financial initiative of the Crown, that is, that no public charge can be incurred except on the initiative of the Government. Taxation bills must be introduced by a Minister, and amendments to bills to increase the rate or widen the incidence of a proposed tax can likewise only be made by a Minister. An important point to note, nevertheless, is that any Member may move to reduce a tax proposed in a bill. The above requirements are reflected in the Standing Orders of the House.

12. The Speaker presides over the debates of the House. He is empowered to interpret the Standing Orders and precedents, deal with points of order when they are raised, and give rulings when called upon to do so.

Practice and Procedure in Hong Kong before the Reunification

13. In the former Legislative Council, the financial procedure applicable to the United Kingdom, as well as most other common law jurisdictions, also applied. The restriction that no Member could move bills, motions or Committee Stage amendments with "charging effect" was spelt out in the Royal Instructions and the Standing Orders of the Legislative Council. In the event that a Members' Bill was regarded as having a charging effect, the President reviewed the arguments put forward by the Government and the Member who introduced the Bill, and made a ruling on the Bill. Once the President had made a ruling, the decision was final.

14. As regards “charges on the people”, no provision was made in the Standing Orders of the former Legislative Council to restrict Members from introducing a Bill to levy taxation.

15. Another opportunity for Members to take initiative on revenue issues was the moving of amendments to reduce the level of tax in bills or motions brought into force by Public Revenue Protection Orders made by the Governor as an interim measure.

Legislative Council Secretariat

22 July 1998

**President's ruling
on proposed resolutions to amend the Employees Retraining Ordinance
(Amendment of Schedule 3) (No. 2) Notice 2008 proposed by
Hon Mrs Regina IP LAU Suk-yee and Hon LEE Wing-tat**

Hon Mrs Regina IP and Hon LEE Wing-tat have given notice to move proposed resolutions to amend the Employees Retraining Ordinance (Amendment of Schedule 3) (No. 2) Notice 2008 ("No. 2 Notice") at the meeting of the Legislative Council of 10 December 2008. In considering the admissibility of these proposed resolutions for consideration by the Council, I have invited the Administration to comment on the proposed resolutions and the Members concerned to respond to the Administration's comments. The Administration's comments and the Members' responses are summarized in the **Appendix** (not attached).

2. In the two submissions of the Administration, I notice that the Administration has addressed at some length the "lawfulness" of the Members' proposed resolutions. I wish to reiterate that the President determines the admissibility of the proposed resolutions in accordance with the Rules of Procedure of the Legislative Council ("RoP") only. My rulings are procedural in nature. Legal or constitutional issues would be considered when they form an integral part of the procedural question under my consideration. I shall take into account all relevant considerations and the purpose of the relevant rules when forming my opinion.

3. In the course of my consideration, I have made reference to the advice of Counsel to the Legislature in respect of the Council's power to amend subsidiary legislation, his analysis of the meaning of "public moneys" in the context of RoP 31(1), and also to past cases in the Council where references were made to principles of ultra vires and charging effect.

Employees Retraining Ordinance (Amendment of Schedule 3) (No. 2) Notice 2008

4. The Employees Retraining Ordinance (Cap. 423) ("ERO") establishes a body corporate, known as the Employees Retraining Board ("the Board"), to administer the Employees Retraining Fund ("the Fund") for providing training and retraining for local workers.

5. Under section 14 of ERO, a levy, known as the Employees Retraining Levy ("the levy"), shall be payable by each employer who employs imported employees under a labour importation scheme in respect of each imported employee to be employed by him under a contract of employment and granted a visa. The amount of levy payable is the sum specified in Schedule 3 of ERO multiplied by the number of months specified in the contract of

employment. Section 31(1) provides that the Chief Executive in Council ("CE-in-Council") may, by notice in the Gazette, amend Schedule 3.

6. On 1 August 2008, the Employees Retraining Ordinance (Amendment of Schedule 3) Notice 2008 ("Amendment Notice") was gazetted to reduce the sum of \$400 specified in Schedule 3 to \$0 for two years with effect from that date. The Amendment Notice was tabled in Council on 8 October 2008.

7. On 11 November 2008, the No. 2 Notice was gazetted to repeal the Amendment Notice and extend the reduction of the sum to \$0 for five years, and revert the sum to \$400 as from 1 August 2013. The No. 2 Notice was tabled in Council on 12 November 2008.

Hon Mrs Regina IP's proposed resolution

The proposed resolution

8. Mrs IP's proposed resolution seeks to amend the No. 2 Notice to the effect that the levy in respect of each imported employee to be employed under the "Scheme for Importation of Foreign Domestic Helpers ("FDHs")" approved by CE-in-Council on 25 February 2003 shall remain at \$0 from 1 August 2013 onwards, whereas the sum for each imported employee to be employed under any other labour importation scheme shall revert to \$400.

Ultra vires issues

9. The Administration refers to section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) and submits that Mrs IP's proposed amendment is not "consistent with" the power to make the No. 2 Notice, and hence is ultra vires section 31(1) of ERO. The argument put forward by the Administration is that in making the No. 2 Notice, CE-in-Council merely sought to provide temporary relief. As Mrs IP's proposed resolution seeks to dispense altogether with the need to impose a levy on the employers of FDHs for an indefinite period, contrary to ERO itself, the proposed amendment exceeds the power that CE-in-Council was exercising in making the No. 2 Notice. The Administration also argues that there is nothing in ERO indicating that differential levies may be set.

10. Mrs IP does not agree to the Administration's views. Mrs IP submits that if CE-in-Council may suspend the levy of \$400 for a fixed period of time, CE-in-Council must also have the power to extend the suspension period until further notice. Mrs IP also submits that there is no prohibition against CE-in-Council to apply different rates of levy.

11. Counsel advises me that there is no expressed or implied restriction on the length of period during which a certain specified amount of levy, including

the amount of "\$0", should apply to amendments made to Schedule 3 to ERO under section 31(1) thereof. Such length of period is essentially a question of policy. Counsel's view is that the proposed amendment is within the power of CE-in-Council to make, and it does not fall foul of the requirement that the amendment proposed to be made pursuant to section 34(2) of Cap. 1 has to be made in a manner consistent with the power to make the No. 2 Notice under section 31(1) of ERO.

12. As regards differential rates of levy, Counsel points out that section 7(2) of Cap. 1 provides to the effect that words and expressions in the singular include the plural and vice versa. Section 2(1) of the same provides that save where the contrary intention appears, section 7(2) applies to ERO. The references to "the amount of levy" and "the sum specified in Schedule 3" in section 14(2) of ERO, couched in the singular, can be easily explained by the fact that the reference they relate to is "in respect of each imported employee". To construe that wording as disallowing differential levies may well be too restrictive because different labour importation schemes may be approved which may need differential levies to cater for their individual circumstances. In Counsel's view, no contrary intention appears against construing the relevant provisions as allowing differential sums of levies to be specified.

13. Having considered the relevant sections of Cap. 1 and ERO and the views of the Administration, Mrs IP and Counsel, I am of the opinion that no provision is found in ERO which restricts the power of CE-in-Council in amending Schedule 3 in such a way that it has to be for a definite period. It is entirely a question of public policy to be reflected in Schedule 3. ERO does not impose any restriction regarding the duration that a specified amount of levy should apply and so the proposed amendment is not inconsistent with the ERO and thereby with section 34(2) of Cap. 1.

14. As regards differential rates, the Administration's submission fails to persuade me that there can only be one rate for the levy under ERO. I am therefore of the opinion that Mrs IP's proposed amendment to provide a separate rate in respect of the employees under the FDH scheme is not out of order.

Charging effect issue

15. The Administration is of the view that Mrs IP's proposed amendment has charging effect and hence is caught by RoP 31(1), which says:

"A motion or 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."

16. The Administration submits that the assets of the Fund plainly fall within the broad definition of "revenue or other public moneys". Whether sourced from employers by way of the levy or by subvention out of general revenue, the assets of the Fund can only be regarded as public and not private moneys. The Administration considers that the proposed amendment is an infringement which "fails to respect the Executive's financial initiatives", and "interferes with CE's constitutional responsibility to ensure that the Fund is at all time adequate to ensure that the Board can fulfil its statutory responsibilities". The Administration also submits that under section 27(2) of ERO, if and when the Fund's assets are no longer required, the assets may be transferred to general revenue.

17. The Administration further submits that the object or effect of the proposed amendment is to dispose of (i.e. to get rid of) the levy in relation to FDHs as from 1 August 2013. It would thereafter inexorably reduce the income of the Fund, and therefore the assets of the Fund.

18. The Administration has referred to my predecessor's ruling in 1998 in relation to the Pneumoconiosis Compensation Fund¹ and has made the comment that the President took far too narrow a view of the meaning of "revenue or public moneys". The Administration also argues that while the Government had not given any funding support to the Pneumoconiosis Compensation Fund in the past other than the initial loan facility in 1980 which had already been repaid in full in 1983, a zero levy post-2013 in relation to FDHs would necessitate reinstatement of government subventions to the Employees Retraining Fund if the purposes of ERO are thereafter to be fulfilled.

19. Mrs IP submits that judging from how the Fund is established, vested, maintained, used and operated under ERO, the Fund is independent of the Government and does not fall within the definition of "public moneys". Mrs IP also points out that the Administration's submission does not provide an accurate description as to what amounts to "public moneys".

20. Counsel advises that the Board, as a body corporate, has a distinct legal personality of its own. It is empowered to perform the Board's functions and exercise its powers on its own, subject to section 27 of ERO, which

¹ Ruling on Hon LEE Cheuk-yan's amendment to the Administration's resolution under the Pneumoconiosis (Compensation) Ordinance (Cap. 360) dated 20 July 1998

provides that CE may give to the Board such directions as he thinks fit in relation to the performance of its functions or the exercise of its powers and the Board shall comply with such directions. Nevertheless, where this happens, it is still the Board, and the Board alone, which performs its functions or exercises its powers. In this regard, section 2 of Schedule 1 to ERO specifically provides that the Board "shall not be regarded as a servant or agent of the Government or as enjoying any status, immunity or privilege of the Government".

21. Counsel points out that the definitions of "public moneys" in the Public Finance Ordinance (Cap. 2) and the Audit Ordinance (Cap. 122) are the only statutory definitions of the expression. These definitions not only appear in the two main ordinances dealing with public finance, but they also carry the same narrow meaning. As advised by Counsel, in today's public finance system of Hong Kong, funds that fall within the meaning of "public moneys" include, for example, the Capital Works Reserve Fund, Capital Investment Fund, and trading funds of various government departments. Regarding section 27(2) of ERO, Counsel points out that similar mechanisms are found in other ordinances, for example section 23C of the Probate and Administration Ordinance (Cap. 10), to deal with non-public moneys which are being held by a public authority.

22. In the light of Counsel's advice in paragraph 21 above, I share Counsel's view that there is a strong argument that the Employees Retraining Fund does not fall within the meaning of "other public moneys" in RoP 31(1). Counsel further advises that ERO does not place any statutory obligation on the Government to inject funds into the Fund on any account.

23. I note from the previous rulings of my predecessor the following principles which have been established in relation to the application of RoP 31(1):

- (a) any consequence on a statutory fund, not being the revenue or other public moneys of Hong Kong, incidental or direct, would not have any charging effect within the meaning of RoP 31(1); and
- (b) unless there is a relevant obligation under which the Government is bound by law, any effect that an amendment will have on government revenue will not constitute charging effect.

24. There is nothing in the Administration's submission to persuade me that the above principles should not apply in the present case. None of the points raised by the Administration could, on its own or taken together, establish to my satisfaction that the Employees Retraining Fund is within the meaning of "public moneys" of RoP 31(1). I have no alternative but to form

the opinion that the Fund is not a part of public moneys and so Mrs IP's proposed resolution does not have charging effect under RoP 31(1).

Hon LEE Wing-tat's proposed resolution

The proposed resolution

25. Mr LEE's proposed resolution seeks to provide for the reversion of the amount of the levy to \$400 to come into operation on a date to be appointed by the Secretary for Labour Welfare (SLW) subject to the approval of the Council.

26. The Administration has made a submission to object to Mr LEE's proposed amendment on grounds of ultra vires and charging effect, which I shall address later. Mr LEE's proposed amendment has also raised a drafting issue, which has called for a study of its compliance with section 28(4) of Cap. 1. In the course of my consideration, I have been assisted by Counsel to the Legislature on whether the drafting of the proposed amendment is in order. Under RoP 30(3)(c), I am under the obligation to direct the notice of a motion to be returned to the Member who signed it, if it is in my opinion out of order.

Ultra vires issues

27. Mr LEE's proposed amendment is to repeal section 1(1) of the No. 2 Notice, and substitute it with the following:

"(1) Section 2 shall come into operation on a date to be appointed by the Secretary for Labour and Welfare subject to the approval of the Legislative Council."

Section 2 reverts the amount of levy from \$0 to \$400. Section 1(1) is to enable section 2 to come into operation on 1 August 2013, with the effect that the \$0 levy will be in force for five years from 1 August 2008.

28. Mr LEE's proposed amendment comprises three operative parts:

- (a) that section 2 shall come into operation on a date to be appointed;
- (b) that the date shall be appointed by SLW; and
- (c) that the commencement of section 2 shall be subject to the approval of the Council.

29. Counsel advises me that Mr LEE's proposed amendment contains no requirement that the appointment be "by notice", which is always present in commencement clauses providing for the commencement date to be appointed. According to Counsel, the statutory provision that governs the commencement

of subsidiary legislation is section 28(3) and (4) of Cap. 1. The relevant provision for the present purpose is subsection (4), which provides:

"A person who makes subsidiary legislation may provide for the subsidiary legislation to commence on a day to be fixed by notice to be given by him or by some other person designated in the subsidiary legislation.".

The effect of subsection (4) is to empower the maker of the subsidiary legislation to defer the fixing of a commencement date to another date to be appointed by notice, and the notice may be given by himself or by another person. Where this power to defer the fixing of a commencement date is exercised, it is clear that the power has to be exercised as provided, that is, by notice.

30. I have looked closely at the relevant provision in the context of section 28 of Cap. 1 and noted how the requirement of "notice" relates to the definition of subsidiary legislation. I agree with Counsel that the requirement to make the appointment of the commencement date "by notice" is essential to the valid exercise of the power to make such an appointment. Hence, it follows that Mr LEE's proposed resolution is ultra vires the said subsection (4) as the governing provision.

31. The Administration's objection to Mr LEE's proposed amendment is also on ultra vires ground but on a basis different from that referred to in the foregoing paragraphs. The Administration's submission refers to the third part of Mr LEE's proposed amendment, i.e. the commencement of the reversion of the amount of levy to \$400 shall be subject to the approval of the Council. The Administration points out that a notice made under section 31(1) of ERO including the commencement provision as set out in section 1 of the No. 2 Notice is a form of subsidiary legislation which is subject to the requirement of section 34 of Cap. 1 that it be tabled in Council, i.e. the negative vetting procedure². Mr LEE's proposed amendment has the effect of making the commencement subject to section 35 of Cap. 1, i.e. the positive vetting procedure³. While section 31(1) of ERO is not subject to section 35 of Cap. 1, the proposed imposition or importation of such a requirement would have the effect of applying the requirement of section 35 of Cap. 1 to the making of subsidiary legislation under section 31(1) of ERO. The Administration

² Under the negative vetting procedure provided in section 34 of Cap. 1, all subsidiary legislation is to be tabled at the next Council meeting after the publication in the Gazette of the subsidiary legislation. The Council may amend an item of subsidiary legislation by a resolution passed at a Council meeting held not later than 28 days after the meeting at which it was tabled. The Council may also extend the scrutiny period by 21 days, or to the Council meeting immediately following the 21 days, if there is no Council meeting on the 21st day.

³ Under the positive vetting procedure provided in section 35 of Cap. 1, where any ordinance provides that an item of subsidiary legislation is to be subject to the Council's approval, the item must be submitted to the Council for approval.

considers that it is beyond the scope of powers under section 31(1) to make such an amendment, which may only be achieved by way of an amendment ordinance.

32. In Mr LEE's submission, he argues that there is nothing in section 35 or other parts of Cap. 1 that requires that amendments to a provision to the effect that it be submitted for the approval of the Council could only be made when the provision itself is subject to the requirement of section 35 of Cap. 1. Mr LEE also points out that there is no previous ruling that such an amendment is "beyond the scope of power".

33. I accept the Administration's submission that the imposition of requirements of section 35 of Cap. 1 to the making of the subsidiary legislation, i.e. a commencement notice, under section 31(1) of ERO is beyond the powers given to CE-in-Council by the same section. Accordingly, I rule Mr LEE's proposed amendment out of order.

Charging effect issue

34. As I have already formed the opinion that Mr LEE's proposed amendment is ultra vires, I shall not deal with the issue of whether it has charging effect under RoP 31(1).

My ruling

35. I rule that:

- (a) Hon Mrs Regina IP may move her proposed resolution to the No. 2 Notice at the Council meeting of 10 December 2008; and
- (b) Mr LEE Wing-tat's proposed resolution is out of order and its notice be returned to him under RoP 30(3)(c).

(Jasper TSANG Yok-sing)
President
Legislative Council

8 December 2008

**President's ruling on proposed resolution to repeal
the Country Parks (Designation) (Consolidation) (Amendment) Order 2010
proposed by Hon Tanya CHAN**

Hon Tanya CHAN has given notice to move a proposed resolution to repeal the Country Parks (Designation) (Consolidation) (Amendment) Order 2010 ("Amendment Order") at the meeting of the Legislative Council ("LegCo") on 13 October 2010. In considering whether the proposed resolution is in order under the Rules of Procedure, I have invited the Administration to comment on the proposed resolution and Hon Tanya CHAN to respond to the Administration's comments, and sought the advice of Counsel to the Legislature ("Counsel"). I have also obtained a legal opinion from Senior Counsel Mr Philip Dykes.

Country Parks (Designation) (Consolidation) (Amendment) Order 2010

2. According to the LegCo Brief on the Amendment Order, the latter seeks to amend the Country Parks (Designation) (Consolidation) Order (Cap. 208 sub leg B) to replace the original approved map in respect of the Clear Water Bay Country Park ("CWBCP") with a new approved map, for the purpose of excising the area to form part of the proposed South East New Territories ("SENT") Landfill Extension from the original approved map of CWBCP. The Amendment Order is to come into operation on 1 November 2010.

3. The Administration explains in the LegCo Brief that the SENT Landfill will be full by around 2013-2014. The Environmental Protection Department ("EPD") has proposed to extend the lifespan of the SENT Landfill by another six years by expanding it by 50 hectares ("ha"). The 50 ha extension includes an encroachment of about five ha of land of CWBCP¹. EPD consulted the Country and Marine Parks Board ("CMPB") several times since December 2005 on the encroachment. Taking into account the advice of CMPB, the Director of Agriculture, Fisheries and Conservation, as the Country and Marine Parks Authority ("the Authority"), sought permission from the Chief Executive ("CE") in Council to invoke section 15 of the Country Parks Ordinance (Cap. 208) to refer the original approved map of CWBCP to the Authority for replacement by a new map so as to excise from the original approved map the encroachment area. A draft replacement map was prepared by the Authority in accordance with Cap. 208 and made available for public inspection².

¹ The other areas covered by the 50 ha extension are 30 ha of piggy-backing over the existing SENT Landfill and 15 ha of the adjoining Tseung Kwan O Area 137.

² The draft replacement map was made available for public inspection for a period of 60 days with effect from 14 November 2008.

4. According to the LegCo Brief, CMPB rejected all objections to the draft map on 30 March 2009 after having considered all the written objections, the opinions of those attending the hearing sessions, the Authority's representations and EPD's explanations. CE in Council approved the draft map of CWBCP on 30 June 2009 under section 13(1) of Cap. 208. In accordance with section 13(4) of Cap. 208, the Authority deposited the new approved map in the Land Registry on 17 July 2009. On 25 May 2010, the Executive Council advised and CE ordered that the Amendment Order should be made under section 14 of Cap. 208.

Hon Tanya CHAN's proposed resolution

5. Hon Tanya CHAN's proposed resolution seeks to repeal the Amendment Order.

The Administration's comments

6. The Administration submits that it is unlawful for a LegCo Member to propose a resolution to repeal the Amendment Order as to do so would be inconsistent with the power to make the Amendment Order under section 14 of Cap. 208. The Administration's view is based on its interpretation of the provisions of sections 28(1)(b) and 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1). Section 28(1)(b) provides that "no subsidiary legislation shall be inconsistent with the provisions of any Ordinance", while section 34(2) provides that "[w]here 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 provide that such subsidiary legislation shall be amended in any manner whatsoever consistent with the power to make such subsidiary legislation.....". By virtue of section 3 of Cap. 1, the expression "amend" in section 34(2) includes "repeal".

7. The Administration argues that section 14 of Cap. 208 is cast in mandatory terms by using the term "shall", which means "must" in this context. CE's power under the section is limited and he is bound to implement the decision of CE in Council under section 13 by making the Amendment Order. Further, it could not have been the statutory intention and the purpose of Cap. 208 to empower CE to repeal the Amendment Order and undo the elaborate statutory process for the designation which covers several stages, i.e. preparation of a draft map; public consultation; adjudication of objections; submission and approval of the draft map; deposit of the approved map; and designation of country park, as set out in sections 8 to 14 of Cap. 208. Hence, CE's power to make the Amendment Order does not include the power to repeal it. "Amend" in section 28(1)(b) of Cap. 1 in the context of Part III

(i.e. sections 8 to 15) of Cap. 208 does not include “repeal” as there is contrary intention in Cap. 208.

8. The Administration also argues that CE’s power to designate is expressed as a duty imposed by section 14 of Cap. 208. CE shall designate the area shown in the new map as it has been earlier approved by CE in Council and deposited in the Land Registry. If he were not to do so, it would be contrary to his duty and in fact would be in defiance of the statutory scheme and, in particular, the decision of CE in Council under section 13 of Cap. 208. The Administration considers that if CE is allowed to refuse to order the designation resulting from the elaborate statutory process or to repeal it, it would lead to the absurd consequence that CE would be empowered to undo the statutory process and set at naught years of work carried out in accordance with the statutory provisions.

9. The Administration submits that CE cannot on his own initiative repeal the Amendment Order without going through the same statutory process. LegCo therefore equally has no power to stop altogether the area shown in the new approved map from becoming a country park, as LegCo’s power to amend the Amendment Order must be in a manner “consistent with the power to make such subsidiary legislation”, as provided in Cap. 34(2) of Cap. 1. While CE has the power to change the commencement date of the Amendment Order as this would not be inconsistent with section 14 of Cap. 208, any amendment on the commencement date cannot be made in such a way as to make the Amendment Order inconsistent with the statutory duty imposed by Cap. 208. Hence, although LegCo can amend the commencement date of the Amendment Order, LegCo cannot amend it in such a way as to negate the statutory duty imposed on CE by Cap. 208. Neither can LegCo amend the commencement date in such a way as to make the Amendment Order inconsistent with that statutory duty imposed by Cap. 208, or frustrate the statutory duty imposed by Cap. 208, or delay the date of commencement unduly.

10. The Administration has also advanced other supporting arguments in its submission which I shall not repeat here. A copy of the submission is in the **Appendix**.

Hon Tanya CHAN’s comments

11. Hon Tanya CHAN submits that the Administration’s position that LegCo does not have the power to repeal the Amendment Order is premised solely on its interpretation of section 14 of Cap. 208, with which she does not agree. She further submits that the explicit limitations imposed by section 14 are that before CE could make any order to designate, two conditions must have been fulfilled, i.e. a draft map has been approved under section 13; and the approved map has been deposited in the Land Registry. Under section 14, CE has no power to designate any area other than an area shown in the

approved map to be a country park or to designate any area shown in the approved map not to be a country park. In this sense, CE has no discretion in the designation, and for this matter, CE must make the designation by order in the Gazette.

12. Miss CHAN considers that the statutory duty alleged to have been imposed on CE by the word “shall” in section 14 of Cap. 208 could not have overridden CE’s duty to decide on government policies under the Basic Law (“BL”). In her view, it is plainly absurd to see section 14 as having imposed an overriding duty on CE that requires him to ignore everything else.

13. Miss CHAN points out that section 15 of Cap. 208 allows CE to refer an approved plan under section 13 to the Authority for it to be replaced by a new map or amended. In such a case, provisions contained in sections 8 to 14 of Cap. 208 will apply, and there is no requirement that such a referral could only be made after a designation under section 14 has been made. She considers that it is lawful for CE to make the referral without making a designation after a map has been approved under section 13.

14. Miss CHAN also considers that the Administration has made an unwarranted assumption that any repeal of an order of designation whether in operation or not is a refusal to order designation and would undo the elaborate statutory process and set at naught years of work carried out in accordance with the statutory provisions. In her view, repeal of a designation will legally be no bar to the making of another order to designate the area shown in the same map approved by CE in Council under section 13 to be a country park.

My opinion

15. By virtue of Article 66 of BL, LegCo is the legislature of the Hong Kong Special Administrative Region (“HKSAR”). Under Article 73(1) of BL, the powers and functions of LegCo include “to enact, amend or repeal laws in accordance with the provisions of this Law and legal procedures”. The difference of views between the Administration and the subcommittee formed to scrutinize the Amendment Order as represented by its Chairman, Hon Tanya CHAN, brings into focus the constitutional role and power of LegCo to intervene under the negative vetting procedure as stipulated by section 34 of Cap. 1.

16. In his legal opinion, Mr Philip Dykes, SC, has stated the applicable constitutional principle that “LegCo must have effective oversight of the exercise of all legislative power and relevant legislation governing the exercise of law-making powers, such as the IGCO [Cap. 1] should be construed so as to give effect to this principle”. He points out that the use of statutory provisions to delegate law-making power to third parties, such as government officials, public bodies and private bodies, is necessary for effective law making, and

that there should be no constitutional objection to CE or CE in Council possessing such devolved authority, as long as LegCo can scrutinize the laws made under such authority. In his view, “[t]o construe a statute in such a way as to permit the donee of a legislative function the power to legislate and be immune from such scrutiny would be to undermine the constitutional legislative authority of LegCo”. For this reason, section 34 of Cap. 1 is important because it is one of the means by which LegCo controls the product of a devolved legislative authority.

17. Mr Dykes also makes the point that it would be anomalous to the extreme if LegCo identified a legal flaw in the decision-making process leading to the making of subsidiary legislation but could not do anything about it. He considers that the legislature should be the body primarily responsible for quality control of the laws made in the legislative process, and that it should be able to rectify as of right perceived defects and not have to wait upon the courts for remedies.

18. My view is that LegCo has the constitutional duty to scrutinize subsidiary legislation and correspondingly has the power to amend or repeal when it is appropriate to do so. The statutory provisions in any ordinance which grant powers to make subsidiary legislation should not in the absence of clear words or manifest legislative intention be interpreted to mean that LegCo has abdicated its control over the exercise of those powers. It is only reasonable that Members will be wary if LegCo’s power to intervene in the process of law making under delegated authority were to be restricted beyond what is permissible under BL.

19. My view set out above is in agreement with my predecessor’s ruling made in May 1999 when the effect of section 34(2) of Cap. 1 on the power of LegCo to amend a piece of subsidiary legislation was considered. The issues then considered concerned the admissibility of a motion proposed to repeal certain clauses of a bill scheduled to an order made by CE under section 2 of the Public Revenue Protection Ordinance (Cap. 120). My predecessor has usefully set out the relevant principles that should apply: “[i]n a normal case where the Legislative Council is seeking to amend a piece of subsidiary legislation under section 34(2) of Cap. 1, as long as the proposed amendment conforms with requirements of the Rules of Procedure, the Legislative Council would be able to amend by way of repeal, addition or variation of the subsidiary legislation in question. However, because of the requirement in section 34(2) of Cap. 1 that an amendment to a piece of subsidiary legislation can only be made consistent with the power to make the subsidiary legislation in question, the true extent of the Legislative Council’s power to amend the Order has to be examined in the context of theOrdinance”.

20. The key question that I have to consider now is whether in the passage of Cap. 208, in particular section 14, LegCo had agreed to abdicate its control over the power for CE to make orders under section 14, which reads: “[w]here

the Chief Executive in Council has approved a draft map under section 13 and it has been deposited in the Land Registry, the Chief Executive shall, by order in the Gazette, designate the area shown in the approved map to be a country park”.

21. To assist me in answering this question, I have made comparison with the relevant provisions of the Town Planning Ordinance (Cap. 131) which deal with the notification in the Gazette of plans submitted by the Town Planning Board and approved by CE in Council. Section 9(5) of Cap. 131 stipulates: “[o]n such approval being given [by CE in Council] the approved plan shall be printed and exhibited for public inspection at such place as the Board may consider suitable and the fact of such approval and exhibition shall be notified in the Gazette”. Counsel advises me that upon approval by CE in Council, the statutory process for approval of plans is complete. Such notices in the Gazette are not subject to section 34 of Cap. 1 and LegCo has no power of intervention.

22. I have asked myself whether in the case of section 14 of Cap. 208, LegCo similarly has no role to intervene when an order is made under section 14. I find that there is an obvious difference between the two cases. Unlike plans approved by CE in Council under section 9(2) of Cap. 131, the statutory process for the designation of a country park is not yet complete when CE in Council approves the draft map. The final step in the statutory process for the designation of a country park is for CE to make a designation order under section 14 of Cap. 208. Such designation is made by an order published in the Gazette which is subject to LegCo’s scrutiny under section 34(2) of Cap. 1. This is different from making a notification in the Gazette of the approved plans as in the case under Cap. 131. I am satisfied that the publication of an order made under section 14 of Cap. 208 is not merely for the purpose of notification.

23. The Administration contends that because of the use of the word “shall”, section 14 of Cap. 208 has imposed on CE a duty that he must discharge without any discretion. CE must make an order when the two aforesaid conditions specified in the section have been met, and cannot do anything to stop or amend the designation, including moving a motion to repeal an order he has made under that section. The Administration argues that the power to repeal under section 28(1)(c) of Cap. 1 is thus displaced by contrary intention in section 14. These interpretations clearly render the negative vetting procedure ineffective and deprive LegCo of its function of overseeing the exercise of powers in relation to subsidiary legislation. I have to be satisfied that section 14 does manifest a contrary intention that the statutory provisions that empower CE and LegCo to amend, and therefore repeal, an order made under the section should not apply.

24. In my view, the word “shall” in section 14 of Cap. 208 means three things. First, it stipulates that CE must make the designation, when the two

conditions in the section have been met. This is the duty that the Administration has emphasized. Second, it prescribes the only way the designation should be made i.e. by order in the Gazette. Third, CE must designate the area shown in the approved map to be a country park. He cannot designate any area other than an area shown in the approved map to be a country park or to designate any area shown in the approved map not to be a country park.

25. Counsel advises me that any statutory duty should carry with it powers incidental to the discharge of that duty unless such powers are displaced by clear wording in or necessary implication of the statute which imposes such duty. The authority responsible for discharging the duty has to ensure that the duty is properly discharged in pursuance of the purposes of the relevant statutory provisions. In my opinion, the powers which CE should have, in the discharge of his duty under section 14, include the power to determine when an order for the designation should be made and come into effect, and to initiate a motion in LegCo to repeal the order which he has already made, if there are good reasons to do so. Moreover, the repeal of the Amendment Order by LegCo's exercise of its power to amend under section 34(2) of Cap. 1 will not go against the mandatory obligations of CE as signified by the expression "shall". I am not convinced that section 14 of Cap. 208 rules out CE's power to move a motion of repeal.

26. I have also asked myself whether repeal of an order made under section 14 of Cap. 208 will lead to non-compliance with the requirements in Cap. 208, or result in such unreasonable consequences that any reasonable person would construe that retaining the power to repeal such an order could not have been the original intention of LegCo. The Administration argues that the repeal of the Amendment Order would put the statutory process for the designation that has gone before to naught. Counsel advises me that if the Amendment Order is repealed by LegCo, the Amendment Order would be taken as if it had never been made, and CE may make another order under section 14 of Cap. 208.

27. I note that section 15(1) of Cap. 208 allows CE in Council to refer an approved map made under section 13 to the Authority for it to be replaced by a new map or amended. In such a case, provisions in sections 8 to 14 of Cap. 208 will apply. Counsel advises that there is no requirement in Cap. 208 that such a referral may only be made after an order under section 14 has been made by CE. In view of Counsel's advice, I am satisfied that repeal of an order made under section 14 will not lead to non-compliance with the requirements in Cap. 208 or result in unreasonable consequences. If the Administration fails to persuade LegCo not to exercise its power to repeal an order made by CE under section 14 for the designation of a country park, referrals may be made under section 15(1) after taking into account the views of LegCo. Such a scenario may be considered as an example of how LegCo may effectively oversee the exercise of delegated legislative power by the

executive authorities.

28. As a result of my above analysis, I am satisfied that neither section 14 of Cap. 208 nor Cap. 208 when read as a whole expresses or manifests any contrary intention that the power of LegCo to amend, and therefore repeal, subsidiary legislation under section 34 of Cap. 1 has been displaced.

My ruling

29. I rule that Hon Tanya CHAN's proposed resolution is in order under the Rules of Procedure and may be moved at the LegCo meeting on 13 October 2010.

(Jasper TSANG Yok-sing)
President
Legislative Council

11 October 2010

**Member's Proposed Repeal of the
Country Parks (Designation) (Consolidation) (Amendment) Order 2010**

Administration's Submission to the President of the Legislative Council

This submission addresses the following question:

Is it lawful for a Member of the Legislative Council ("LegCo") to propose a resolution to repeal the Country Parks (Designation)(Consolidation) (Amendment) Order 2010, L.N. 72 of 2010?

Summary of our submission

The Administration as advised by Mr Michael Thomas, QC, SC is firmly of the view that the answer is in the "**Negative**" as to do so would be inconsistent with the power to make subsidiary legislation under s.28(1)(b) and s.34(2) of Cap. 1 -

- S.14 of Cap. 208 is cast in mandatory terms by using "shall" which means "must" in this context.
- The power of the CE under s.14 of Cap. 208 is limited and he is bound to implement the decision of the CE in Council under s.13 by making the Designation Order.
- It could not have been the statutory intention and purpose of Cap. 208 to empower the CE to undo the elaborate statutory process by repealing the Designation Order.
- The power of the LegCo to amend under s.34(2) of Cap. 1 the Designation Order must be in a manner "consistent with the power to make such subsidiary legislation".
- Power to amend under s.28(1)(c) and s.34(2) of Cap. 1 is subject to contrary intention of the specific Ordinance (i.e. Cap 208 in the present case) and "amend" does not include "repeal" upon a proper construction of the statutory context of Part III of Cap. 208.
- It follows that the LegCo's power to amend is no wider than the power the CE has under Cap. 208.
- There are fundamental flaws in the argument that since the Designation Order has not yet commenced, it can be repealed without affecting any designation.
- Any purported repeal of the Designation Order is a purported repeal of the designation of the country park.

- It is not disputed that the LegCo can seek to amend the commencement date of the designation for a reasonable period of time as the CE so can do and hence the negative vetting power of LegCo is not rendered nugatory.

Our detailed submission

Common grounds

2. For present purpose, we assume the following propositions not to be in dispute:
 - (a) that L.N. 72 of 2010 is “subsidiary legislation” within the meaning of s. 34(1) of the Interpretation and General Clauses Ordinance (Cap 1) (“Designation Order”);
 - (b) that the power of repeal conferred by s. 34(2) upon LegCo is as broad in scope as, but is no broader than, the scope of the power of the Chief Executive (CE) under section 14 of the Country Parks Ordinance (Cap 208);
 - (c) that upon the tabling of any resolution proposing to repeal the L.N. 72 of 2010, the President of LegCo is bound to consider and to form an opinion on what is essentially a matter of law, namely whether the proposed repeal is consistent with the power of the CE to make the L.N. 72 of 2010; and
 - (d) that if the President forms an opinion that the proposed repeal is inconsistent, it will follow that no amendment can be lawfully proposed by a member.

The issue

3. The current issue to be addressed is, therefore, whether the proposed repeal of the L.N. 72 of 2010 is consistent with the power to make the L.N. 72 of 2010 within the meaning of s. 34(2) of Cap 1.

Inconsistency with the power to make subsidiary legislation and section 34(2) of Cap 1

4. S.28(1)(b) of Cap.1 provides that “no subsidiary legislation shall be inconsistent with the provisions of any Ordinance”. S. 34(1) of Cap. 1 empowers the LegCo to amend subsidiary legislation tabled before it “in any manner whatsoever consistent with the power to make such subsidiary legislation”.

5. The proposed repeal of the L.N. 72 of 2010 is objectionable because it is inconsistent with the provisions of s. 14 of Cap 208, and hence, is not “consistent with” the power to make the subsidiary legislation L.N. 72 of 2010 and goes beyond the power conferred by s. 34(2) of Cap 1.

The statutory scheme for the designation

6. The designation by L.N. 72 of 2010 was an act of the CE performed pursuant to s. 14 of Cap 208.
7. S.14 of Cap 208 does not provide the CE with unlimited power to make an order designating any area in an approved map to be a country park nor an option to refuse to designate a new plan once it has been approved by the CE in Council.
8. The designation order only forms part of the statutory scheme provided under Part III of Cap 208, and any designation of any area in an approved map (including amendment/replacement of an approved map) as a country park must follow the statutory scheme.
9. The statutory scheme for the designation of a country park under Part III of Cap 208 comprises the following stages –

(A) Preparation of a draft map stage

- (a) The Authority (i.e. Director of Agriculture, Fisheries and Conservation) shall consult the Country and Marine Parks Board on the preparation of a draft map (s. 8 of Cap 208).

(B) Public consultation stage

- (b) A draft map prepared by the Authority shall be published by notice in the Gazette (s.9(2)(a) of Cap 208);
- (c) A copy of the notice shall be published in 3 issues of one English language and 2 Chinese language daily newspaper and be displayed in some conspicuous part of the proposed country park (s.9(2)(b) of Cap 208);
- (d) A copy of the draft map shall be made available for public inspection at the offices of the Government for a period of 60

days from the date of the publication of a notice (s. 9(3) of Cap 208).

- (e) Any new development to be carried out within the area of the proposed country park shall require an approval of the Authority (s. 10 of Cap 208).

(C) Adjudication of objections stage

- (f) During the 60-day public inspection period, any person aggrieved by the draft map may send to the Authority and the Secretary of the CMPB a written statement of his objection (s.11(1) of Cap 208);
- (g) The Secretary of the CMPB shall fix a time and place for the hearing of the objection by the CMPB (s. 11(4) of Cap 208);
- (h) The CMPB shall make a determination after hearing an objection whether it may –
 - (i) reject the objection in whole or in part; or
 - (ii) direct the Authority to make amendment to the draft map to meet such objection in whole or in part. (s.11(6) of Cap 208).

(D) Submission and approval of the draft map stage

- (i) The draft map (including a schedule of objections and representations made under s. 11) shall be submitted to the CE in Council for approval (s. 12 of Cap 208);
- (j) The CE in Council, upon submission of a draft map under s. 12, shall -
 - (i) approve the draft map;
 - (ii) refuse to approve it; or
 - (iii) refer it to the Authority for further consideration and amendment.(s. 13 of Cap 208)

(E) Deposit of the approved map stage

- (k) The map approved by CE in Council shall be signed by the Authority and be deposited in the Land Registry (s. 13(4) of Cap 208).

(F) Designation of country park stage

- (l) After the approval of the map by CE in Council and deposit of such map in the Land Registry, the CE shall by order in the Gazette, designate the area shown in the approved map to be a country park (s. 14 of Cap 208).

10. It is clear from the above that designating a country park is the final stage of the statutory process, following preparation of a draft map of the proposed country park, public consultation on the draft map, consideration of any objections raised in respect of the draft map by the CMPB, adjudication of the objections by CMPB and consideration regarding the approval of the draft map by the CE in Council.

11. The designation power of the CE under s.14 of Cap. 208 is limited. All that the CE can do under s.14 of Cap. 208 is to implement the decision made by the CE in Council under s.13 of Cap. 208 by ordering that the area shown in the approved map be designated as a country park. This coincides with the statutory wording in s. 14 of Cap 208, which provides that –

“Where the Chief Executive in Council has approved a draft map under section 13 and it has been deposited in the Land Registry, the Chief Executive **shall**, by order in the Gazette, designate the area shown in the approved map to be a country park”. (emphasis added)

12. Put simply, the CE is **bound** (and has no option but to proceed) to make a designation under s.14 of Cap 208 where the CE in Council has approved a draft map and that such map has been deposited in the Land Registry. If s.14 of Cap 208 were to be construed otherwise, thereby allowing CE to refuse to order the designation resulting from the elaborate statutory process or to repeal it, the work of the Authority in preparing, and of the CE in Council in approving a draft map, and also the deposit of the signed map in the Land Registry would have no legal effect, and the public consultation through the objections system as well as the adjudication made by the CMPB in respect of any objections raised in relation to a draft map would also be rendered futile. Such a construction would lead to the

absurd consequence that the CE would be empowered to undo and set at nought years of work carried out in accordance with the statutory provisions. That simply could not have been the statutory intention and purpose of Cap 208.

LegCo's powers

13. The factual background leading to the making of the L.N. 72 of 2010 is set out at the Annex for easy reference.
14. S. 34(2) of Cap. 1 provides that “[w]here 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 ... provide that such subsidiary legislation shall be amended in any manner whatsoever consistent with the power to make such subsidiary legislation ...”. Because of the definition in s. 3 of Cap. 1, ‘amend’ must include ‘repeal’.
15. Taken on its own, the phrase ‘amended in any manner whatsoever’ in s. 34(2) may suggest that LegCo has a wide power to stop or delay the newly mapped area from becoming a country park in the present case. But the very next words have a severely limiting effect on that power. LegCo’s resolution may only amend (or repeal) the L.N.72 of 2010 ‘in a manner consistent with the power to make such subsidiary legislation.’ ‘Consistent’ must mean in this context ‘compatible’. So the intention is that LegCo can only do what the CE is himself empowered or enabled to do.
16. That takes one back to s. 14 of Cap. 208 and its context. First, the CE’s power to designate is expressed as a duty imposed by the section. The CE shall (which means in the context ‘must’) designate the newly mapped area as it has been earlier approved by the CE in Council, and shown in the signed and deposited plan. If he were not to do so, it would be contrary to his duty and in fact, would be in defiance of the statutory scheme and in particular, the decision of the CE in Council under s. 13 of Cap 208. Similarly, without going through the same statutory process, the CE cannot on his own initiative repeal the Designation Order made under s.14 of Cap 208 in accordance with the decision made by the CE in Council in respect of an approved map under s. 13 of Cap 208.
17. The exercise of the LegCo’s power under s. 34(2) of Cap 1 in the present case shall be consistent with the power of the CE to make the L.N. 72 of 2010. Put simply, LegCo has no power to stop altogether the newly

mapped area from becoming a country park (by resolving to repeal the order). The simple reason is: CE could not do that and neither can LegCo.

18. Cap. 208 provides a mechanism for changing a designation of a country park under s.15. This involves going through the statutory procedure set out in ss. 8 to 14 including consultations and objections. The CE cannot simply repeal a designation order under s.14. He must follow the statutory procedure as required by s.15.

Response to LegCo legal adviser's views (as contained in LC Paper No. LS99/09-10 dated 5 October 2010)

Statutory duty on CE to order the designation by gazette

19. Under **s.28(1)(b)** of the Interpretation and General Clause Ordinance, Cap.1:

“Where an Ordinance confers power on a person to make subsidiary legislation, the following provisions shall have effect with reference to the subsidiary legislation- no subsidiary legislation shall be inconsistent with the provisions of any Ordinance”.

20. As stated in para. 12, s. 14 of Cap. 208 imposes a duty on the CE, as maker of the order in the Gazette to designate the area shown in the approved map to be a country park. The CE, as the maker of that order (as subsidiary legislation), cannot amend (or repeal) the order in such a way as to make it inconsistent with that statutory duty imposed by Cap.208, i.e. to designate the area approved by the CE in Council as country park.
21. LegCo's legal adviser accepted that: “under section 14 CE has no power to designate any area other than an area in the approved map to be a country park or to designate any area not to be a country park. In this sense, CE has no discretion in the designation. **For this matter, CE must make the designation by order in the Gazette.** These are the explicit limitations imposed by section 14.” (*emphasis added*)
22. The CE clearly has the power to change the commencement date of the Designation Order as this would not be inconsistent with the provision in s. 14. But even so the amendment on the commencement date cannot be in such a way as to make the Order inconsistent with the statutory duty

imposed by Cap.208. For example, the Designation Order cannot be amended to commence only in the far distant future, for the CE has the statutory duty to designate the area by order in the Gazette within a reasonable period.

Power of LegCo to amend the designation order gazetted

23. It is common ground that the power of LegCo to amend the designation order gazetted must be **in a manner “consistent with the power to make such subsidiary legislation”** (s.34 (2) of Cap.1).
24. In other words, the power LegCo has to amend any subsidiary legislation must be consistent with, and therefore not wider than, the power the maker of the subsidiary legislation has.
25. Such a limitation on LegCo’s power pursuant to s.34 of Cap.1 is trite and is not disputed. See President’s ruling dated 3 May 1999 on proposed resolutions under s. 34(2) of Cap 1 to amend the Public Revenue Protection (Revenue) Order 1999 and advice of LegCo Assistant Legal Adviser in respect of the mechanism for toll variation under s. 36 of the Tate’s Cairn Tunnel Ordinance (Cap. 393) and s. 55 of the Eastern Harbour Crossing Ordinance (Cap. 215) contained in paras. 6 & 7 of LC Paper No. CB(1)2150/09-10 and para. 4 of LC Paper No. CB(1)2153/04-05.
26. Applying s.34 of Cap.1, in seeking to amend the designation order gazetted, LegCo’s power must be consistent with, and therefore not wider than, the power the CE has under Cap.208. Therefore, LegCo:
 - (1) cannot amend (including repeal) the order in such a way as to negate the statutory duty imposed on CE by Cap.208, i.e. to designate the area approved by the CE in Council as country park;
 - (2) can amend the commencement date of the order. But even so the amendment on the commencement date cannot be in such a way as to make the order inconsistent with that statutory duty imposed by Cap. 208. Even so, the amendment of the commencement date cannot be done in such a way as would frustrate the statutory duty imposed by Cap. 208, or delay the date of commencement unduly (i.e. beyond a reasonable time).

The alleged distinction between “the order in the gazette” and “the designation”

27. The argument put forward by LegCo’s legal adviser, as we understand it, is as follows:

- (1) The limitations on the LegCo’s power to amend the gazetted order imposed by section 14 of Cap.208 “only require that the consequence of a repeal is not to affect any designation of country park” (para.4 of LegCo’s paper).
- (2) The LegCo’s power to amend (including repeal) is subject to the limitations mentioned above. There is nothing in section 14 that rules out repeal so long as the limitations set out above are not infringed.
- (3) The arguments of DoJ would render the power of negative vetting by LegCo nugatory.
- (4) The gazetted order has not yet come into operation. The commencement date stated in section 1 is 1 November 2010. This means that the designation made under the Amendment Order is not yet effective. Any repeal of the Amendment Order will not be a repeal of any designation. The designation made in respect of plan CP/CWB^B approved on 18 September 1979 by Governor in Council remains in full force.

Not any designation of country park, but designation of the area approved by CE in Council as country park

28. With respect, the above views of the LegCo’s legal adviser have ignored the statutory duty imposed by s.14 on the CE. It is not just to order in the gazette the designation of any area approved by CE in Council as country park (such as the designation of the approved plan back in 1979). The duty imposed by s.14 on the CE is to “**by order in the Gazette, designate the area shown in the approved map to be a country park.**” (i.e. **the map CP/CWB_B approved on 30 June 2009 by the CE in Council**). If the LegCo purports to repeal the gazetted order, it would definitely affect and defeat the designation of **the area shown in the approved map** (approved by CE in Council on 30 June 2009) to be a country park.

Gazetted order already effective to create the designation

29. LegCo's legal adviser seems to take the view that **because the commencement date has not yet arrived**, the gazetted order is not legally effective to create the designation. Since the order is not effective to create the designation, the repeal of the gazetted order itself does not have the effect of repealing the designation. Therefore there is no infringement of the limitations on the power of the LegCo in making any amendment (including repeal).

30. With respect, there are fundamental flaws in this analysis:

- (1) It would be illogical to split the gazetted order from the designation. The CE designates a country park by making the order in the gazette. The only purpose and effect of the gazetted order is the designation of the country park as approved by CE in Council. There is nothing in Cap.208 supporting such a distinction or creating additional hurdles to clear before the gazetted order can effect the designation. There is nothing in Cap.208 or Cap.1 or elsewhere providing that the gazetted order can only effect a designation upon, say, completion of negative vetting by LegCo, or upon the order coming into operation on the commencement date.
- (2) The designation of the country park is already complete, valid and effective in law once the CE's order is gazetted. The fact that it does not come into operation immediately upon publication of the gazette but only upon the commencement date on 1 November 2010 does not in any way affect its validity and effectiveness as the instrument to designate the area approved by CE in Council as country park.
- (3) The provision in the gazetted order of a specific commencement date itself cannot possibly be the decisive factor creating a fundamental difference to the power on the part of the CE or the LegCo to amend (including repeal) the order or the designation.
- (4) Whether the CE or LegCo can amend or repeal the Designation Order does not depend on whether the Designation Order has come into operation or not. For under Cap.208, the CE **shall** gazette the order to implement the decision of the CE in Council. He has no power to do anything to prevent the

implementation of the approved plan by designation, though he has power to select an appropriate date on which the change shall take effect.

- (5) The legislative process to designate must have been completed at the time when the Designation Order is published in gazette. It is valid and effective in law, albeit not having yet come into operation. Otherwise, there is no point to talk about amendment or repeal. One amends or repeals a piece of legislation which is already complete in law, not something in the making. This is also borne out by s.32 of Cap.1, which shows that postponing the operation of an Ordinance does not mean the Ordinance is incomplete or ineffectual.

“(1) Where an Ordinance is to come into operation on a day other than the day of its publication in the Gazette, a power to do anything under the Ordinance may be exercised at any time after its publication in the Gazette.

(2) An exercise of a power under subsection (1) is not effective until the provision in the Ordinance to which it relates comes into operation unless the exercise of the power is necessary to bring the Ordinance into operation.”

- (6) Nor can the fact that the gazetted order is subject to negative vetting affect the validity and completeness of the gazetted order as subsidiary legislation. This is clear from the wording of s.34(2) of Cap.1 itself:

“(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 publication in the Gazette of such resolution.**

- (7) Any purported repeal of the gazetted order is a purported repeal of the designation of country park.

Negative vetting power of LegCo not rendered nugatory

31. Negative vetting power of LegCo is not rendered nugatory. As mentioned, without being inconsistent with the provisions of s.14 of Cap.208, LegCo can seek to amend the commencement date of the designation.

“Amended” in s.28(1)(c) of Cap. 1 does not in the context of Part III of Cap. 208 include “repealed”

32. LegCo’s legal adviser further argues that the CE, as the maker of the Designation Order, has power to repeal because of s. 28(1)(c) of Cap 1. This argument fails to take into account that the exercise of the power of s. 28(1)(c) of Cap 1 is premised on the original power of the specific ordinance and is in fact subject to any contrary intention as provided in such specific ordinance (see s. 2(1) of Cap 1 and s. 28(1)(b) of Cap 1). In the present case, the exercise of the power in s. 28(1)(c) by the CE (if required) is subject to the intention of Cap 208. S.15 provides a statutory mechanism for changing a designation of a country park and replacement of an approved plan which displaces any general power. In any event, any power of repeal derived from ss. 28(1)(c) or 34(2) would still be subject to the restriction imposed on the CE, as maker, under s.14 and the statutory framework of Cap. 208. Consequentially, “amended” in s.28(1)(c) and “amend” in s.34(2) do not in the context of Part III of Cap. 208 include “repealed” or “repeal”.

Whether “excision” of land from country park a permissible exercise of power under s.15 of Cap. 208 ?

33. It has been suggested that according to the construction of Cap 208, land within the boundary of a country park can only be extended, but not excised. With respect, we do not agree. It is clearly provided in s. 15 that the CE in Council may refer any map approved by him under s. 13 to the Authority for replacement of a new map or for amendment and there is nothing in Cap. 208 which suggests that such replacement or amendment can only be used for the extension of the boundary. Hence, such replacement or amendment of the map can be for the extension or excision of any map approved under s. 13 of Cap 208.

34. A similar issue was dealt with in the case *Lai Pun Sung v the Director of Agriculture, Fisheries and Conservation and the Country and Marine*

Parks Board, HCAL 83/2009. In that case, the applicant challenged that the land previously designated as country park could not be switched to other land-use, like landfill purpose. The court in considering the construction of s. 15(1) of Cap 208 said that -

“...the only point that I need to consider in the present proceedings is whether, assuming it can be demonstrated or it has been demonstrated that there is an overriding need for use of the land as a landfill site, it is still beyond the power of the Chief Executive in Council under section 15(1) to refer the matter to the Authority for a replacement or amendment of the map for the country park designating its parameters. As I said, there is nothing in the Ordinance which suggests that this cannot be done.”

Department of Justice

7 October 2010

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**Factual background leading to
the making of the L.N. 72 of 2010**

1. The making of the Designation Order in the L.N.72 of 2010 in the present case forms the last step of the statutory scheme for the designation of the area in the map approved by CE in Council as the Clear Water Bay Country Park (CWBCP).
2. After many many rounds of discussion with the District Council and CMPB (including site visits to SENT Landfill) and numerous items of improvement works done by the Administration, the CMPB on 11 September 2008 recommended the excision of the proposed encroached area from the approved map of the CWBCP by invoking the statutory procedure under section 15 of Cap 208.
3. Pursuant to section 15 of Cap 208, CE in Council on 21 October 2008 referred the original approved map of the CWBCP to the Authority for replacement of a new map to excise the relevant 5 hectares of land affected by the proposed SENT Landfill Extension from the approved map.
4. In accordance with sections 8 and 9 of Cap 208, the draft replacement map was prepared and made available for public inspection for a period of 60 days with effect from 14 November 2008.
5. A total of 3,105 objections (the bulk of them are proforma objections) were received during the objection period. By exercise of the power of the CMPB under section 11(6) of Cap 208, the hearing of the objections to the draft map took place in six sessions in March 2009. After considering all the written objections, the views of those attending the hearing sessions, the Authority's representations and the explanation of the Environmental Protection Department (EPD) as the project proponent, the CMPB agreed to the excision of the 5 hectares of land from the CWBCP and rejected all objections on 30 March 2009 and issued a position statement to objectors while notifying them in writing of its decision. In response to the CMPB ' s

recommendation for enhancing the facilities of the CWBCP to provide better enjoyment for park visitors as compensatory measures for the loss of five hectares of country park land, the Authority has suggested, and EPD has agreed to, implement the following enhancement measures -

- (a) Ecological enhancement by inter-planting of native species in some 5 hectare of exotic woodland in the CWBCP to support various forms of wildlife;
 - (b) Upgrading of educational displays in the CWBCP Visitor Centre;
 - (c) Setting up of interpretative signs at Tai Hang Tun to provide better education facilities for park visitors; and
 - (d) Provision of guided tours at the Visitor Centre for the public.
6. Pursuant to section 12 of Cap 208, the draft map with the five hectares of land excised from the approved map together with the schedule of objections and representations made under section 11 were submitted to CE in Council for consideration.
7. On 30 June 2009, after considering the submission made under section 12 of Cap 208, CE in Council in exercise of the power under section 13(1)(a) of Cap 208 approved the draft replacement map.
8. According to section 13(4) of Cap 208, the replacement map approved by CE in Council under section 13(1) was deposited in the Land Registry on 17 July 2009.
9. On 25 May 2010, the CE ordered that the Country Parks (Designation)(Consolidation)(Amendment) Order 2010 should be made under section 14 of Cap 208 to designate the area in the replacement map approved by CE in Council as the CWBCP. The Designation Order in the legal notice (LN72/2010) was accordingly made and published in the Gazette on 31 May 2010.
10. The statutory scheme under Part III of Cap 208 (see paragraph 10 above) has all along been followed in the making of the Designation Order. In other words, the draft map had gone through the stages of

public consultation and adjudication of objection by the CMPB. It was also approved by the CE in Council and was deposited in the Land Registry. It comes to the last stage of the statutory scheme that designation shall be made by the CE in relation to the area in the map approved by the CE in Council as the CWBCP.

11. The foregoing reinforces our submission that the CE at this stage is bound, as he so did, to make a designation under s.14 of Cap 208 in respect of the area shown in the map no. CP/CWB_D approved by the CE in Council as the CWBCP and it is not open to him nor the LegCo to undo the entire statutory process by repealing the Designation Order at this stage.
12. It is understood that no person would be pleased to have a waste disposal facility built or extended in his/her backyard. However, it is the hard fact that the SENT Landfill would reach its full capacity in the next 3 to 4 years and there would be a real waste disposal problem in Hong Kong as the SENT Landfill would reach its full capacity in 2013-14 and the alternative long term waste disposal facilities (such as the construction waste management facility) has yet to be in place. The Administration faces an imminent need to extend the SENT Landfill (including encroaching 5 hectares of land of the CWBCP situated next to it) so that the SENT Landfill extension could operate for six more years pending the introduction of alternative long term waste disposal facilities.

PRESIDENT'S RULING

Immigration (Amendment) (No. 2) Bill 1995

Mr. LEE Cheuk-yan indicated his intention to introduce a Private Member's Bill entitled Immigration (Amendment) (No. 2) Bill 1995 and has presented me with the draft Bill requesting me to give my opinion on whether or not the said Bill has a charging effect under S.O. 23.

2. On 30 November 1995 I indicated my opinion, and I now record the reasons therefor.

3. At the outset it may be helpful if I explain what I consider to be my duty in approaching questions involving "charging effects". The phrase is a convenient shorthand expression to encompass the principle laid down in Royal Instruction XXIV(2) that—

"Every Ordinance, vote, resolution, or question, the object or effect of which may be to dispose of or charge any part of Our revenue arising within the Colony, shall be proposed only by —

- (a) the Governor;
- (b) a public officer whom the Governor has designated to make such a proposal under clause XXIB, paragraph (2); or
- (c) a member of the Legislative Council expressly authorised or permitted by the Governor to make such a proposal."

4. This principle is then reflected in the Legislative Council's Standing Order No. 23, which is applied to Bills by Standing Order No. 39(2). Standing Order No. 23 provides that —

"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 Governor;
- (b) a public officer designated by the Governor under Standing Order No. 4B (Attendance of Public Officers); or
- (c) a Member of the Council expressly authorized or permitted by the Governor to make such a proposal."

5. Although the President's function under S.O. 23 is expressed in discretionary terms it is not a purely subjective discretion. Rather he is required to act fairly and reasonably, and to take into account all relevant considerations, then to reach his opinion having weighed all relevant considerations in an objective way.

6. There is a further important aspect of the President's function under S.O.23, which is worth repeating here because it underlines the important balancing duty which he

has to perform. S.O. 23, which reflects RIXXIV(2), is based on the constitutional principle of the "financial initiative of the Crown"; that is to say, it is for the Crown to demand public monies for public expenditure, and for the Legislature to grant. Hence if the Crown raises "charging effect" objections to a Private Member's Bill the President must give very serious consideration to the Crown's arguments in support, for it is his duty to act in accordance with the constitutional principle of the "financial initiative of the Crown". On the other hand, it is also the President's duty to preserve the constitutional principle, enshrined in RIXXIV(1) that, subject to "charging effect" considerations, any Member of the Legislative Council is entitled to propose any question for debate in the Council; and this includes the presentation to the Council of a Private Member's Bill.

7. In summary, therefore, when the Crown objects to a Private Member's Bill on "charging effect" grounds it is the President's duty to consider such objections very seriously; but not uncritically, for otherwise the constitutional "competence" of Private Members to introduce Bills will be nullified, contrary to RIXXIV(1).

8. The operative provisions in the draft Bill are contained in clause 2, which proposes to add 3 subsections to the existing section 11 dealing with permission to land and conditions of stay. Of the 3 proposed subsections, only (1B) and (1C) are relevant for present purposes. The third proposed subsection, (1D), merely provides an exclusionary definition of "domestic duties" as used in (1B) (a), upon which nothing turns in the present context.

9. Proposed subsections (1B) and (1C) in effect provide that an immigration officer/assistant shall not give permission to foreign nationals (not having a statutory right to land and remain in Hong Kong) to land or remain in Hong Kong for the purpose of employment here unless the immigration officer/assistant is satisfied that the relevant employment is either solely for domestic duties or requires some special skill, knowledge or experience which is likely to be of value to but may not be available in Hong Kong.

10. I have sought the Administration's view on (1) the Bill, (2) Mr. LEE's arguments that the Bill does not have a charging effect and can proceed without the Governor's authorisation or permission, and (3) Counsel to the Legislature's opinion on a comparison of the law as it exists and as proposed.

11. The Administration's principal stated argument for the Bill having a charging effect is concerned with 'returnees', i.e. foreign workers who make trips out of Hong Kong, returning within the period during which they are permitted to work here. The Administration argues that the present system of immigration control, being free from statutory rules limiting immigration officials' discretion, enables purely administrative arrangements to be put in place under which no individual reappraisal of a returnee is legally mandatory. It then points to the legal position under the Bill if enacted, and argues that the Bill's requirements would in effect legally oblige the staff of the Immigration Department to re-assess a foreign national's skill, knowledge or experience in relation to the current labour market situation on each and every occasion he returns to Hong Kong.

12. According to the Administration, this replacement of "a prerogative scheme" by a statutory one obliges the Government to act in a particular way with regard to immigration control for the purposes of employment, and to bear the cost.

13. Mr. LEE, on the other hand, has stated that it is neither the purpose nor the effect of the Bill to require reassessments on each and every occasion that a returnee returns. Rather, he contends, in the case of returnees, when an employment visa of one or two years is granted to a person it means that that person has satisfied statutory requirements throughout the valid period of one or two years as specified in his visa. Hence a new assessment would not be necessary on each and every occasion he enters Hong Kong. When the Bill is enacted the Director of Immigration only needs to issue an internal directive to his Department to exempt persons holding valid employment visas from being assessed again on each and every occasion they enter Hong Kong.

14. In response to Mr. LEE's comments the Administration has asserted that, regardless of his intentions as to the purpose of the Bill, the effect of it would be to require Immigration personnel to assess a person's skill upon reentry, and the Director of Immigration cannot override a statutory requirement by administrative means such as by issuing an internal directive to the staff of his Department.

15. At my request Counsel to the Legislature has given an opinion on a comparison of the law as it exists and as proposed.

16. In summary, he is of the view that although the present system of immigration control gives a large measure of discretion to immigration officials it is important to note that that discretion is not unfettered. He points out that by concentrating on the absence of statutory rules the Administration gives insufficient attention to the existence of modern common law principles governing the exercise of any statutory power. In his view these principles establish that under the Immigration Ordinance statutory power is conferred for public purposes and that, in the words of an eminent authority on administrative law, that power "is conferred as it were upon trust not absolutely - that is to say, it can be validly used only in the right and proper way which (the legislature) when conferring it is presumed to have intended".

17. Counsel to the Legislature is therefore of the opinion that when exercising powers under the Immigration Ordinance the Administration is already under a legal duty to take into account relevant considerations regarding immigration for the purposes of employment. He advises that even under current law, the Administration has a duty to inform itself, to a reasonable degree, about employment matters relevant to the question of immigration. Furthermore, under Regulation 2(4) of the Immigration Regulations, the Director of Immigration clearly must make an informed decision relevant to the particular employment for which entry is sought. This Regulation is subsidiary legislation to be read with the principal ordinance.

18. Counsel to the Legislature then points out that what the Bill requires is for Immigration personnel to be "satisfied" about certain matters, but it does not direct them as to the method of satisfaction. Hence the legal obligations upon Immigration personnel imposed by proposed subsection 11(1B) and 11(1C) can only properly be analysed in the context of the relevant provisions of the Ordinance as amended.

19. In that context the first point to note is that the subsections would operate with the existing section 11(1). Under section 11(1) immigration officials have a discretionary power to grant or refuse permission to land. The exercise of the discretion is not subject to any express statutory directions but is, as noted above, subject to the common law requirement of reasonableness. The subsections, if enacted, would impose new statutory directions on immigration officials as to exercise of their discretion in cases of foreign nationals seeking entry into Hong Kong for all types of employment except domestic work in private households.

20. Whether or not these new statutory directions would have the legal effect of imposing new functions on immigration officials, amounting to a "charging effect". depends upon the lawful methods which would be available to the officials to exercise the statutory power.

21. Under the subsections immigration officers are required to be satisfied that a foreign national's intended employment "requires some special skill, knowledge or experience which is likely to be of value to but may not be available in Hong Kong." (section 11(1C)).

22. Counsel notes that the Administration considers that the only lawful way for an immigration official to so satisfy himself is to re-assess the foreign national's skill, knowledge or experience in relation to the current labour market situation on each and every occasion he returns to Hong Kong.

23. The key question, therefore, is whether this is indeed the only lawful method available to the immigration officials upon enactment?

24. In Counsel's view the Administration's position appears to overlook the legal significance of other provisions in the Ordinance, with which section 11(1B) and 11(1C) would operate. In particular section 11(2) is not amended by the bill. Section 11(2) is legally significant in that it provides the power for immigration officials to impose limits of stay and conditions of stay. It is, therefore, an important legislative measure in the overall immigration control provisions contained in the Ordinance. Without it section 11(1B) and 11(1C) would be unworkable because the immigration official, in the absence of the section 11(2) power to fix a time dimension to "may not be available in Hong Kong", could only conclude that the permission would have to be either totally unlimited as to time or otherwise operative only for the moment of time when permission was granted. The former would be entirely contrary to the clear legislative intention to ensure orderly and reasonable control of immigration. The latter would make section 11(1B) and 11(1C) a legal nonsense.

25. The legal effect of section 11(1B) and (1C), when read together with section 11(2), is therefore, in Counsel's view, that upon first entry the immigration official is obliged to satisfy himself that the foreign national's proposed employment requires some special skill etc. which may not be available within a certain period. What that period should amount to is something for the official to decide. The period will then be reflected in the permission conditions imposed by him under section 11(2). If, after first entry, the foreign national leaves Hong Kong and then returns within the period of time covered by his original permission the legal position is as follows —

- (a) his original permission has expired (section 11(10));
- (b) the immigration officer must be satisfied in terms of section 11(1B) and 11(1C) before he grants new permission.

26. The vital question, Counsel advises, is what minimum test as to satisfaction should be applied by the immigration officer to a returnee? Would the proposed law require him to investigate the individual circumstances of each returnee, even if the returnee is returning within the period during which he was permitted to work? In Counsel's view the proper interpretation of 11(1B) and 11(1C), when examined in the context of the Ordinance and, in particular, section 11(2) is that an immigration officers could lawfully be "satisfied" for the purposes of 11(1C), without the need for a reappraisal de novo, in the case of a returnee returning within the period during which he was originally permitted to work in Hong Kong under section 11(2).

27. In response to Counsel's opinion the Administration reasserted that under existing law, immigration controls are imposed in accordance with policy guidelines which are applied administratively; that the Bill changes the present position fundamentally; and that the new obligations would oblige the Administration to incur more public expense.

28. I have carefully considered all the views presented. I am satisfied that the existing scheme of immigration control is not a mere administrative measure which may or may not be carried out by immigration officials. It is a statutory function under the Immigration Ordinance and its subsidiary legislation, and in immigration for employment purposes it is already subject to a degree of reasonableness concerning the extent of relevant matters which must be taken into account; so that the additional provisions in the Bill are not sufficient, in my opinion, to justify the Administration's assertion that the Bill imposes new and distinct functions in the context of the established Parliamentary test set out in *Ersine May* (21st Ed) at p.712. And I quote:

"In order to constitute a charge upon public funds, expenditure must be new and distinct"; and

"The comparison of provisions in a bill with the law on the subject, as it exists, may show that, while such provisions undoubtedly involve expenditure, the power to incur such expenditure is covered by general powers conferred by statute."

I consider this test to be appropriate to Hong Kong's constitutional circumstances.

29. Accordingly it is my opinion that the Bill in question does not have a charging effect for the purposes of S.O. 23.

Andrew WONG
President

5 December 1995

**Ruling by the President on
Hon Cyd HO's proposed amendment to clause 59
(concerning the functions of District Councils)
in the District Councils Bill**

The Hon Cyd HO has given notice to move a Committee Stage amendment (CSA) to clause 59 (concerning the functions of District Councils) of the District Councils Bill, by adding a new paragraph (c) stipulating that one of the functions of the District Councils is to “receive and handle complaints from residents of Hong Kong”.

2. I am required to rule under Rule 57(6) of the Rules of Procedure whether the proposed amendment, if passed, will have a charging effect. If this is so, then the amendment requires the written consent of the Chief Executive.

The Administration's views

3. The Secretary for Constitutional Affairs considers that the amendment has a “charging effect” as the new proposal, if enacted, may entail an extension of the enacted purposes of expenditure or increase the expenditure potentially liable to be incurred in pursuit of such purposes. The Secretary assesses that the additional annual staff costs required to enable the District Councils to perform the proposed function is \$15 million at present day value. The Secretary also considers that the amendment falls within the meaning of “relating to public expenditure” under Article 74 of the Basic Law, since such an additional statutory function will require additional funding from public revenue.

Hon Cyd HO's response

4. Ms Cyd HO has stated that District Boards (DBs) current already have a “meet the public scheme” which is operated by DB members on a roster. Also the Home Affairs Department allocates funds to DB members to enable them to set up district offices to serve the public including handling their complaints. The purpose of her amendment is to formally include such work in the functions of District Councils and no additional expenses would be incurred.

Counsel to the Legislature's opinion

5. Clause 59 of the Bill provides for the functions of a District Council. They are of two categories. Under clause 59(a), a District Council is to advise the Government on a range of specified matters. Under clause 59(b), a District Council is to undertake certain activities where funds are made available. Hon Cyd Ho's proposed amendment to clause 59 is to add a new category of functions by adding a new subclause to the effect that a District Council would have the function to "receive and handle complaints from Hong Kong residents".

6. According to information provided by the Administration to the Bills Committee studying this bill, existing Provisional District Boards are already administering "Meet the Public Schemes" to enable members of the Provisional District Boards to meet the public and to receive complaints from them. In considering whether a proposed amendment would have charging effect, the existence of a scheme or function which is administered or performed administratively and not pursuant to a requirement of the law does not exempt the proposed amendment from such consideration.

7. According to rulings made by former Presidents, where a new function is imposed upon a body created by statute in terms which require that it shall do a certain thing, the inevitable consequence is that there will be a charge on the public revenue if the doing of that act requires the spending of public money. Government is in those circumstances obliged to provide the money necessary to enable that act to be done. Furthermore, where a new discretion is conferred on that body, the body is of course free not to do the act, in which case no question of public expenditure will arise; but it is equally free to do the act, in which case the question of public expenditure will arise. It is in those circumstances that the effect of an amendment may be to dispose of or charge public revenue within the meaning of Rule 57(6).

8. The applicable test for considering whether the proposed amendment of this nature would have charging effect is whether the proposed statutory function required to be undertaken is one which is not provided for under existing law. If it is not, then if the President is satisfied that the performance of that new function will require the spending of public money, it may be held to have charging effect within the meaning of Rule 57(6). Although the practical effect of the proposed amendment would be to change an

administrative scheme to a statutory one, it does not exempt the proposal from charging effect considerations.

Ruling

9. The President is bound by the Rules of Procedure made by the Legislative Council in pursuance of Article 75 of the Basic Law. Since the Rules of Procedure only require me to form an opinion as to whether the object or effect of an amendment may be to dispose of or charge any part of the revenue or other public moneys of Hong Kong, I shall not deal with other points arising from the Administration's view on the merit or otherwise of the proposed amendment or its understanding of the effect of Article 74 of the Basic Law.

10. By administrative arrangements, District Board secretariats currently provide assistance for those District Board members who participate in the "Meet the Public Scheme" on a voluntary basis. Ms HO's proposed amendment seeks to make it a statutory function of District Councils to receive and handle complaints from Hong Kong residents. This would be quite distinct from the existing administrative arrangements for District Board members to meet the public. The Government will be legally obliged to devote resources for this function if the proposed amendment is passed.

11. For the reasons given in paragraph 10, I rule under Rule 57(6) of the Rules of Procedure that Ms HO may not move the amendment to clause 59 without the written consent of the Chief Executive.

(Mrs Rita FAN)
President
Legislative Council

8 March 1999

**Ruling by the President on
whether there is charging effect in Hon LEE Cheuk-yan's amendment to
the Administration's resolution under the
Pneumoconiosis (Compensation) Ordinance, Cap. 360**

Hon LEE Cheuk-yan has given notice to move an amendment to the Secretary for Education and Manpower's resolution to be moved under the Pneumoconiosis (Compensation) Ordinance (the Ordinance) at the Council meeting on 22 July 1998. Mr LEE's amendment seeks to raise the compensation for bereavement from \$70,000 to \$150,000, as against the Administration's proposed increase of the compensation to \$100,000.

The Administration's views

2. The Secretary for Education and Manpower claims that Mr LEE's amendment will have charging effect as described in Rule 31 of the Rules of Procedure of the Legislative Council. His reasons are set out in paragraphs 3 to 5 below.
3. Compensation made under the Ordinance is funded by a levy imposed on the construction works undertaken and quarry products produced in Hong Kong, which have a value above \$1 million. The Government is liable to paying the levy through the tendered contract prices to the contractors and quarry operators concerned for its construction projects. Mr LEE's amendment may result in an increase in levy and the Government may be required to incur increased expenditure through higher contract prices.
4. It has been the Government's policy to revise the levels of compensation under the Pneumoconiosis Ex-Gratia Scheme in step with the revision of levels of compensation under the Ordinance. Mr LEE's amendment may result in a depletion of the fund in the Scheme, leaving the Government with no choice but to inject public money into it.
5. The Secretary quotes from Eskiné May that a charge upon public funds (revenue) or upon the people (taxation or levy) cannot be considered by the legislature unless it is demanded by or recommended from the Crown. As the Secretary is of the view that Mr LEE's proposed amendment has charging effect, he therefore thinks that the amendment requires the recommendation of the Government.

Counsel to the Legislature's Opinion

6. The Counsel to the Legislature advises that the legal effect of Mr LEE's amendment, if passed, would be to increase the amount of compensation for bereavement from \$70,000 to \$150,000 instead of \$100,000 as proposed in the original resolution. The payment of compensation is a statutory obligation imposed on the Pneumoconiosis Compensation Fund. There is no statutory mechanism in the Ordinance to peg the level of levy to the amounts of compensation.

7. He further advises that section 27(b) of the Ordinance does not have the legal effect of requiring the Government to provide money to the Fund.

My Analysis

8. Having considered the Administration's views and the advice of the Counsel to the Legislature, I am of the opinion that Mr LEE's amendment will not have charging effect within the meaning of Rule 31 of the Rules of Procedure. I cannot accept the Administration's claim that the increased compensation for bereavement as proposed in Mr LEE's amendment would directly "require an increase in the levy" payable by contractors and quarry operators. And even if it were decided that the levy payable by contractors should be increased, contractors do not necessarily pass on the increased portion of the levy to their clients, who include the Government.

9. Although it is the policy of the Government to bring the level of compensation under the Pneumoconiosis Ex-Gratia Scheme in line with that under the Ordinance, it is not bound by law to do so. I therefore do not consider that Mr LEE's amendment will have the legislative effect of increasing Government's expenditure on the Pneumoconiosis Ex-Gratia Scheme.

10. Rule 31 of the Rules of Procedure refers to revenue or other public moneys of Hong Kong. Since the Pneumoconiosis Compensation Fund is a statutory fund and not the revenue of the Government, any consequence on the Fund, incidental or direct which I do not consider there is, would not have any charging effect on general revenue.

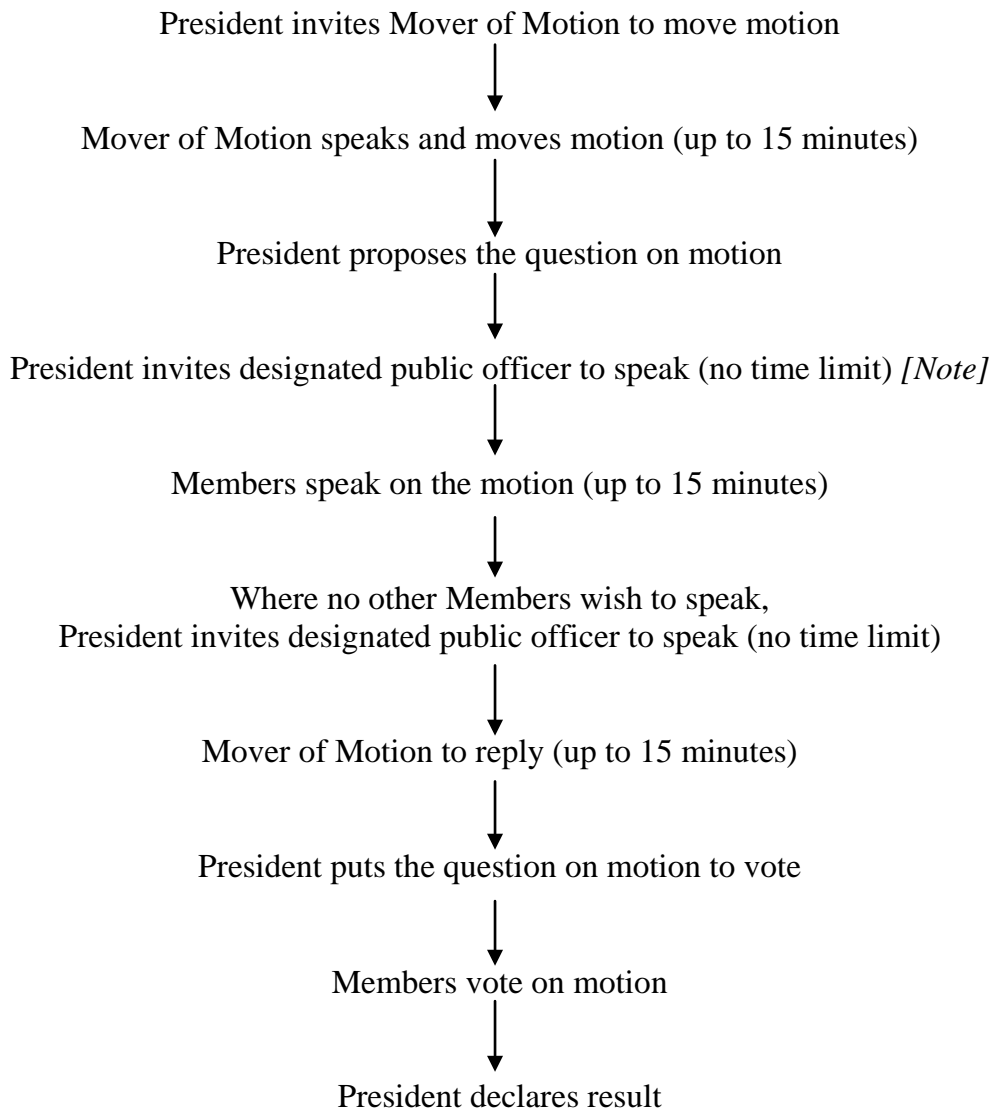
The Ruling

11. For the reasons given in paragraphs 8 to 10 above, I rule that Mr LEE's amendment will not have charging effect within the meaning of Rule 31 of the Rules of Procedure.

(Mrs Rita FAN)
President
Legislative Council

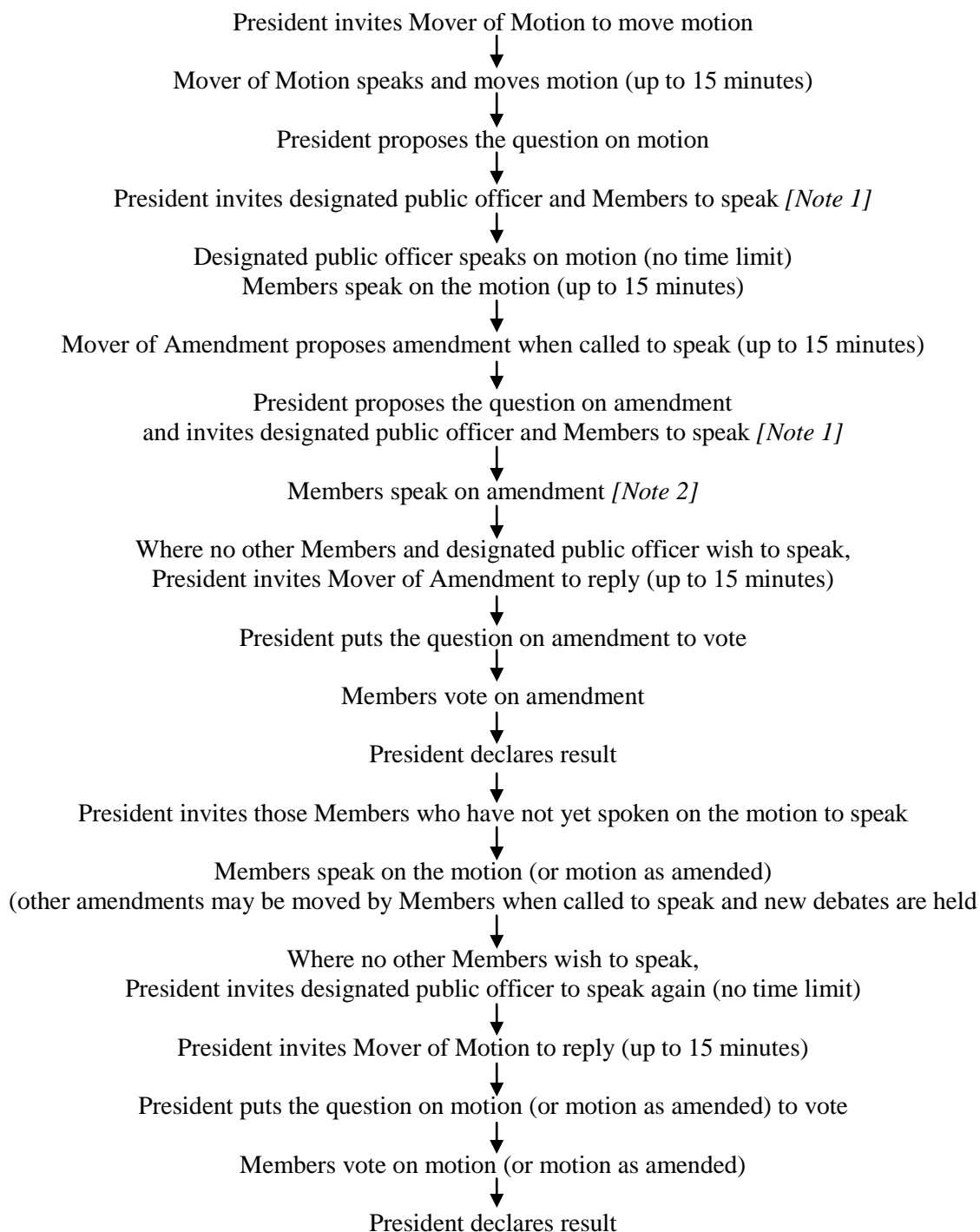
20 July 1998

**Process of a debate on a motion not subject to amendment
or to which no amendment is proposed**



Note: It is not the practice to invite designated public officer to speak at the start of the debate on a motion moved under Rule 49E of the Rules of Procedure or a motion to extend the scrutiny period of subsidiary legislation under section 34 of Cap.1, but a designated public officer may speak a second time under Rule 38(8) of the Rules of Procedure if he so wishes.

Process of separate debates on a motion with amendments

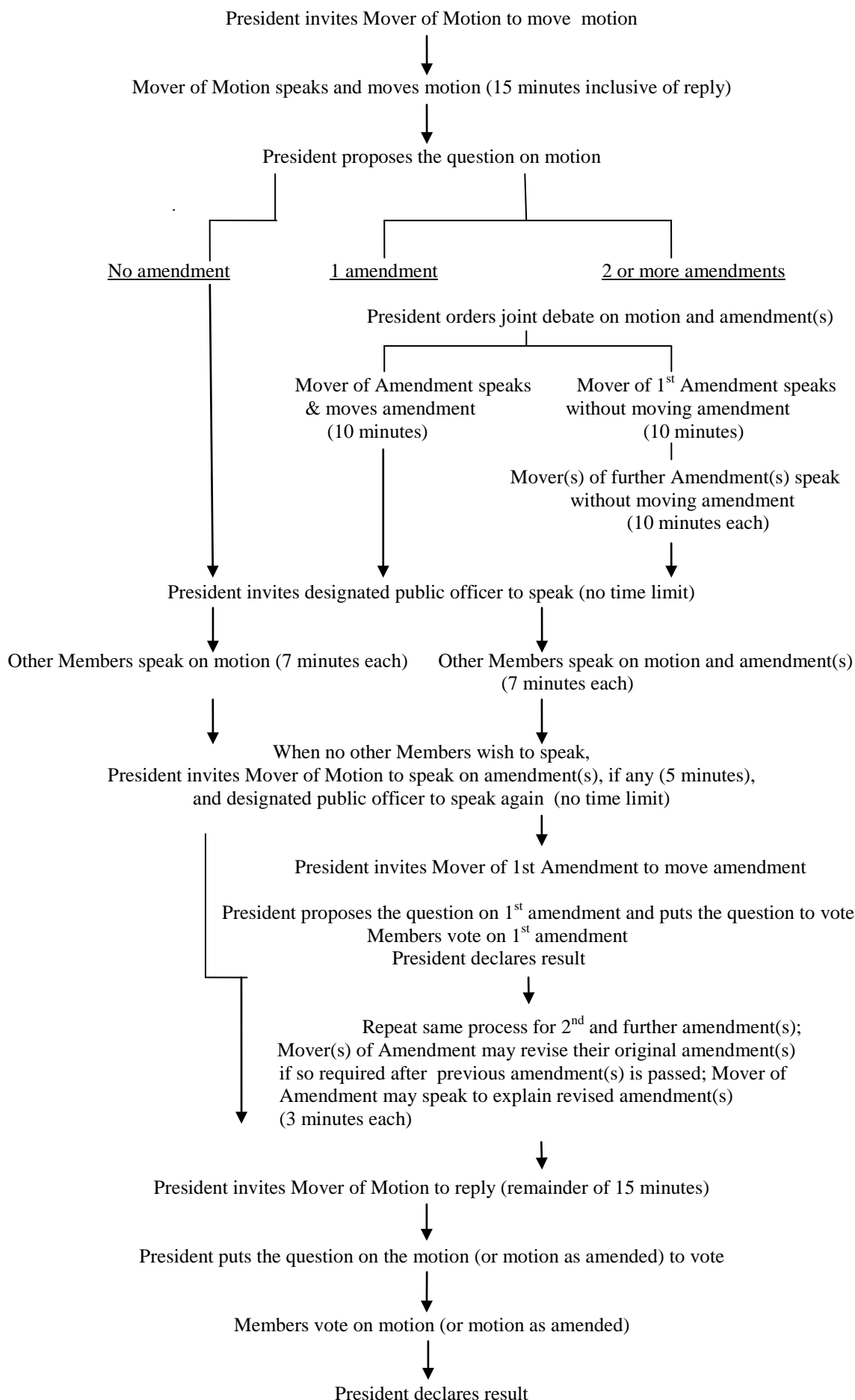


Note 1: President may invite designated public officer to speak at the start of the debate after the Mover of Motion has spoken and at the end of the debate before the Mover of Motion makes his reply. In separate debates on motion and amendments, designated public officer may speak more than once during any of the debates.

Note 2: All Members including the Mover of Motion may speak on the amendment during this separate debate. There was a practice in the pre-1997 Legislature that any Members who spoke on both the motion and the amendment during the debate on the amendment would not be allowed to speak again on the motion (or motion as amended) after the Council had voted on the amendment.

Process of a debate on a motion not intended to have legislative effect

(Joint debate with speaking time limits set out in Rule 17(b) of House Rules based on the recommendation of the House Committee in accordance with Rule 37 of the Rules of Procedure)



立法會

Legislative Council

致：立法會秘書 (傳真號碼 Fax No : 2537 1204)
To：Clerk to the Legislative Council

申請辯論時段

Application for Debate Slots

本人擬在_____年___月___日的立法會會議上動議以下議案：

I would like to move the following motion at the Legislative Council meeting
of _____:

議案的題目及措辭
Subject and wording of motion

簽署
Signature:

姓名
Name:

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:

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