

# 立法會 *Legislative Council*

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## **Publication of Part II (Chapters 11 to 14) and Part III (Chapters 15 to 16) 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") Part II (Chapters 11 to 14) and Part III (Chapters 15 to 16) 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 29 June 2016.

### **Background**

2. The Legislative Council Commission ("the Commission") decided at its meeting on 20 November 2012 to compile the Companion<sup>1</sup> 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 in which LegCo conducts its business.

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<sup>1</sup> The Chief Writer of the Companion is Ms Pauline NG, former Secretary General. Production of the Companion is overseen by a supervisory committee chaired by the incumbent Secretary General.

## The Companion

3. The Companion 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) and Part II (Chapters 7 to 10) of the Companion were tabled at the LegCo meeting of 18 June 2014<sup>2</sup> and 8 July 2015<sup>3</sup> respectively. Electronic version of these Chapters with hyperlinks to enable easy access to cross reference documents have been uploaded onto the LegCo website. Hardcopies of these two Parts were also made available to tertiary institutions, public libraries, etc.
  
5. The final Parts of the Companion, including Chapters 11 to 14 of Part II and Chapters 15 to 16 of Part III (**Appendix**) cover the following subjects:
  - (a) Legislative process (Chapter 11);
  - (b) Financial procedure (Chapter 12);
  - (c) Conduct of business in committees (Chapter 13);
  - (d) Conduct of inquiries (Chapter 14);
  - (e) Redress system (Chapter 15); and
  - (f) Public engagement (Chapter 16).

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<sup>2</sup> <http://www.legco.gov.hk/yr13-14/english/counmtg/papers/cm0618as-143-e.pdf> (LC Paper No. AS 143/13-14).

<sup>3</sup> <http://www.legco.gov.hk/yr14-15/english/counmtg/papers/cm20150708cb4-1263-e.pdf> (LC Paper No. CB(4)1263/14-15).

6. With the completion of the final Parts of the Companion, the whole Companion will be uploaded onto the LegCo website. Similar to the publication of the former Parts of the Companion, hyperlinks will be provided for this electronic version for easy cross referencing. A printed hardbound version of the Companion will also be produced.

7. The Commission wishes to thank the following persons for their valuable comments on the drafting of the Companion: Mr Andrew WONG Wang-fat and Mrs Rita FAN Hsu Lai-tai, former Presidents of LegCo; the late Mrs Elsie TU, Dr LEONG Che-hung, Mrs Selina CHOW LIANG Shuk-yee and Ms Miriam LAU Kin-yee, former Chairmen of the House Committee; and Hon TAM Yiu-chung, Hon Alan LEONG Kah-kit and Dr Margaret NG, current and former Chairman and Deputy Chairmen of the Committee on Rules of Procedure. The Commission also wishes to thank the Chief Writer Ms Pauline NG, and expert advisers Sir Malcolm JACK, former Clerk of the House of Commons of the United Kingdom; the late Mr LAW Kam-sang, former Deputy Secretary General; Mr Jonathan DAW and Mr Jimmy MA, former Legal Advisers to LegCo, for their contributions in compiling the Companion.

Legislative Council Secretariat  
June 2016



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

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**Part II**

**Conduct of business in the Council and committees  
(Chapter 11 to Chapter 12)**

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# **Report on the Companion to the history, rules and practices of the Legislative Council**

## **Introduction**

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

## **Format and Content**

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

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

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

## **Style and Language**

5. Given this considerable coverage and the diverse readership the *Companion* is likely to attract, there is inevitable overlap of certain details between the sections and across chapters but each chapter may be used discretely for reference.

6. A clear and direct language, free of jargon, is maintained throughout the text which is important both from the point of view of clarity but also from that of transparency, making the account readable for experts and the general public alike.

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

## **Editing**

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

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

## **Conclusion**

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

Sir Malcolm Jack  
17th March 2016

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## **Chapter 11**

### **Legislative process**

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

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

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

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

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

<sup>2</sup> Chapter 2, para. 2.4 – 2.5.

## 11. *Legislative process*

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

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

11.5 Under the Basic Law, both the Government and Members of the Legislative Council may introduce legislative proposals to the Legislative Council in accordance with relevant provisions in the Basic Law.<sup>4</sup> The Legislative Council scrutinizes the proposed legislation and passes it into law in accordance with the legislative procedure set out in the Rules of Procedure.

11.6 In respect of subsidiary legislation, the power of the Legislative Council, as explained in Chapter 7<sup>5</sup>, may be a positive power to vet and approve an item of subsidiary legislation pursuant to section 35 of Cap. 1, or a scrutiny and intervention power to be exercised in accordance with the negative vetting procedure provided in section 34 of Cap. 1. The extent of power of the Legislature to amend a proposed resolution or an item of subsidiary legislation tabled in the Council has been discussed in Chapter 10<sup>6</sup>.

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<sup>3</sup> Laws (Loose-leaf Publication) Ordinance 1990, section 3; and legislative provisions for the legal status of an electronic database of legislation of Hong Kong have been made in the Legislation Publication Ordinance (Cap. 614) but have not yet been brought into effect.

<sup>4</sup> Articles 56, 62(5) and 74 of the Basic Law.

<sup>5</sup> Chapter 7, para. 7.81 – 7.83.

<sup>6</sup> Chapter 10, para. 10.36 – 10.44.

## **Bills**

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

### Classification of bills

#### *Public and private bills*

11.8 Although the HKSAR Legislature has adopted the same legislative process as that used by the pre-1997 Legislature and legislatures in other common law jurisdictions, the classification of bills commonly used in these legislatures, namely public and private bills, is not explicitly provided for in the Rules of Procedure. According to Erskine May<sup>7</sup>, public bills in the House of Commons of the UK Parliament relate to matters of public policy and are introduced directly by the Member in charge, who may be, and in the majority of cases is, a Government Minister while private bills are for the particular interest or benefit of any person(s), public company or corporation, or local authority, and are promoted by the interested parties themselves by means of petitions. Such classification was more commonly adopted for use in the pre-1997 Legislature. The term "Private Bill" first appeared in the 1884 Standing Orders when referring to proposed legislation involving private rights.<sup>8</sup> In the 1968 Standing Orders, a more generic term was used. This type of bill was then referred to as a bill "not being a Government measure, intended to affect or benefit some particular person, association or corporate body".<sup>9</sup> On 3 July 1991, the Private Bills Bill 1990 was passed to stipulate a fee for the presentation of a Private Bill unless the bill is for a charitable purpose or for a Government measure. In section 2 of the Private Bills Ordinance (Cap. 69), "private bill" is defined as a bill which provides primarily for the particular interest or benefit of any individual, association or body corporate rather than the interest or benefit of the public; and is not a Government measure.

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<sup>7</sup> Erskine May (24<sup>th</sup> edition), p. 525.

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

<sup>9</sup> Standing Order No. 38(8) of the 1968 Standing Orders.

## 11. *Legislative process*

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Cap. 69 is one of the Ordinances which continues to be in force in the HKSAR after 30 June 1997<sup>10</sup>.

11.9 It has been the practice, even up to this date, that bills relating to private interests, such as legislation to regulate tertiary institutions, charitable organizations and banks, etc.<sup>11</sup> are sponsored by individual Members of the Council. These Members are required to follow the procedures which apply to "a bill to be presented by a Member" commonly known as a "Members' Bill". Details on these procedures are provided in the latter part of this Chapter.

11.10 As Members' bills during the pre-1997 period were only subject to the "charging effect" restriction<sup>12</sup> in the Standing Orders, quite a number of Members' bills relating to public policies were proposed in the last few years before reunification and some of them were passed into law.<sup>13</sup> These bills relating to public policies presented by Members were often referred to as "Members' Public Bills" as they related to public policies while those relating to private interests were called "Members' Private Bills". There was no differentiation between public and private bills in the way they were scrutinized and processed in the Council though bills presented by the Government had precedence on the Order Paper over bills moved by individual Members.<sup>14</sup>

### *Government bills and Members' bills under the Basic Law*

11.11 Although the concept of public and private bills continued to apply to the drafting of bills<sup>15</sup> after the Basic Law came into effect on 1 July 1997,

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<sup>10</sup> Article 160 of the Basic Law provides that "... the laws previously in force in Hong Kong shall be adopted as laws of the Region except for those which the Standing Committee of the National People's Congress declares to be in contravention of this Law [the Basic Law] ...".

<sup>11</sup> Ordinances that were enacted through the passage of private bills are given a chapter number beginning from 1002 in the Laws of Hong Kong, e.g. Basel Evangelical Missionary Society Incorporation Ordinance (Cap. 1002) and Citibank (Hong Kong) Limited (Merger) Ordinance (Cap. 1177).

<sup>12</sup> Standing Order No. 39(2) required that in the case of a bill having any object or effect, in the opinion of the President or Chairman, of disposing of or charging any part of the revenue or other public moneys of Hong Kong, a certificate stating the Governor's authorization or signification should be provided when giving notice of the presentation of the bill.

<sup>13</sup> For example, the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996, which was a Members' Bill, was passed by the pre-1997 Legislature on 11 June 1997. It was enacted as the Sex and Disability Discrimination (Miscellaneous Provisions) Ordinance 1997 (Ord. No. 71 of 1997).

<sup>14</sup> Rule 12(3) of the Standing Orders of the pre-1997 Legislature.

<sup>15</sup> See "*Drafting Legislation in Hong Kong - A Guide to Styles & Practice*" (2012), published by Law Drafting Division, Department of Justice, para. 1.2.4.

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

11.12 The term "Members' bills" is more often used in internal communication with Members when referring to the requirements for bills which are to be introduced by Members as distinct from public officers. The procedure which applied to "Members' bills" in the pre-1997 Legislature has continued to apply, except that such bills must not relate to public expenditure or political structure or the operation of the government, and where the bills relate to government policies, the written consent of the Chief Executive shall be required, as stipulated in Article 74 of the Basic Law. The restrictions and requirement in this Article are reflected in Rule 51(3) and (4) of the Rules of Procedure. It has been a practice for individual Members to seek a ruling from the President on whether their proposed Members' bills contravene the Rules of Procedure before they proceed with the formal procedure for the presentation of the bills, which will be discussed in the latter part of this Chapter.<sup>16</sup> As these rulings are sought before formal procedures begin, they are also known as "private rulings" in order to distinguish them from rulings of the President made pursuant to specific powers given to him under the Rules of Procedure.

### Form of Bills

11.13 A bill, after it is passed by the Legislative Council, shall be signed by the Chief Executive and promulgated as a law.<sup>17</sup> The promulgation is done by

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<sup>16</sup> Paragraphs 11.44 – 11.65.

<sup>17</sup> Article 48(3) of the Basic Law; Rule 65 of the Rules of Procedure.

## 11. *Legislative process*

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way of publication in the Gazette and the bill then becomes an "Ordinance".<sup>18</sup> It is therefore necessary that a bill for presentation to the Council conforms to the requirements laid down in Rule 50 (Form of Bills)<sup>19</sup> of the Rules of Procedure. In the case of a bill to be presented by a Member, a certificate must be obtained from the Law Draftsman of the Department of Justice to confirm that the bill conforms to the requirements of Rule 50 and the general form of Hong Kong legislation.<sup>20</sup> The certificate signed by the Law Draftsman must be attached to the notice given to the Clerk in respect of the presentation of the bill.<sup>21</sup>

### *Title of a bill*

11.14 Each bill is given a short title which corresponds with the title by which it is to be cited if it becomes law.<sup>22</sup> This citation title is usually given in the first clause of the bill. The title should describe the bill in a straightforward manner and should not duplicate, after it becomes law, any of the existing Ordinances. Throughout the passage of the bill, the title remains unchanged.<sup>23</sup> The short title of a bill, however, is subject to amendment if it is made necessary by an amendment to the bill, but such amendment is dealt with at the end of the proceedings at Committee Stage.<sup>24</sup>

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

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<sup>18</sup> See "*Drafting Legislation in Hong Kong - A Guide to Styles & Practice*" (2012), published by Law Drafting Division, Department of Justice, para. 1.2.1 – 1.2.2.

<sup>19</sup> These requirements follow those set out in the pre-1997 Legislative Council Standing Orders, some of which were requirements provided by the Royal Instructions, e.g. the requirements of a savings provision. The saving provision for private bills was mentioned in para. 27(XXVII) of the Hong Kong Royal Instructions 1917 (as amended to 17 February 1993). The numbering and internal arrangement of ordinances were mentioned in para. 25 (XXV) subpara. 2 of the Royal Instructions.

<sup>20</sup> Rule 51(2) of the Rules of Procedure.

<sup>21</sup> Rule 51(1) of the Rules of Procedure.

<sup>22</sup> Rule 50(2) of the Rules of Procedure.

<sup>23</sup> Rule 50(2) of the Rules of Procedure.

<sup>24</sup> Rule 58(9) of the Rules of Procedure.



edition of the Laws of Hong Kong and was given a chapter number.<sup>25</sup> The legislation is now known as the "Competition Ordinance (Cap. 619)".<sup>26</sup>

11.16 As regards an amendment bill, the title of the bill carries the same title of the Ordinance to which amendment is to be made together with the year of its publication in the Gazette. For example, the Stamp Duty (Amendment) Bill 2012 was published in the Gazette on 28 December 2012 and its title remained the same throughout the legislative process although it was first read in the Council on 9 January 2013. The Bill was subsequently passed on 22 February 2014 and was published in the Gazette as the Stamp Duty (Amendment) Ordinance 2014 (2 of 2014) on 28 February 2014.<sup>27</sup> In relation to omnibus bills which seek to amend more than one ordinance, the title may contain general descriptions such as "miscellaneous amendments" that reflect the object or nature of the bill<sup>28</sup>. No separate chapter number is given to an amending ordinance as its contents are incorporated into the relevant principal ordinance(s).<sup>29</sup>

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

### *Long title*

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

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

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

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

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

<sup>29</sup> See "*Drafting Legislation in Hong Kong - A Guide to Styles & Practice*" (2012), published by Law Drafting Division, Department of Justice, para. 1.2.15.

## 11. Legislative process

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long title is positioned before the citation or short title clause.<sup>30</sup> Historically, the long title of a bill served no more than a general statement of the purposes of the bill although in UK practice it must cover the scope of the Bill which affects how it can be amended. For example, the long title of District Councils Bill introduced to the Council on 11 December 1998 read as follows:

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

11.19 The current drafting practice is that the long title "has to be wide enough to embrace the whole of the contents of the Bill and is usually drafted to be specific enough to give fair notice of the subject of the Bill".<sup>31</sup> For example, the long title of the Stamp Duty (Amendment) Bill 2012 read as follows:

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

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

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<sup>30</sup> Rule 50(3) of the Rules of Procedure.

<sup>31</sup> See *"Drafting Legislation in Hong Kong - A Guide to Styles & Practice"* (2012), published by Law Drafting Division, Department of Justice, para. 2.1.7.

the language or to clarify a certain point which is within the scope of a bill.<sup>32 33</sup>

### *Enacting formula and preamble*

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

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

### *Short title and commencement date*

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

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<sup>32</sup> Rule 58(9) of the Rules of Procedure.

<sup>33</sup> See the deliberation on long titles by the Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill (see Report of the Bills Committee to the Council at <http://www.legco.gov.hk/yr06-07/english/bc/bc56/reports/bc560423cb2-1666-e.pdf>). The long title of Pesticides (Amendment) Bill 2013 was amended due to amendments made to the content of the Bill.

<sup>34</sup> Erskine May (24<sup>th</sup> Edition) p. 528.

<sup>35</sup> See <http://www.legco.gov.hk/yr06-07/english/bills/b0702061.pdf>.

<sup>36</sup> See section 20 of Interpretation and General Clauses Ordinance (Cap. 1).

## 11. Legislative process

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ordinance in accordance with such provision in an ordinance is generally entitled a commencement notice. It is subsidiary legislation<sup>37</sup> that has to be made by the appointing authority, which is normally the authority responsible for the implementation of the ordinance.

### *Language*

11.24 All bills must be presented in the Chinese and English languages. However, Rule 50(4) of the Rules of Procedure provides for this requirement to be subject to a direction given by the Chief Executive in Council under section 4(3) of the Official Languages Ordinance (Cap. 5) if the Chief Executive in Council is of the opinion that a Bill is urgent and its enactment as an Ordinance in both official languages will occasion unreasonable delay. This requirement does not apply to subsidiary legislation.<sup>38</sup>

### *Structure of a bill*

11.25 A bill is divided into *clauses* numbered consecutively. Each clause will become a *section* of the Ordinance after enactment, except in the case of amendment bills. To facilitate reading, Rule 50(6) of the Rules of Procedure stipulates that a descriptive section heading is required for each clause. Where subclauses are used, each *subclause* is referred to as *subsection* after enactment. A subclause may be divided into *paragraphs* and then *subparagraphs*. Grouping of clauses into *Parts* (and dividing a Part into *Divisions*) is common in the case of long and complicated bills<sup>39</sup>.

11.26 Where technical matters or matters of detail are to be provided, they may be set out in the form of *Schedules* which are placed after the main body of the bill<sup>40</sup>. A Schedule is part of the bill but is dependent on specific provisions in the bill which give effect to the Schedule. Matters in an

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<sup>37</sup> See paragraph 11.36.

<sup>38</sup> Section 4(5) of the Official Languages Ordinance (Cap. 5) provides that this section does not extend to subsidiary legislation. Rule 30(2) of the Rules of Procedure also provides that a notice of an amendment to a motion (which may include a motion to approve or amend an item of subsidiary legislation) shall be in Chinese if the motion is in Chinese and in English if the motion is in English.

<sup>39</sup> Typical examples are those relating to financial and companies matters. The Securities and Futures Ordinance (Cap. 571) contains 409 sections grouped under 17 Parts. Some Parts are divided up to 13 Divisions. The new Companies Ordinance (Cap. 622) re-written in 2013 contains 921 sections grouped under 21 Parts. Most Parts are divided into Divisions and Subdivisions.

<sup>40</sup> See "Drafting Legislation in Hong Kong - A Guide to Styles & Practice" (2012), published by Law Drafting Division, Department of Justice, para. 4.1.5.

ordinance which are subject to amendment by a delegated authority in the form of subsidiary legislation are usually provided in Schedules <sup>41</sup>.

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

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

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<sup>41</sup> See *"Drafting Legislation in Hong Kong - A Guide to Styles & Practice"* (2012), published by Law Drafting Division, Department of Justice, para. 4.1.6.

<sup>42</sup> See minutes of the meeting of the House Committee on 7 January 2011, para. 4 – 9.

## ***11. Legislative process***

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### *Explanatory memorandum*

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

### *Saving provision for "private bills"*

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

#### **"Saving**

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

### **Subsidiary legislation and subordinate legislation**

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

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<sup>43</sup> Rule 50(7) of the Rules of Procedure.

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

<sup>45</sup> Section 3 of the Interpretation and General Clauses Ordinance (Cap. 1).

<sup>46</sup> Chapter 7, para. 7.81 – 7.83.

proclamation, rule, regulation, order, resolution, notice, rule of court or bylaws. It may be amended at any time by the same delegates and in the same manner by and in which it was made.<sup>47</sup> Details on the making of subsidiary legislation are provided in Part V of the Interpretation and General Clauses Ordinance (Cap. 1) which also sets out the Legislative Council's power of scrutiny and intervention through the negative and positive vetting procedures provided respectively in section 34 and section 35 of Cap. 1 and in accordance with the provisions of the Rules of Procedure.

### Publication and numbering of subsidiary legislation

11.32 Subsidiary legislation must be published in the Gazette.<sup>48</sup> For subsidiary legislation subject to the negative vetting procedure, the publication in the Gazette normally takes place on a Friday<sup>49</sup> before the subsidiary legislation is laid on the Table of the Legislative Council at a meeting following that Friday (usually on the following Wednesday). Subsidiary legislation is published in Legal Supplement No. 2 of the Gazette. Each item is given a Legal Notice Number (L.N. No.) in accordance with the order in the year in which it was published starting with L.N. No. 1 in the beginning of a calendar year. For example, the first item of subsidiary legislation subject to negative vetting procedure in 2015 was the Employment (Amendment) Ordinance 2014 (Commencement) Notice which was published in Legal Supplement No. 2 of the Gazette issued on 2 January 2015 as L.N. 1 of 2015.

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

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<sup>47</sup> Section 28(1)(c) of the Interpretation and General Clauses Ordinance (Cap. 1).

<sup>48</sup> Section 28(2) of the Interpretation and General Clauses Ordinance (Cap. 1).

<sup>49</sup> There may be extraordinary issues of the Gazette published on other days of the week: for example, orders made under the Public Revenue Protection Ordinance (Cap. 120) are published on the Wednesday and at the time when the Financial Secretary delivers his budget speech at the start of the second reading debate on an Appropriation Bill at a meeting of the Legislative Council.

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

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

### Commencement notice

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

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

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<sup>50</sup> See "*Drafting Legislation in Hong Kong - A Guide to Styles & Practice*" (2012), published by Law Drafting Division, Department of Justice, para. 1.3.4 – 1.3.6.

<sup>51</sup> Rule 29(1) of the Rules of Procedure.

<sup>52</sup> Section 28(3) of the Interpretation and General Clauses Ordinance (Cap. 1).

<sup>53</sup> Section 28(5) of the Interpretation and General Clauses Ordinance (Cap. 1).



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

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

### **Pre-legislative scrutiny**

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

11.39 As mentioned in Chapter 5<sup>54</sup>, there is an established understanding with the Government that the Legislature should be given ample time to study and scrutinize a bill or an item of subsidiary legislation. It has been a practice since the First Legislative Council that at the start of a new session, each Director of Bureau would inform the corresponding Legislative Council Panel of the major legislative proposals to be introduced to the Council within the session. This will facilitate the relevant Panel, which has a responsibility to oversee the policies of the Bureau, to plan how and when discussions on the legislative proposals should be conducted. The Government is encouraged to conduct its own public consultation in the course of drawing up a legislative proposal and to provide a summary of the views collected when it briefs the Legislative Council Panel on the proposal. This will enable Members of the

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<sup>54</sup> Chapter 5, para. 5.88 – 5.93.

## *11. Legislative process*

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Legislature to have a comprehensive understanding of its likely impact of the proposal on any sector and on the community at large.

11.40 When the legislative proposal comes before the Panel, the Government normally provides a brief on the purpose and merits of the proposal with some details of the proposal but not the text of the proposed legislation. Initial discussion on the legislative proposal will take place at the Panel's regular meeting or series of meetings dedicated for the purpose, depending on the complexity of the proposed legislation.<sup>55</sup> The Panel may decide to conduct public hearings to enable all affected and interested parties to come forward with their views and suggestions on how the proposed legislation may be improved. Where public hearings are to be conducted, notice is given through the Legislative Council's website and, if appropriate, also by invitation to relevant bodies and all District Councils. All parties are invited to submit written views before the hearings and the submissions are circulated to all members. The Panel may also invite any parties who have expressed interest in appearing before the Panel to give an oral presentation.

11.41 At the conclusion of public hearings, the Panel will consider the views collected before it advises the Government whether the proposed legislation is ready for formal presentation or whether further study is required. Where the proposed legislation is of a complex nature, Members may ask for a draft bill (or subsidiary legislation) to be prepared for further consultation before formal introduction. This draft bill, usually referred to as a White Bill, is normally considered by a subcommittee formed under the House Committee so that any Member who may not be a member of the Panel may take part in the study of the White Bill.<sup>56</sup> However, the provision of a draft bill for pre-legislative scrutiny is no longer a common practice in recent years.

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

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

## **Compliance with Article 74 of the Basic Law**

11.42 As the same rules governing the introduction of bills applied to both Members and public officers under the Standing Orders, Members in the pre-1997 Legislature were not subject to restrictions other than those which were considered by the President to have a charging effect, in which case the written consent of the Governor was required. The principle about charging derives from the constitutional convention in the UK whereby the Crown (or Executive) requests money while the House of Commons grants it.<sup>57</sup> Nevertheless, it should be noted that under the Letters Patent, it was the Governor who had the power to make laws, by and with the consent of the Legislative Council.<sup>58</sup> Article X of the Letters Patent (1991) provided that "*When a Bill passed by the Legislative Council is presented to the Governor for his assent, he shall, according to his discretion, but subject to any Instructions addressed to him under Our Sign Manual and Signet or through one of Our Principal Secretaries of State, declare that he assents thereto, or refuses his assent to the same, or that he reserves the same for the signification of Our pleasure*". In other words, despite the absence of restrictions in the matters contained in the bills introduced by individual Members, the final discretion of whether such bills, if passed by the Legislative Council, should be promulgated rested with the Governor; albeit that the discretion to refuse assent was very rarely exercised.

11.43 Article 74 of the Basic Law provides that Members of the Legislative Council may introduce bills which do not relate to public expenditure or political structure or the operation of the government. Bills relating to government policies require the written consent of the Chief Executive. Due to the lack of precedents in this area, it had taken some years for the executive authorities and the legislature to come to an understanding of how the Article should apply. It was at one time considered by the then Solicitor-General that it should be the Chief Executive who would decide whether certain proposed motions or bills and related proposed amendments were subject to Article 48(10)<sup>59</sup> and Article 74 of the Basic Law.<sup>60</sup> The matter was studied by the House Committee and, after deliberation<sup>61</sup>, it was of the view that since Article 75 provided the Legislative Council with the power to make its

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<sup>57</sup> Erskine May, 24<sup>th</sup> Edition, p. 711.

<sup>58</sup> Article VII (1) of the Letters Patent, 1991.

<sup>59</sup> Article 48(10) provides that the Chief Executive of the HKSAR shall have the power and function to approve the introduction of motions regarding revenues or expenditure to the Legislative Council.

<sup>60</sup> See Chapter 10, para. 10.32.

<sup>61</sup> Meeting of the House Committee of the First Legislative Council on 24 July 1998.

## *11. Legislative process*

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own rules of procedure, it was for the Council to draw up its own procedures which on the one hand satisfied the requirements under the Basic Law, and on the other, facilitated the conduct of business of the Council in the most effective manner. Having regard to the functions of the executive authorities and the legislature and the various articles to enable the two bodies to regulate and monitor the activities of each other under the Basic Law, the House Committee considered that the President, who was empowered to decide whether bills, motions and amendments to bills might be put on the Agenda of the Council, should be the one to decide whether any bills introduced by Members were related to the specific areas specified under Article 74.<sup>62</sup> The report of the House Committee was noted by the Government.

### Purpose of Article 74 of the Basic Law

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

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

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<sup>62</sup> See Appendix 10-B, para. 16 – 22.

<sup>63</sup> Employment (Amendment) Bill 1999 proposed by Mr Andrew CHENG Kar-foo.

<sup>64</sup> Labour Relations (Rights to Representation, Consultation and Collective Bargaining) Bill proposed by Mr LEE Cheuk-yan.

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

### Interpretation of specific terms in Article 74

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

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

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<sup>65</sup> Erskine May, 24<sup>th</sup> Edition, p. 755.

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

### *"Relate to"*

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

### *"Public expenditure"*

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

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

<sup>67</sup> President's ruling on Employment (Amendment) (No. 2) Bill 1998 proposed by Hon LEE Cheuk-yan on 19 July 1999, para. 21.

11.50 The above interpretation was adopted when President Rita FAN considered Mr LEE Cheuk-yan's proposed Labour Relations (Rights to Representation, Consultation and Collective Bargaining) Bill. The President noted the Government's estimated additional staff cost of \$23.3 million per annum, and she considered that this amount alone was substantial and was such that she must not ignore. She considered that Mr LEE's Bill related to public expenditure and so could not be introduced. The President's ruling dated 19 July 1999 is at **Appendix 11-B**.

11.51 Questions were then raised on whether an empowering provision which did not impose a duty or obligation on the Government to take action should be regarded as one related to public expenditure. A ruling in February 2001<sup>68</sup> explained that even if an empowering provision provides the Government with the discretion to exercise the power or not, as in the case of the bringing of potentially costly civil actions against certain businesses was not the same as exercising the power to pardon or commute prison sentences which did not incur substantial public expenditure. If the discretion, once exercised, would give rise to a cost which is so substantial that it cannot be ignored, the bill will be regarded as relating to public expenditure.

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

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

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the estimated expenditure of \$4.5 billion of the Department of Health for the 2010-2011 financial year.<sup>69</sup>

### *"Operation of the Government"*

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

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

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

<sup>70</sup> See Appendix 11-B. (para. 24).

<sup>71</sup> President's ruling on 18 January 2007 (paras. 35 & 36, 44 – 47) is at [http://www.legco.gov.hk/yr06-07/english/pre\\_rul/pre0118-ref-e.pdf](http://www.legco.gov.hk/yr06-07/english/pre_rul/pre0118-ref-e.pdf).



11.55 In May 2009, in considering Mr CHAN Wai-yip's proposed Smoking (Public Health) (Amendment) Bill 2009, President Jasper TSANG adopted the same principle established in the rulings of his predecessor. Mr CHAN's proposed Bill sought to defer the implementation date of the smoking ban on certain establishments (listed in Part 2 of Schedule 6 to the Ordinance) from the original implementation date of 1 July 2009 by two years to 1 July 2011. The Government argued that the extension would have an obvious or substantive impact on the procedure of the Government as it could not enforce the smoking ban during the extension period. In view of the absence of information to substantiate how any procedure of the Government would be affected, the President did not find the proposed Bill related to the operation of the Government. However, as the proposed Bill was ruled by the President to relate to Government policies, the written consent of the Chief Executive was required.<sup>72</sup>

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

### *"Government policies"*

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

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<sup>72</sup> President's ruling on 11 May 2009 is at [http://www.legco.gov.hk/yr08-09/english/pre\\_rul/pre0511-ref-e.pdf](http://www.legco.gov.hk/yr08-09/english/pre_rul/pre0511-ref-e.pdf).

<sup>73</sup> President's ruling on 25 June 2010 is at [http://www.legco.gov.hk/yr09-10/english/pre\\_rul/pre0625-ref-e.pdf](http://www.legco.gov.hk/yr09-10/english/pre_rul/pre0625-ref-e.pdf).

## *11. Legislative process*

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that government policies may need to be implemented through legislation and hence policies reflected in legislation are also government policies for the purpose of Rule 51(4). In this context, policies decided by public officers under delegated authority from the Chief Executive and policies promulgated in the Legislative Council or its committees by designated public officers are also regarded as government policies, but these do not include policies which are being formulated.

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

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

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

respectively to the Council on 13 June 2001. Both Bills were passed on 12 July 2001.<sup>75</sup>

11.60 As regards whether a bill which seeks to amend an existing ordinance may be related to Government policies, President Rita FAN provided further explanation in her ruling on Mr Eric LI Ka-cheung's Professional Accountants (Amendment) Bill 2004 on 4 March 2004. The proposed Bill sought to enhance regulation of the accounting profession by altering the name and membership structure of the Hong Kong Society of Accountants ("the Society") and providing for the professional development of professional accountants. In her ruling, Mrs FAN referred to the view of the Counsel to the Legislature that the test of whether a bill should be classified as one having a substantive effect on a Government policy or policies is neither as high as requiring that the bill must have an important effect nor so low that it need merely have some tenuous link with a Government policy articulated by the Administration; and that a bill does not relate to Government policies simply because it seeks to amend an ordinance in order to address an issue which is merely incidental to a Government policy. As it was Government's policy to regulate the accounting profession and Mr LI's proposed Bill sought to add lay members to be appointed by the Chief Executive to the Society's Council and its Investigation Panel, Mrs FAN ruled that the proposed Bill related to Government policies.<sup>76</sup> Mr LI subsequently obtained the written consent of the Chief Executive and introduced the Bill to the Council on 24 March 2004. The Bill was passed on 9 July 2004.<sup>77</sup>

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

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<sup>75</sup> Presidents rulings on 25 May 2001 at [http://www.legco.gov.hk/yr00-01/english/pre\\_rul/r010525ae.pdf](http://www.legco.gov.hk/yr00-01/english/pre_rul/r010525ae.pdf) and [http://www.legco.gov.hk/yr00-01/english/pre\\_rul/r010525be.pdf](http://www.legco.gov.hk/yr00-01/english/pre_rul/r010525be.pdf).

<sup>76</sup> President's ruling at [http://www.legco.gov.hk/yr03-04/english/pre\\_rul/pre0304cb3-ref-e.pdf](http://www.legco.gov.hk/yr03-04/english/pre_rul/pre0304cb3-ref-e.pdf).

<sup>77</sup> Examples of other Members' Bills which were also considered by the President to relate to Government policies on appointments of the institutions' Council members are City University of Hong Kong (Amendment) Bill 2006, The Hong Kong University of Science and Technology (Amendment) Bill 2008 and The Hong Kong Polytechnic University (Amendment) Bill 2010. See President's rulings at [http://www.legco.gov.hk/yr05-06/english/pre\\_rul/pre0502cb3-ref-e.pdf](http://www.legco.gov.hk/yr05-06/english/pre_rul/pre0502cb3-ref-e.pdf), [http://www.legco.gov.hk/yr07-08/english/pre\\_rul/pre0529-ref-e.pdf](http://www.legco.gov.hk/yr07-08/english/pre_rul/pre0529-ref-e.pdf) and [http://www.legco.gov.hk/yr10-11/english/pre\\_rul/pre1215-ref-e.pdf](http://www.legco.gov.hk/yr10-11/english/pre_rul/pre1215-ref-e.pdf) respectively. These Bills were all passed by the Council.

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regulate the accountancy profession. He further noted that the provisions sought to be amended by the proposed Bill were previously amended by the Government. It was clear to him that the whole Ordinance represented Government policies; and that what he needed to consider was whether the proposed amendments would have a substantive effect on Government policies. After examining the details of the proposed amendments in the proposed Bill, the President ruled that the Bill related to Government policies. Mr LEUNG subsequently obtained the written consent of the Chief Executive and introduced the Bill on 26 April 2013. The Bill was passed on 30 October 2013.

### *"Political structure"*

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

### **Legislative procedures**

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

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<sup>78</sup> See President's ruling contained in the letter to Mr Eric LI Ka-cheung dated 11 November 1997 at [http://www.legco.gov.hk/yr97-98/english/pre\\_rul/971114.pdf](http://www.legco.gov.hk/yr97-98/english/pre_rul/971114.pdf).

<sup>79</sup> Article 73(1) of the Basic Law.

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

### Gazettal and presentation of bills

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

### *Government bills*

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

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<sup>80</sup> See, for example, the High Court's judgment in *LEUNG Kwok-hung v The President of the Legislative Council of the Hong Kong Special Administrative Region* [2007] 1 HKLRD 387, para. 7.

<sup>81</sup> Rule 51(1) of the Rules of Procedure.

<sup>82</sup> Rule 51(5) of the Rules of Procedure.

<sup>83</sup> Section 4(3) of Official Languages Ordinance (Cap. 5).

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the Government to issue a Legislative Council Brief with the full text of the bill when notice is given to the Clerk for the presentation of the bill. The Legislative Council Brief is issued to all Members as soon as it is received, usually on the day of receipt of the notice of presentation of the bill.

11.66 After receipt of a bill for presentation to the Council, the Clerk must arrange for the bill and its explanatory memorandum to be published in the Gazette unless the President directs that it shall not be published before it has been read the first time.<sup>84</sup> Such a direction is exceptional. The bill is usually published in the Gazette on the nearest Friday after receipt of the notice.

### *Members' bills*

11.67 As regards a Members' bill, the Member presenting the bill would also have sought a private ruling from the President prior to giving notice of his intention to present it, and have consulted the relevant Panel on the details of the legislative proposal. It is not uncommon that approach to the President for a private ruling and consultation with the Panel take place at about the same time. Such approach and consultation, however, are not a pre-condition for presenting a bill. Any Member may at any time give notice to the Clerk of his intention to present a bill but if the bill, in the opinion of the President, contravenes Rule 51(3) or (4), it will not be included on the Agenda of the Council. If the bill, in the opinion of the President, relates to Government policies, the written consent of the Chief Executive in respect of the bill should be attached to the notice.<sup>85</sup> For all Members' bills, the notice should also be accompanied by a certificate signed by the Law Draftsman to confirm conformity to the requirements of Rule 50 and the general form of Hong Kong legislation.<sup>86</sup>

11.68 If the bill is a "private bill" as defined in the Private Bills Ordinance (Cap. 69)<sup>87</sup>, the Member is required to attach a certificate signed by the Member, stating that the bill has been published in two successive publications of the Gazette and that notice of the bill has been given by two advertisements in each of two daily newspapers published in Hong Kong, one being a Chinese language newspaper and the other being an English language

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<sup>84</sup> Rule 52(1) of the Rules of Procedure.

<sup>85</sup> Rule 51(4) of the Rules of Procedure.

<sup>86</sup> Rule 51(1) and (2) of the Rules of Procedure.

<sup>87</sup> "Private bill" is one which provides primarily for the particular interest or benefit of any individual association or body corporate rather than the interest or benefit of the public; and is not a government bill (section 2 Private Bills Ordinance Cap.69).

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

*Member or public officer in charge of a bill*

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

*Bills with substantially the same provisions*

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

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

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<sup>88</sup> Rule 51(6) of the Rules of Procedure.

<sup>89</sup> Rule 52(1)(b) of the Rules of Procedure.

<sup>90</sup> Rule 51(8) of the Rules of Procedure.

<sup>91</sup> Rule 51(9) of the Rules of Procedure.

<sup>92</sup> Rule 51(7)(a) of the Rules of Procedure.

<sup>93</sup> Rule 51(7)(b) of the Rules of Procedure.

## 11. *Legislative process*

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

### Three-reading process

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

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

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

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<sup>94</sup> Rule 51(7)(a) and Rule 51(7A) of the Rules of Procedure. Also see Progress report of the Committee on Rules of Procedure for the period May 1999 to June 2000, para. 2.1 – 2.19.

<sup>95</sup> In the 14<sup>th</sup> Century, it was already the usual practice of the House of Commons to read a Bill three times. "All bills be thrice, in three divers days, read and disputed upon, before they come to the question .." quoted from Sir Gilbert Campion (1950), *An Introduction to the Procedure of the House of Commons*, p. 22.



*First Reading*

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

11.75 A bill is deemed to have been ordered by the Council to be set down for second reading after the bill has been read the first time. This arrangement, which was first provided for in the 1968 Standing Orders<sup>99</sup>, is set out in Rule 53(3) of the current Rules of Procedure. This means that the first reading and the moving of the motion for second reading of a bill take place at the same Council meeting. No separate notice is required to be given by the Member or public officer in charge of the bill for moving the motion for second reading.

*Second Reading*

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

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

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<sup>96</sup> Rule 52(2) of the Rules of Procedure.

<sup>97</sup> Rule 53(1) of the Rules of Procedure.

<sup>98</sup> Rule 53(2) of the Rules of Procedure.

<sup>99</sup> Standing Order 41(3) of the Standing Orders of pre-1997 Legislature.

<sup>100</sup> Rule 54(1) of the Rules of Procedure.

<sup>101</sup> Rule 54(2) of the Rules of Procedure.

## *11. Legislative process*

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on the motion by explaining the purposes of the bill. The bill is then referred to the House Committee. However, any Member may move without notice that the debate shall not be adjourned. If the Council agrees to such a motion, the Council shall then proceed to debating the second reading of the bill.

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

11.79 The deeming provision for the second reading debate to be adjourned and the bill to be referred to the House Committee does not apply to Appropriation Bills. In the case of an Appropriation Bill, the Estimates containing details of the financial requirements for the services of the Government may be referred by the President to the Finance Committee for their examination before the consideration of the Appropriation Bill in committee of the whole Council.<sup>102</sup> Details on the financial procedures of the Legislative Council are explained in Chapter 12.

### *Referral to House Committee*

11.80 After a bill is referred to the House Committee, an item is placed on the agenda for the next meeting of the House Committee which is usually held

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<sup>102</sup> Rule 54(4) and Rule 71(11) of the Rules of Procedure.

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

### *Forming of a Bills Committee*

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

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

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<sup>103</sup> It has been a standing practice that all major legislative proposals should first be discussed by the relevant policy Panels before they are formally introduced to the Council.

<sup>104</sup> See Rule 20(g) of the House Rules.

<sup>105</sup> Rule 21(c) of the House Rules.

## *11. Legislative process*

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### *Queuing system for Bills Committees*

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

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

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

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<sup>106</sup> Rule 75(5) of the Rules of Procedure and Rule 20(g) of the House Rules.

<sup>107</sup> The setting of a quota for the number of Bills Committee that may be operating at the same time was made by the House Committee in 1994.

<sup>108</sup> Rule 21(f) and Rule 20(g) of the House Rules.

<sup>109</sup> Rule 21(f) of the House Rules.

<sup>110</sup> Rule 75(4) of the Rules of Procedure.

work is clearly laid down in the Rules of Procedure and supplemented by the House Rules. Any departure from the standing arrangement may give rise to confusion over the roles of different committees of the Council. The House Committee is nevertheless prepared to consider other alternatives, such as setting out the queries about the bill in writing and seeking information from the Government through the Legal Service Division, before deciding on whether a Bills Committee should be formed.<sup>111</sup>

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

### *Consideration of a bill by a Bills Committee*

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

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

<sup>112</sup> Rule 21(g) of the House Rules.

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

<sup>114</sup> Rule 75(6) of the Rules of Procedure.

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Committee, which are set out in the House Rules.<sup>115</sup> In gist, a Bills Committee is required to act in the following manner:

- (a) The scrutiny of a bill should be conducted quickly and, whenever possible, be completed within three months; the chairman should report to the House Committee should there be a need to work beyond 3 months<sup>116</sup>;
- (b) The chairman, who is elected at the first meeting, has the duty to monitor closely the progress of scrutiny and report to the House Committee if there is a need to hold the bill in abeyance<sup>117</sup>;
- (c) The meetings of a Bills Committee shall be held in public unless the chairman otherwise orders in accordance with a decision of the committee.<sup>118</sup> All matters for the decision of a Bills Committee shall be decided by a majority of the members voting<sup>119</sup>;
- (d) In the course of deliberation, the Bills Committee may come to a view that amendments should be made to certain clauses of or schedules to the bill. Such proposed amendments, if adopted by the majority of members of the Bills Committee, will be moved in the name of the chairman or any member as determined by the Bills Committee, on behalf of the Bills Committee;
- (e) As soon as a Bills Committee has completed consideration of the bill allocated to it, it notifies the House Committee and advises it in writing of the Bills Committee's deliberations and where appropriate, the majority and minority views, and whether or not the Bills Committee supports the bill<sup>120</sup>. Where there is urgency to resume the second reading debate on a bill and a written report cannot be provided to the House Committee before the deadline for giving notice of resumption, the chairman may make a verbal report to the House Committee and provide a written report at the

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<sup>115</sup> Rule 75(8) of the Rules of Procedure.

<sup>116</sup> Rule 21(h) of the House Rules.

<sup>117</sup> Subrule (iv) of Rule 21(i) of the House Rules.

<sup>118</sup> Rule 76(6) of the Rules of Procedure.

<sup>119</sup> Rule 76(8) of the Rules of Procedure.

<sup>120</sup> Rule 76(9) of the Rules of Procedure and Rule 21(j) of the House Rules.

earliest opportunity, e.g. at the following House Committee meeting;<sup>121</sup>

- (f) The deliberations of a Bills Committee may be discussed by the House Committee for the purpose of informing Members in preparation for resumption of the second reading debate on the bill in the Council. The deliberations of the Bills Committee, including any proposed amendments to the bill to be moved by its chairman or member on behalf of the Bills Committee, are not binding on any Member, whether in Council, or in a committee of the whole Council or in the House Committee.<sup>122</sup>
- (g) On occasions, some Members who are not members of the Bills Committee may raise questions about the Bill or inform the House Committee of their intention to move amendments to the bill concerned. If such amendments have not been considered by the Bills Committee and if time permits, the House Committee may suggest to the Bills Committee the holding of a further meeting to consider the proposed amendments before the second reading debate is resumed. However, Members are reminded that reopening of discussion on issues on which there has been full deliberation is not allowed.<sup>123</sup> Members should have brought their proposed amendments to the Bills Committee for discussion at an early stage to facilitate due consideration of the Bill and any proposed amendments to it by the Bills Committee.
- (h) After discussion at the House Committee on its deliberations, a Bills Committee shall submit a report to the Council and arrange for it to be presented at the same Council meeting at which the resumption of the second reading debate on the bill takes place.<sup>124</sup> The chairman or any member of the Bills Committee may, with the permission of the President, address the Council on the report at the commencement of the resumption of the second reading debate on the bill and he will be the first Member to speak at the resumed debate.<sup>125</sup> However, if the purpose of the

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<sup>121</sup> Para. 8.18 of the Handbook for Chairmen of Bills Committee.

<sup>122</sup> Rule 76(10) of the Rules of Procedure.

<sup>123</sup> Rule 21(i)(iii) of the House Rules.

<sup>124</sup> Rule 76(9) of the Rules of Procedure and Rule 21(l) of the House Rules.

<sup>125</sup> Rule 21(k), (m) and (o) of the House Rules.

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resumption of the second reading debate on a bill is for making an announcement for the withdrawal of the bill, the chairman or any member of the Bills Committee concerned may, with the permission of the President, address the Council at the time when the report is laid on the Table of the Council.<sup>126</sup> The address to the Council is not subject to the 15-minute restriction on speaking time;<sup>127</sup>

- (i) In the event that there is no indication that the second reading debate on a bill will resume within a reasonable time after completion of the Bills Committee's work, the Bills Committee may decide to table a written report in the Council. The chairman or any member of the Bills Committee may seek the President's permission to address the Council under Rule 21(3) of the Rules of Procedure (Presentation of Papers);<sup>128</sup> and
- (j) The Bills Committee will be dissolved as soon as the bill considered by it has passed through the Council or when it is so decided by the House Committee.<sup>129</sup>

### *Notice for resumption of the second reading debate on a bill*

11.88 The discussion at the House Committee upon the completion of the work of a Bills Committee is on whether the bill is ready for resumption of further proceedings in the Council. The decision of the House Committee is therefore not on whether the bill is to be supported, but rather on whether there is support for the second reading debate on the bill to be resumed at a Council meeting as requested by the Member or public officer in charge of the bill. Rule 54(5) of the Rules of Procedure has provided a mechanism and timeframe to facilitate the seeking of the support of the House Committee before the notice for the resumption of the second reading debate may be given.<sup>130</sup> Nevertheless, in terms of formal procedure, the Member or public officer in charge of the bill may at any time give notice to the Clerk for the resumption of the second reading debate by giving not less than 12 clear days'

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<sup>126</sup> Rule 21(n) of the House Rules.

<sup>127</sup> Rule 21(p) of the House Rules.

<sup>128</sup> Rule 21(q) of the House Rules.

<sup>129</sup> Rule 21(r) of the House Rules.

<sup>130</sup> Also refer to Note in Appendix 10-A.



notice before the day on which the debate is to be resumed, or less than 12 clear days if the President in his discretion dispenses with such notice.<sup>131</sup>

11.89 Under Rule 54(5) of the Rules of Procedure, the resumption of second reading debate may not take place earlier than 9 clear days after the meeting of the House Committee. This stipulation should be read against the background that the Council meets on Wednesdays and the House Committee meets on Friday to consider business to be dealt with at a Council meeting. When a Bills Committee has reported its deliberations to the House Committee on a Friday, the earliest date the second reading debate on the bill can be resumed is the second Wednesday after the meeting of the House Committee. Rule 54(5)(c) does provide the flexibility for the House Committee to recommend that the second reading debate on the bill be resumed at the next meeting of the Council, i.e. the Wednesday immediately after the House Committee, provided that permission is given by the President and notice is given no later than 2 clear days after the House Committee meeting<sup>132</sup>.

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

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

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<sup>131</sup> Rule 54(5)(d) of the Rules of Procedure.

<sup>132</sup> Rule 54(5)(e) of the Rules of Procedure.

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### *Resumption of the second reading debate on a bill*

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

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

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

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

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<sup>133</sup> Chapter 8, para. 8.9 – 8.10 (on speaking order), 8.16 (on speaking time).

<sup>134</sup> Rule 54(8) of the Rules of Procedure.

<sup>135</sup> Rule 64 of the Rules of Procedure.

<sup>136</sup> An example is the withdrawal of the Legislative Council (Amendment) Bill 2011 at the Council meeting of 22 February 2012 after it introduced the Legislative Council (Amendment) Bill 2012 on 8 February 2015 to address the concerns expressed by the community in respect of the proposals in the earlier Bill. Hansard, pp. 6118 – 6120.

the same membership of the Council) will meet immediately after a bill has been read the second time so that the committee stage of a bill takes place immediately after the second reading stage. The President, who is also the Chairman of the committee of the whole Council, will make an announcement that the Council resolves itself into a committee of whole Council or resumes as Council.

11.95 There are provisions in Rule 55 of the Rules of Procedure for the Council, upon a motion moved without notice by a Member, to commit a bill to a select committee, and for the President to direct a bill to be committed to a select committee if he is of the opinion that the bill would specially benefit or affect some particular person or association or corporate body. The provisions in Rule 55 have been adopted from previous Standing Orders which reflected the position when standing committees and select committees were the only forms of committees to undertake the detailed study of a bill.<sup>137</sup> There was no longer any need for bills to be referred to a select committee after the OMELCO ad hoc groups came into existence in early 1970s and Bills Committees became formal committees of the Council in 1992. Nevertheless the flexibility to commit a bill to a select committee has been preserved to provide such an alternative in the event that the Council or the President considers it appropriate to do so.

11.96 Any committee of the whole Council or select committee to which a bill is committed shall not discuss the principles of the bill but only its detailed provisions, i.e. the clauses and schedules. Such committee has the power to make amendments to the clauses and schedules including adding new clauses and new schedules provided that they are relevant to the subject matter of the bill.<sup>138</sup>

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<sup>137</sup> The last occasion when a bill was referred to a select committee was in the case of the Appropriation (1968-69) Bill which was reported to the Council on 27 March 1968. In 1985 the principles and issues raised by the Trial of Commercial Crimes Bill 1985 were referred to a select committee (under what is now Rule 78(1)). Whilst the Bill itself was deferred and subsequently withdrawn upon introduction of the Complex Commercial Crimes Bill 1988 which followed the select committee's recommendations. The original bill was not committed to the select committee for the important reason, also applicable to date under Rule 56(1) of the Rules of Procedure that only the details and not the principles of a committee bill may be discussed by a select committee.

<sup>138</sup> Rule 56 of the Rules of Procedure.

## ***11. Legislative process***

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### *Proceedings of a committee of the whole Council*

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

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

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

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

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

<sup>140</sup> Rule 58(1) of the Rules of Procedure.

<sup>141</sup> Rule 58(2) of the Rules of Procedure.

the number(s) of the clause(s) has been called, i.e. the question is deemed to have been proposed, Members who have given notice to amend the clause(s) are invited to move the amendments in the order set out in the Agenda, as explained below. Members and designated public officers are allowed to speak more than once on the specific clause(s) and amendments<sup>142</sup> provided that they do not persist in irrelevant or tedious repetition of their own or other Members' arguments in the discussion<sup>143</sup>. When no other Member wishes to speak or, in the case of a prolonged discussion and for which a time order has been made by the Chairman over the duration of committee stage<sup>144</sup>, at the ending time of the discussion the question on the ancillary motion is put to vote.

11.100 If no amendment to the clauses under the ancillary motion "That the following clauses stand part of the bill" is passed by the committee of the whole Council, the Chairman shall put the question to vote. In the event that a clause is amended, the Clerk is then directed to call the number of the clause again with the words "as amended" added after the clause number. The question "That the clause as amended stand part of the bill" is deemed to have been proposed.<sup>145</sup> If the question, whether referring to the original clause or the clause as amended, is passed, the clause (or clause as amended) will become part of the bill. If negatived, the clause is taken out of the bill and will not form part of the bill.<sup>146</sup>

11.101 New clauses are dealt with after all original clauses, whether amended or not, have been disposed of.<sup>147</sup> Amendments may be moved to new clauses but such amendments may only be moved if the new clauses have been read a second time. In a committee of the whole Council, when the section heading of a new clause is read by the Clerk the clause is deemed to have been read a first time. The Chairman shall then propose the question "That the clause be read a second time". If this is agreed to, amendment may then be proposed to the new clause. A joint debate may be ordered by the Chairman to discuss both the new clause and the proposed amendments. The amendments, if any, are then put to vote. The final question is "That the clause (or the clause as

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<sup>142</sup> Rule 38(1)(a) of the Rules of Procedure.

<sup>143</sup> Rule 45(1) of the Rules of Procedure.

<sup>144</sup> See Chapter 8, para. 8.34 – 8.36.

<sup>145</sup> Rule 58(1) of the Rules of Procedure.

<sup>146</sup> Examples are clause 58 of the Race Discrimination Bill negatived at the Council meeting of 9 July 2008, Hansard, pp. 10827 – 10848; and the heading of Part 5 and clause 18 of the Minimum Wage Bill negatived at the Council meeting of 15 July 2010, Hansard, pp. 11824 – 11826 and p. 11960.

<sup>147</sup> Rule 58(5) of the Rules of Procedure.

## 11. *Legislative process*

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amended) be added to the bill".<sup>148</sup> A proposed new clause may be withdrawn by the mover at any time before it is proposed or, if proposed, by leave of the committee with no dissenting voice from any Member before the question on it is put to vote.

11.102 Schedules are dealt with after all clauses and new clauses are disposed of unless a decision has been made by the Chairman to change the order of consideration under Rule 58(2) of the Rules of Procedure to facilitate a more efficient and effective discussion on interdependent clauses, schedules and amendments. The process for dealing with a schedule is the same as that for a clause, and the process for dealing with a new schedule is the same as that for a new clause.<sup>149</sup> A proposed new schedule may be withdrawn by the mover at any time before it is proposed or, if already proposed, by leave of the committee with no dissenting voice from any Member before the question on it is put to vote.

11.103 If there is a preamble to the bill, the consideration of the preamble will take place after all clauses and schedules and new clauses and new schedules have been dealt with. The question "That this be the preamble to the bill" will be proposed. Only an amendment which is necessitated by a previous amendment to the bill is allowed to be proposed to the preamble. After the amendment is disposed of, the question is then put to vote.<sup>150</sup>

11.104 Similar to the preamble, an amendment to the title of the bill is allowed only if it is made necessary by an amendment to the effective provisions of the bill. Such an amendment is made at the conclusion of the proceedings on the bill. There is no need to propose any question to make the title (as amended) stand part of the bill. No question is put upon the enacting formula.<sup>151</sup> The Law Draftsman may make changes to reference to the year or to any number in the title by which the bill is to be cited when it becomes law.<sup>152</sup>

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<sup>148</sup> Rule 58(6) of the Rules of Procedure.

<sup>149</sup> Rule 58(7) of the Rules of Procedure.

<sup>150</sup> Rule 58(8) of the Rules of Procedure.

<sup>151</sup> Rule 58(9) of the Rules of Procedure.

<sup>152</sup> Rule 58(10) of the Rules of Procedure.

*Report of the bill to the Council*

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

11.106 In the event that a bill is committed to a select committee, the select committee should follow the procedure set out in Rule 79 of the Rules of Procedure and go through the bill in the same manner as a committee of the whole Council as provided in Rule 58 of the Rules of Procedure.<sup>153</sup> Any amendment approved by the select committee should be reflected in the whole text of the bill as amended to be printed and attached to the report of the select committee.<sup>154</sup> The report should be tabled in Council<sup>155</sup> and a motion is to be moved by the chairman of the select committee that the report of the select committee on the bill be adopted.<sup>156</sup> If that motion is agreed to without amendment, the Council shall be deemed to have ordered the bill to be set down for third reading and the order is so recorded in the minutes of proceedings. No notice for third reading is required.<sup>157</sup> However, any Member may propose an amendment to add at the end of the motion the words "subject to the recommittal of the bill (either wholly or in part) to a committee of the whole Council. This motion, if agreed to by the Council, has the effect that the bill now stands recommitted to the committee of the whole Council, and the Council will immediately resolve itself into a committee of the whole Council to consider the bill."<sup>158</sup>

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<sup>153</sup> Rule 60(1) of the Rules of Procedure.

<sup>154</sup> Rule 60(2) of the Rules of Procedure.

<sup>155</sup> Rule 60(3) of the Rules of Procedure.

<sup>156</sup> Rule 61(1) of the Rules of Procedure.

<sup>157</sup> Rule 61(2) of the Rules of Procedure.

<sup>158</sup> Rule 61(3) and (4) of the Rules of Procedure.

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### *Recommittal of a bill*

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

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

### *Third reading*

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

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

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<sup>159</sup> Rule 62(1) and (2) of the Rules of Procedure.

<sup>160</sup> Rule 62(3) of the Rules of Procedure.

<sup>161</sup> Rule 62(4) of the Rules of Procedure.

<sup>162</sup> Rule 63(1) of the Rules of Procedure.

<sup>163</sup> Sections 11 to 14 (Part 4 of the Ordinance) and 17 of the Legislation Publication Ordinance (Cap. 614) provide for the editorial and revision powers of the Secretary for Justice over legislation of Hong Kong.



amendment<sup>164</sup> should be made before the question for the third reading of the bill is put by the President. No amendments of a material character shall be proposed.<sup>165</sup>

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

## **Amendments to bills**

### Notice of amendments to bills

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

### Form of amendments to bills

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

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<sup>164</sup> According to Erskine May (2011)(24<sup>th</sup> Edition), in the House of Commons only verbal amendments may be made to a bill on the third reading. p. 595.

<sup>165</sup> Rule 63(2) of the Rules of Procedure.

<sup>166</sup> Rule 63(3) of the Rules of Procedure.

<sup>167</sup> Rule 63(4) of the Rules of Procedure.

<sup>168</sup> Rule 65 of the Rules of Procedure.

<sup>169</sup> Rule 57(2) of the Rules of Procedure.

<sup>170</sup> In respect of the Appropriation Bill 2014, the President ruled the 909 sequential amendments proposed by Ms LEUNG Kwok-hung out of order but gave leave to waive the notice of 232 amendments selected by Mr LEUNG out of the 909 rejected amendments. In another case, the President waived the required notice for the public officer in charge of the Stamp Duty (Amendment) Bill 2013 to move consequential amendments to the Bill following the passage of the amendments proposed by a Member in committee of the whole Council.

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the notices of amendments, the proposed amendments are set out in an order that follows the order of the clauses of the bill that are proposed to be amended. Similar to making amendments to a motion<sup>171</sup>, a Member may delete one or more words, insert one or more words in a clause or schedule, or both.<sup>172</sup> Moreover, a Member may add new clauses and schedules to the bill.<sup>173</sup> As a general rule, an amendment to leave out words in order to insert other words takes precedence over an amendment merely to leave out words; and an amendment to leave out words take precedence over an amendment to insert other words or to add new clauses or schedules.<sup>174</sup> If two or more amendments are proposed to the same clause, the principle in Rule 34(5) of the Rules of Procedure is followed, i.e. in the order in which the amendments relate to the text of the clause, or in case of doubt in the order decided by the Chairman. The Chairman will also give regard to Rule 30(4) of the Rules of Procedure for determining the order of amendments which are substantially the same, i.e. the Member who gave the earliest notice which has not been withdrawn shall move the amendment, except that precedence is given to the amendment proposed by the Member or public officer in charge of the bill. Although it is the practice in some parliaments, such as UK and Canada, not to allow a proposal to delete an entire clause as the same effect can be achieved by voting against the inclusion of the clause in the bill, the practice in the Hong Kong Legislature is that such a proposed amendment is allowed.<sup>175</sup> The deleting of an entire clause without substitution is given precedence over other proposed amendments that target the text of the clause.

### Restrictions

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

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<sup>171</sup> Chapter 10, para. 10.63.

<sup>172</sup> Rule 34(2) of the Rules of Procedure.

<sup>173</sup> Rule 58 of the Rules of Procedure.

<sup>174</sup> See Erskine May (2011)(24<sup>th</sup> edition) pp. 572 – 573; and House of Commons Procedure and Practice (Canada)(2<sup>nd</sup> Edition) p.765.

<sup>175</sup> Examples of permission being given by the President for the Secretary for Security to delete an entire clause from a bill can be found in the Marriage (Introduction of Civil Celebrants of Marriages and General Amendments) Bill passed by the Council at its meeting of 16 November 2005 (clause 7, Hansard, p.1981) and the Electronic Health Record Sharing System Bill passed by the Council at its meeting of 8 July 2015 (clause 16, Hansard, pp. 14579 – 14585).

process set out in the Rules of Procedure allows the public office in charge of a bill to withdraw the bill at the beginning of the third reading stage if he finds it difficult to accept the bill in its amended form. The procedure provides a means for the Government to decide the final form of the proposed legislation introduced by it. Nevertheless, the Legislature has adopted the restrictions which applied to amendments to bills in the pre-1977 Legislature<sup>176</sup> in its Rules of Procedure. These restrictions, which include the upholding of the principle that the financial initiative should rest with the Government, are self-imposed restrictions and they are set out in Rule 57 of the Rules of Procedure. The President, who is also the Chairman of the committee of the whole Council, relies on this Rule as well as the principles established or evolved over the years in relation to this Rule to determine the admissibility of any proposed amendments.

### *Relevance to the bill and to the clause*

11.115 As mentioned in paragraph 11.96 above, a committee of the whole Council has the power to make amendments to a bill provided that the amendments, including new clauses and new schedules are relevant to the subject matter of the bill.<sup>177</sup> Rule 57(4)(a) provides that an amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates. The "subject matter" determines the scope. An amendment is out of order if it falls beyond or is outside the scope of the bill. If an amendment is within the scope of the bill but is not relevant to the clause under consideration, it may be moved as a new clause.<sup>178</sup>

11.116 The approach adopted by the Presidents of the HKSAR Legislature in determining the subject matter of a bill is to ascertain the purposes of the bill, by information available from relevant materials such as the long title and the explanatory memorandum of the bill, the Legislative Council Brief on the bill as well as any submissions of the Government on proposed amendments and comments on those submissions given by the Members proposing the amendments.<sup>179</sup> In her ruling on the Provision of Municipal Services (Reorganization) Bill dated 29 November 1999, President Rita FAN took into

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<sup>176</sup> Standing Order No. 45.

<sup>177</sup> Rule 56(2) of the Rules of Procedure.

<sup>178</sup> Erskine May (2011) (24<sup>th</sup> Edition), p. 576.

<sup>179</sup> In an information paper provided by the Legal Service Division to the Bills Committee on the Rail Merger Bill, the factors which are taken into consideration by the President to consider the relevance of a proposed amendment are explained. See <http://www.legco.gov.hk/yr05-06/english/bc/bc03/papers/bc03ls-71-e.pdf>, para. 9 – 12.

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account the long title of the Bill concerned and the legal effect of the relevant clauses in the Bill to decide whether the proposed amendments went to the fundamental principles of the Bill rather than its details.

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

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

11.119 There are also a few principles which the Presidents have established for considering whether a proposed amendment is relevant to the subject matter of a bill:

- (a) While the long title and explanatory memorandum of a bill provide useful reference for the President to consider the subject matter of the bill, they are not determinative. Where necessary, other relevant factors may be referred to, but the extent to which such information, such as that contained in a Legislative Council Brief, is relevant or useful would depend on the facts of each case;<sup>180 181</sup>
- (b) The heading of a clause does not determine the subject matter of the bill; it is the substance of the clause that should be looked at;<sup>182</sup> and
- (c) In considering the relevance of an amendment to the subject matter of a bill, the purported goal of the proposer of the amendment is not considered<sup>183</sup>.

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

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

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

<sup>181</sup> President's ruling on 10 July 2006 at [http://www.legco.gov.hk/yr05-06/english/pre\\_rul/pre0710cb3-ref-e.pdf](http://www.legco.gov.hk/yr05-06/english/pre_rul/pre0710cb3-ref-e.pdf).

<sup>182</sup> President's ruling on 10 July 2006 at [http://www.legco.gov.hk/yr05-06/english/pre\\_rul/pre0710cb3-ref-e.pdf](http://www.legco.gov.hk/yr05-06/english/pre_rul/pre0710cb3-ref-e.pdf).

<sup>183</sup> President's ruling on 20 April 2015 in relation to the Appropriation Bill 2015.

<sup>184</sup> Rule 57(4)(b) of the Rules of Procedure.

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

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

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### *Amendment making a clause unintelligible*

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

### *Amendment considered by the Chairman frivolous or meaningless*

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

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<sup>187</sup> Rule 57(4)(c) of the Rules of Procedure.

<sup>188</sup> See President's ruling at [http://www.legco.gov.hk/yr06-07/english/pre\\_rul/pre0611-ref-e.pdf](http://www.legco.gov.hk/yr06-07/english/pre_rul/pre0611-ref-e.pdf).

<sup>189</sup> Rule 57(4)(d) of the Rules of Procedure.

<sup>190</sup> The proposed amendments sought to disqualify a person who had resigned as a Member of the Legislative Council from standing for a by-election. Each of the amendments specified a factor for the disqualification and the factor was presented in a sequentially varying degree in a series of amendments.

indication that he could apply Rule 57(4)(d) to "a series of amendments", he ruled the 720 amendments admissible. He also did not consider it right for him to invoke the power given to him under Rule 92 of the Rules of Procedure<sup>191</sup> to extend the application of the Rule.<sup>192</sup>

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

11.124 In June 2012, in relation to 167 amendments to be proposed to a government resolution to effect a proposed reorganization of the Government Secretariat, President Jasper TSANG noted that 59 of them were sequential amendments. He expressed the view that even if each of these 59 amendments taken individually might serve a particular purpose, it was obvious that when the 59 amendments were taken together they could be regarded as frivolous and might have the effect of prolonging Council proceedings more than was necessary for providing a fair choice for Members. Nevertheless he ruled the 59 amendments admissible as it was not clear whether the restriction against a frivolous or meaningless amendments under Rule 57(4)(d) of the Rules of Procedure could also be applied to a series of amendments to motions.<sup>193</sup>

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

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<sup>191</sup> Rule 92 of the Rules of Procedure provides that in any matter not provided for in the Rules of Procedure, the practice and procedure to be followed in the Council shall be such as may be decided by the President who may, if he thinks fit, be guided by the practice and procedure of other legislatures.

<sup>192</sup> See President Jasper TSANG's ruling at Appendix 8-A.

<sup>193</sup> See President Jasper TSANG's ruling at [http://www.legco.gov.hk/yr11-12/english/pre\\_rul/pre0618-ref-e.pdf](http://www.legco.gov.hk/yr11-12/english/pre_rul/pre0618-ref-e.pdf).

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

- (a) whether the passage of any one such amendment in a series would serve any substantive purpose; and
- (b) whether the passage of one such amendment vis-à-vis another in the same series would make any material difference.

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

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



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

11.129 In 2015, the number of amendments to the Appropriation Bill 2015 rose to 3 904 with 3 280 coming in 1 640 pairs also proposed by Mr LEUNG Kwok-hung seeking to reduce the appropriation to a Head of Expenditure by a certain amount (as represented by using the number of months as the multiplier). In his ruling on 20 April 2015, President Jasper TSANG pointed out that Mr LEUNG had evidently taken advantage of his admission of the amendments in pair to the 2014 Appropriation Bill and proposed voluminous amendments of the same form to the 2015 Appropriation Bill with the avowed intent to filibuster. Mr TSANG reiterated that as President, one of his constitutional powers and functions was to exercise and discharge under Article 72 of the Basic Law to preside over meetings to ensure the orderly, efficient and fair disposition of the Council's business. From the experience of the Council in 2014 and his assessment of the considerable time to complete the proceedings of the 3 280 amendments, he had to strike a proper balance between respecting the right of individual Members to propose amendments and ensuring efficient conduct of the Council as a law-making institution. He therefore ruled that the 3 280 proposed amendments failed to comply with Rule 57(4)(d) for being frivolous and meaningless, and could not be moved. See President's ruling at **Appendix 11-I**.

#### *Language of amendments*

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

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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.<sup>194</sup>

### *Amendment dependent on another amendment*

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

### *Amendment with charging effect*

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

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

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

<sup>195</sup> Rule 57(5) of the Rules of Procedure.

<sup>196</sup> President's ruling at [http://www.legco.gov.hk/yr99-00/english/pre\\_rul/991129.pdf](http://www.legco.gov.hk/yr99-00/english/pre_rul/991129.pdf).

revenue or other public moneys of Hong Kong shall be proposed only by –

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

11.133 As explained in Chapter 10<sup>197</sup>, the retention of this rule in the Rules of Procedure is to uphold the constitutional principle that any proposal with charging effect should only be introduced on the initiative or with the authorization of the Government. The principles which apply to Rule 31(1) of the Rules of Procedure in determining whether there is a charging effect have in fact been developed through the application of Rule 57(6). The guiding factors to which the President often referred include: whether the proposed amendment will impose a new and distinct statutory function which is not provided for in the existing law; whether the proposal will require the spending of an amount of public money that is not nominal or negligible; and whether the proposal will have the effect of forgoing revenue which may be collected under statutory authority. Detailed explanations on these guiding factors and examples to illustrate the application of the principles are given in Chapter 10.<sup>198</sup>

### **Withdrawal or postponement of bills**

11.134 The Member or public officer in charge of a bill may withdraw or postpone the bill at any time before the bill is presented to the Council. It should be noted that when the copy of the bill with its explanatory memorandum is issued by the Clerk to every Member, the bill is deemed to have been presented to the Council.<sup>199</sup> After a bill has been presented to the Council, the Member or public officer in charge of the bill may withdraw or postpone the bill by an announcement made in the Council at the beginning of the proceedings for its second or third reading.<sup>200</sup>

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<sup>197</sup> Chapter 10, para. 10.45.

<sup>198</sup> Chapter 10, para. 10.45 – 10.56.

<sup>199</sup> Rule 52(2) of the Rules of Procedure.

<sup>200</sup> Rule 64(1) of the Rules of Procedure.

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

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

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

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

<sup>202</sup> Rule 64(1) of the Rules of Procedure.

<sup>203</sup> Mr LAU Chin-shek resigned from the office of a Legislative Council Member in protest of the withdrawal of the Employment (Amendment) Bill 1994 at third reading stage. The explanation given by the Secretary for Education and Manpower for the withdrawal of the Bill is provided in the Hansard of the sitting at [http://www.legco.gov.hk/yr94-95/english/lc\\_sitg/hansard/h941214.pdf](http://www.legco.gov.hk/yr94-95/english/lc_sitg/hansard/h941214.pdf).

part of the Bill. When the Council resumed after committee stage, the Attorney General announced that the Government could not accept the amendments on membership requirement and therefore considered that it had no option but to withdraw the Bill. The President announced that no further proceedings on the Bill would be taken following Government's withdrawal of it.<sup>204</sup>

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

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

### **Subsidiary legislation**

#### Nature of subsidiary legislation

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

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<sup>204</sup> Council meeting on 25 June 1997, Hansard, pp. 829 – 838.

<sup>205</sup> Chapter 5, para. 5.75 – 5.78.

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scrutiny period specified in section 34(2) of Cap. 1<sup>206</sup>, the subsidiary legislation will continue to operate in accordance with its content as published in the Gazette. This is generally known as the negative vetting procedure. For subsidiary legislation made under section 35 of Cap.1, which requires the Council's approval in the form of a proposed resolution, the Council may amend the whole or any part of the subsidiary legislation. This is generally known as the positive vetting procedure. Details on how subsidiary legislation is handled in Council have been explained in previous chapters.<sup>207</sup>

### Consultation with Panels

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

11.141 If the Panel considers that the details of the proposed subsidiary legislation are complex in nature or the subject matter is highly controversial, it may make a report to the House Committee and recommend that a subcommittee of the House Committee should be formed to study the proposed subsidiary legislation before it is published in the Gazette or debated under a motion to approve in the Council.<sup>208</sup> Under Rule 75(10)(c) of the Rules of Procedure, the House Committee shall decide the manner of consideration of any draft of subsidiary legislation or instrument. If the recommendation is accepted by the House Committee and a subcommittee is formed, any Member (except the President) may join the subcommittee. As a matter of convention, the Government will not present any proposed subsidiary legislation for consideration by the Council until the subcommittee

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

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

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

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

#### Consideration by the House Committee

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

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

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<sup>209</sup> The Bills Committee on Civil Justice (Miscellaneous Amendments) Bill 2007, when reporting on its work at the House Committee meeting on 18 January 2008, proposed the setting up of a subcommittee to scrutinize the large number of complex proposed amendments to three sets of subsidiary legislation relating to civil proceedings. See <http://www.legco.gov.hk/yr07-08/english/hc/papers/hc0118cb2-834-e.pdf>.

<sup>210</sup> On 18 May 2007, the House Committee decided to form a subcommittee to study the legislative amendments relating to the proposed re-organization of policy bureaux of the Government Secretariat. See minutes of House Committee meeting at <http://www.legco.gov.hk/yr06-07/english/hc/minutes/hc070518.pdf>.

<sup>211</sup> Another example is the draft subsidiary legislation relating to rail merger. See minutes of House Committee meeting on 25 May 2007 at <http://www.legco.gov.hk/yr06-07/english/hc/minutes/hc070525.pdf>.

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

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

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

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11.144 The subcommittees appointed by the House Committee to study subsidiary legislation are subcommittees of the House Committee. Any member of the House Committee may join the subcommittee and take part in the scrutiny of the subsidiary legislation. In addition to examining the merits of the subsidiary legislation, matters studied by the subcommittees include the propriety of the authorities making the subsidiary legislation<sup>215</sup> and the proper scope of the exercise of the law-making power. The subcommittees also study the extent of power of the Legislative Council to amend the subsidiary legislation which is subject to section 34 of Cap. 1.<sup>216</sup>

11.145 After the subcommittee has completed the consideration of the subsidiary legislation assigned to it, it may present a report to the House Committee.<sup>217</sup> As the notice period for amendments to subsidiary legislation is not later than 5 clear days before the day on which it is to be considered by the Council<sup>218</sup>, it has become necessary for subcommittees on subsidiary legislation to report back to the House Committee on the second Friday before the relevant Council meetings. This will allow time for individual Members to consider whether they wish to amend the relevant subsidiary legislation before the notice period is due. Sometimes, a subcommittee may make a verbal report at the House Committee, followed by a written report.

### Proceedings in the Council for consideration of subsidiary legislation

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

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

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

<sup>217</sup> Rule 75(10A) of the Rules of Procedure.

<sup>218</sup> Rule 29(2) of the Rules of Procedure. Also see Chapter 10, para. 10.24. Under this rule, the President may in his discretion dispense with such notice.



advised otherwise by the Government and with the consent of the President.<sup>219</sup> If more than one amendment is to be moved to the same proposed resolution, these amendments will be dealt with in the order in which the respective amendments relate to the text of the proposed resolution. A joint debate is usually ordered to enable Members to speak on both the proposed resolution and the amendments thereto. After all Members who wish to speak have spoken, the amendments are first disposed of before the Council decides on the proposed resolution.

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

### Withdrawal of subsidiary legislation

11.148 The steps to withdraw subsidiary legislation made under section 34 and section 35 of Cap. 1 are different. For the withdrawal of a proposed resolution under 35 of Cap. 1, the notice is usually withdrawn when the House Committee decides to set up a subcommittee to study the subsidiary legislation in detail.<sup>220</sup> If it is subsequently decided by the Government that the subsidiary legislation should not be proceeded with for the time being, no further procedure on the part of the Government is required as the notice has already been withdrawn. The subcommittee however needs to submit a report to the House Committee in the same manner as other subcommittees which

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<sup>219</sup> See Chapter 7, para. 7.86 – 7.87.

<sup>220</sup> The notice of a proposed resolution to be moved under section 5(4) of the Motor Vehicles (First Registration Tax) Ordinance at the Council meeting of 4 March 2014 was withdrawn upon the request of the House Committee after a decision was made on 28 February 2014 to form a subcommittee to study the proposed resolution. The Secretary for the Environment wrote to the Clerk to the Council on 4 March 2014 to withdraw the notice so that the subcommittee would have sufficient time to examine the proposed resolution. The proposed resolution was subsequently passed at the Council meeting of 26 March 2014. See report of the relevant subcommittee at <http://www.legco.gov.hk/yr13-14/english/hc/papers/hc0314cb1-1078-e.pdf>.

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have completed their work. There is nevertheless one occasion where a resolution was to be moved under section 54A of Cap. 1 in 2009 for the transfer of statutory functions from one official office to another. During the scrutiny of the proposed resolution, the Government's attention was drawn to the certain functions in the resolution which did not exist in the Ordinance concerned. The Government subsequently withdrew the original resolution and put forward a revised resolution which was passed by the Council on 9 July 2009.

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

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

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

- (a) the order of the Council for a bill after first reading to be set down for second reading (Rule 53(3));
- (b) the signification of the Chief Executive's written consent by a designated public officer for the presentation of a Members' bill which relates to Government policies (Rule 54(1) and (2));
- (c) the order of the Council for a bill after reporting from a committee of the whole Council to be set down for third reading (Rule 59);
- (d) the order of the Council for a bill after reporting from a select committee to be set down for third reading (Rule 61(2)); and
- (e) the order of the Council for a bill returned by the Chief Executive for reconsideration to be set down for a motion "That the .... Bill returned by the Chief Executive in accordance with Article 49 of the Basic Law do pass after reconsideration", which may be moved by any Member without notice (Rule 66(5)).

## **Chapter 12**

### **Financial Procedure**

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

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

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

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### **The financial procedure**

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

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

- (a) The government of the HKSAR shall exercise the power and function to draw up and introduce budgets and final accounts (Article 62(4)); and it shall obtain approval from the Legislative Council for taxation and public expenditure (Article 64);
- (b) The Chief Executive of the HKSAR shall have the power and function to approve the introduction of motions regarding revenues or expenditure to the Legislative Council (Article 48(10));
- (c) The Legislative Council shall exercise the power and functions to examine and approve budgets introduced by the government (Article 73(2)) and to approve taxation and public expenditure (Article 73(3));
- (d) If the Legislative Council refuses to pass a budget introduced by the government, and if consensus still cannot be reached after consultations, the Chief Executive may dissolve the Legislative Council (Article 50);
- (e) If the Legislative Council refuses to pass the budget introduced by the government, the Chief Executive may apply to the Legislative Council for provisional appropriations; and if such appropriation cannot be approved due to dissolution of the Legislative Council, the Chief Executive may, prior to the election of the new Legislative Council, approve provisional short-term appropriations according to the level of expenditure of the previous fiscal year (Article 51); and
- (f) When, after the Legislative Council is dissolved because it refuses to pass a budget, the new Legislative Council still refuses to pass the original budget, the Chief Executive must resign (Article 52(3)).

### The budget

12.5 The financial procedure used in Hong Kong has existed for over 170 years since 1843 and has remained unchanged after the establishment of the HKSAR in 1997 under the "one country, two systems" principle.<sup>1</sup> The financial procedure is set out primarily in the Public Finance Ordinance (Cap. 2)<sup>2</sup>, in the Legislative Council's Rules of Procedure and the Government's internal working mechanism in the management of public finance. This procedure, which shares many similarities with British public and parliamentary financial procedure<sup>3</sup>, has undergone significant changes in past decades to enable the legislature to examine the detailed requirements presented by the government and to authorize the relevant expenditure set out in the estimates of expenditure through the passage of an Appropriation Bill, as well as approving the raising of taxation and imposition of charges upon the people through separate legislative proposals. It has been the convention that at the meeting where the Appropriation Bill is introduced into the Council, the Financial Secretary presents the "budget" which includes both the estimates of expenditure and revenue as well as new revenue proposals for the next financial year (from 1 April to 31 March in the following year).

### *Appropriations and supplementary appropriations*

12.6 Any bill containing the estimated financial requirements for expenditure on all the services of the Government of HKSAR for the current or succeeding financial year is known as an Appropriation Bill.<sup>4</sup> As explained in Chapter 6<sup>5</sup>, the Appropriation Bill seeks the Legislative Council's authorization of an appropriation from the general revenue account up to a specified amount for the services of the government in the upcoming financial year. The Bill is introduced into the Council for its approval before or as soon as practicable after the commencement of the financial year to which it relates.<sup>6</sup> According to Erskine May, appropriation was originally "a system of attributing sums advanced to particular services of the Government (i.e. showing what sums were appropriated to what services) for the purpose of establishing whether the estimates presented to Parliament were reflected in

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<sup>1</sup> Chapter 2, para.2.10 – 2.11.

<sup>2</sup> Public Finance Ordinance (Cap. 2) is one of the ordinances adopted by the Standing Committee of the NPC on 23 February 1997 to continue to be in force after the establishment of the HKSAR on 1 July 1997.

<sup>3</sup> See Erskine May's *Treatise on The Laws, Privileges, Proceedings and Usage of Parliament*, 24<sup>th</sup> Edition, p. 711.

<sup>4</sup> Rule 67(1) of the Rules of Procedure.

<sup>5</sup> Chapter 6, para. 6.30.

<sup>6</sup> Sections 5(1) and 6(1) of the Public Finance Ordinance (Cap. 2).

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the eventual pattern of expenditure".<sup>7</sup> Hong Kong still maintains this system and has followed the same precepts of financial practice under this system, i.e. the amount appropriated for a particular service is a maximum amount and it cannot be used for another service unless with the authorization of the legislature or authorities with delegated powers.<sup>8</sup>

12.7 The Public Finance Ordinance (Cap. 2) requires that the estimates of expenditure are to classify expenditure under heads and subheads with the ambit of each head described.<sup>9</sup> In respect of each head, the estimated total expenditure for all the programme areas listed under the head should be shown with provision sought in respect of each subhead, the establishment of posts and the limit to any non-recurrent commitments.<sup>10</sup>

12.8 Where certain expenditure cannot be anticipated at the time when the Appropriation Bill for a financial year was approved by the Legislative Council, the financial system provides that the Finance Committee of the Legislative Council may, upon a proposal of the Financial Secretary, make changes to the approved estimates of expenditure during the financial year.<sup>11</sup> These changes include the approval of supplementary provision in approved or new subheads, variation in the establishments of posts<sup>12</sup> and increase in the limit to the commitments in capital items.<sup>13</sup> The Finance Committee may delegate to the Financial Secretary its power to approve changes subject to such conditions, exceptions and limitation as are specified in the delegation.<sup>14</sup> This delegated power may be further delegated to any public officer.<sup>15</sup> The power of the Finance Committee and the delegation of its power are set out in section 8 of the Public Finance Ordinance (Cap. 2).

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

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<sup>7</sup> Erskine May, 24<sup>th</sup> Edition, p. 714.

<sup>8</sup> Erskine May, 24<sup>th</sup> Edition, p. 714; Hong Kong Fact Sheet (December 2014).

<sup>9</sup> Section 5 of the Public Finance Ordinance (Cap. 2).

<sup>10</sup> Section 5 of the Public Finance Ordinance (Cap. 2)

<sup>11</sup> Section 8(1) of the Public Finance Ordinance (Cap. 2); Hong Kong Fact Sheet (December 2014).

<sup>12</sup> According to the Introduction in the annual Estimates of Expenditure, the "establishment" mechanism in the Government has been used since 1980. Under this mechanism, controlling officers are authorized to create or delete posts in existing non-directorate ranks provided that the net additional notional annual mid-point salary value of the posts created does not exceed the departmental establishment ceiling shown in the estimates. Any changes to the departmental establishment ceiling during the year will require the approval of the Finance Committee.

<sup>13</sup> Section 8(2) of the Public Finance Ordinance (Cap. 2).

<sup>14</sup> Section 8(3) of the Public Finance Ordinance (Cap. 2).

<sup>15</sup> Section 8(4) of the Public Finance Ordinance (Cap. 2).

expenditure charged to any head is in excess of the sum originally appropriated for that head by an Appropriation Ordinance, a Supplementary Appropriation Bill must be introduced into the Legislative Council as soon as practicable after the close of the financial year to which the excess expenditure relates.<sup>16</sup>

### *Revenue proposals*

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

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

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

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<sup>16</sup> Section 9 of the Public Finance Ordinance (Cap. 2).

<sup>17</sup> Major Sources of Government Revenue published by Research Office, Legislative Council Secretariat. (updated 7 September 2015).

<sup>18</sup> Article 107 of the Basic Law.

<sup>19</sup> According to Hong Kong Fact Sheet (December 2014), a medium-range forecast is a five-year forecast of expenditure and revenue which focuses on the consolidated financial position of the Government.

<sup>20</sup> Hong Kong Fact Sheet (December 2014).

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

### Charges upon public revenue or upon public funds

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

### Control of finances

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

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<sup>21</sup> Sections 6 and 7 of Public Revenue Protection Ordinance, Cap. 120.

<sup>22</sup> Erskine May, 24<sup>th</sup> Edition, p. 712.

<sup>23</sup> Rules 31(1) and 57(6) of the Rules of Procedure.

<sup>24</sup> Section 10 of the Public Finance Ordinance (Cap. 2).

<sup>25</sup> Section 3(1) of the Public Finance Ordinance (Cap. 2).

<sup>26</sup> Section 3(2) of the Public Finance Ordinance (Cap. 2).



Cap. 2 also stipulates that the Director of Accounting Services is responsible for the compilation and supervision of the Government's accounts and for ensuring that all regulations, directions or instructions made or given under Cap. 2 are complied with.<sup>27</sup>

### *Controlling Officers*

12.15 In the estimates of expenditure presented to the Legislative Council, there are a number of Heads of Expenditure.<sup>28</sup> Each Head of Expenditure usually corresponds to a government bureau, a branch of a bureau or a department,<sup>29</sup> and is supported with a report by the respective controlling officer. The controlling officer designated for a Head of Expenditure is responsible and accountable for all expenditure from any subheads under the respective Head, and for all public moneys and Government property in respect of the department or service for which he is responsible.<sup>30</sup> Every controlling officer is required to obey all regulations made and directions or instructions given by the Financial Secretary under section 11 of the Public Finance Ordinance (Cap. 2) and, if so required, account to the Financial Secretary for the performance of his duties as controlling officer.<sup>31</sup> In the controlling officers' reports in the Estimates, the effectiveness or cost-effectiveness of the results from the resources proposed to be spent on a specific programme area is measured where possible in terms of unit costs or productivity indicators.<sup>32</sup>

12.16 The provision of each Head of Expenditure is typically broken down into various expenditure components and standard subheads, such as *Subhead 000 Operational expenses* which covers all expenditure of a recurrent nature of a department, unless otherwise shown in separate subheads. Since April 1999, the financial provision under this subhead has been operated as a one-line vote, such that the controlling officer is given autonomy and flexibility in deploying the funds among various conventional subheads<sup>33</sup> within this *Subhead 000*.<sup>34</sup>

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<sup>27</sup> Section 16 of the Public Finance Ordinance (Cap. 2).

<sup>28</sup> The number of Heads of Expenditure in the 2015-2016 Estimates was 83.

<sup>29</sup> Estimates of Expenditure 2015-2016, Volume I, Introduction, para. 3.

<sup>30</sup> Section 12(1) and (2) of the Public Finance Ordinance (Cap. 2).

<sup>31</sup> Section 13 of the Public Finance Ordinance (Cap. 2).

<sup>32</sup> Estimates of Expenditure 2015-2016, Volume I, Introduction, para. 4.

<sup>33</sup> Conventional subheads under Subhead 000 Operational expenses include Personal Emoluments (staff salaries and allowances); Personnel Related Expenses (Mandatory Provident Fund Contribution, etc.); Departmental Expenses (day-to-day operation costs); Other Charges; and Recurrent Subventions (payments to external or subvented bodies).

<sup>34</sup> Estimates of Expenditure 2015- 2016, Volume I, Introduction, para. 6 and 9.

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### *General Revenue Account*

12.17 The Government controls its finances through the General Revenue Account, which is the main account for the day-to-day departmental expenditure and revenue collection, and acts as the central funding device with resources transferred as appropriate to and from the 9 purpose-specific funds established under section 29 of the Public Finance Ordinance (Cap. 2) with the approval of the Legislative Council.<sup>35</sup> Upon the coming into operation of an Appropriation Ordinance or the making by the Legislative Council of a resolution under section 7 of Cap. 2 to authorize expenditure in advance of an Appropriation Ordinance, the Financial Secretary authorizes the Director of Accounting Services by general warrant or vote on account warrant respectively under his hand to pay from the General Revenue Account such sums as may be required to meet expenditure in accordance with the Ordinance or resolution.<sup>36</sup> Where the Finance Committee has made a change to the approved estimates of expenditure for a particular Head in accordance with section 8 of Cap. 2, the Financial Secretary shall authorize the Director of Accounting Services by supplementary warrant to pay from the general revenue such sum as is in excess of the sum appropriated for that Head by the Appropriation Ordinance for meeting the requirement arising from the change.<sup>37</sup> Every appropriation by the Legislative Council from the General Revenue Account for the service of any financial year and every warrant issued under the provisions of Cap. 2 shall lapse and cease to have effect at the close of that financial year.<sup>38</sup>

12.18 The Financial Secretary may in his discretion authorize the investment of any deposit in such manner as he may determine, and any interest or dividend received in respect of any deposit so invested shall form part of the general revenue.<sup>39</sup>

### *Funds*

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

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<sup>35</sup> Estimates of Expenditure 2015-2016, Volume I, Introduction, para. 1.

<sup>36</sup> Section 19 of the Public Finance Ordinance (Cap. 2).

<sup>37</sup> Section 19 of the Public Finance Ordinance (Cap. 2).

<sup>38</sup> Section 31 of the Public Finance Ordinance (Cap. 2).

<sup>39</sup> Section 23(2) of the Public Finance Ordinance (Cap.2) provides that any moneys deposited under subsection (2) shall not form part of the general revenue, but if the deposit is unclaimed for 5 years, it may be treated as moneys received for the purposes of the Government under subsection (4) and shall then form part of the general revenue.

purposes as may be specified in the resolution may be credited into the relevant funds. The Financial Secretary may issue a funds warrant to incur expenditure for the purposes for which the funds were established subject to such conditions, exceptions and limitations as may be specified in the resolution.<sup>40</sup> The purpose-specific funds established are:

- (a) the ***Capital Works Reserve Fund*** for financing the Government's public works programme and consequential equipment, development, purchase and installation of major systems and equipment, capital subventions, acquisition of land, etc.;<sup>41</sup>
- (b) the ***Capital Investment Fund*** for financing loans, advances and investments (including investments by way of waived land premium, donated works or other benefits (other than cash)) to or in such persons as may be approved by the Finance Committee;<sup>42</sup>
- (c) the ***Civil Service Pension Reserve Fund*** for meeting the liabilities for payment of pensions, gratuities or other allowances for civil servants and judges under the various relevant pension ordinances if the Financial Secretary believes that having taken into account all anticipated receipts and payments, the balance in the General Revenue Account will be in deficit at the end of that financial year;<sup>43</sup>
- (d) the ***Disaster Relief Fund*** for providing aid in relief of disasters that occur outside Hong Kong;<sup>44</sup>
- (e) the ***Innovation and Technology Fund*** for financing projects that contribute to the upgrading (including innovation and

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<sup>40</sup> Section 29(1) of the Public Finance Ordinance (Cap. 2).

<sup>41</sup> Cap. 2A is a Resolution passed by the Legislative Council on 20 January 1982 under section 29(1) of the Public Finance Ordinance (Cap. 2) to establish the Capital Works Reserve Fund for the purpose of financing the Public Works Programme and the acquisition of land. The Resolution took effect from 1 April 1982. It was amended from time to time to incorporate changes such as the transfer of the financing of capital subventions and major systems and equipment from the General Revenue Account to the Fund with effect from 1 April 1988.

<sup>42</sup> Cap. 2B.

<sup>43</sup> Cap. 2E.

<sup>44</sup> Cap. 2L.

## 12. Financial Procedure

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technology upgrading) and development in the manufacturing and service industries;<sup>45</sup>

- (f) the **Land Fund** for receiving and holding all of the assets upon the establishment of the HKSAR Government transferred from the HKSAR Land Fund established by a Declaration of Trust of the HKSAR Government Land Fund Trust made on 13 August 1986 to the HKSAR Government;<sup>46</sup>
- (g) the **Loan Fund** for assuming the liabilities of the Student Loan Fund, Development Loan Fund and other schemes under Part II of the Schedule to Cap. 2C;
- (h) the **Lotteries Fund** administered by the Financial Secretary and invested in such securities as may be approved by him;<sup>47</sup> and
- (i) the **Bond Fund** for repaying or, if appropriate, paying the principal of, interest on, and expenses incurred in relation to, any sums that have been borrowed under section 3 of the Loans Ordinance (Cap. 61) for the purposes of the Fund.<sup>48</sup>

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

### *Fiscal reserves*

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

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<sup>45</sup> Cap. 2Q.

<sup>46</sup> Cap. 2O.

<sup>47</sup> Cap. 2D.

<sup>48</sup> Cap. 2S.

<sup>49</sup> Hong Kong Fact Sheet (December 2014).

12.22 Fiscal reserves are the total amount of resources that the Government may use to meet its day-to-day operational expenses and public works expenditure. It is the Government's cash balance. Since 1976, the bulk of the Government's fiscal reserves has been placed with the Exchange Fund<sup>50</sup> managed by the Hong Kong Monetary Authority to generate investment income. Since the establishment of the HKSAR, there have been changes in the policy of the Government over the level of fiscal reserves that should be maintained.

12.23 The purposes of the fiscal reserves were explained in detail in the Budget Speech made by the then Financial Secretary, Mr Donald TSANG, when he presented the Appropriation Bill in the Provisional Legislative Council on 18 February 1998.<sup>51</sup> Mr TSANG stated that, in the light of the 1997-1998 Asian financial crisis, it would be necessary for the Government to hold substantial public funds in reserves for the following three purposes:

- (a) the operating requirement to meet the cash flow requirement of the operation of the Government;
- (b) the contingency requirement to reserve funds for the Government's unexpected and urgent uses; and
- (c) the monetary requirement to maintain the stability in the exchange rate of the Hong Kong dollar.

12.24 On the basis of the Government's assessment of the amounts of cash that needed to be maintained for each of the above purposes, the Financial Secretary stated that the level of fiscal reserves should stay between 15 months of government expenditure plus 125% of Hong Kong dollar supply under the M1 definition (i.e. the upper limit) and 9 months of government expenditure plus 75% of Hong Kong dollar money supply under the M1 definition (i.e. the lower limit).<sup>52</sup>

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

<sup>51</sup> Council meeting of 18 February 1998. See *Hansard*, pp. 45 – 49.

<sup>52</sup> Fact Sheet on "Management of the Exchange Fund and fiscal reserves" published by the Research and Library Services of the Legislative Council Secretariat on 18 March 2010 (updated on 19 March 2010), para. 6.5.

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12.25 In his Budget Speech on 6 March 2002, the then Financial Secretary Mr Antony LEUNG announced that in view of the accumulated surplus of the Exchange Fund at \$300 billion, there was no further need to link the level of fiscal reserves to money supply. He considered that it should be sufficient to keep fiscal reserves at around 12 months of government expenditure to meet operation and contingency requirements.<sup>53</sup> Statistics show that the fiscal reserves dropped from 24 months of government expenditure in 1998-1999 to 16 months in 2002-2003.

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

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

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

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<sup>53</sup> Council meeting of 6 March 2002, see *Hansard*, p. 4155.

<sup>54</sup> Council meeting of 5 March 2003, see *Hansard*, p. 4338.

<sup>55</sup> Council meeting of 28 February 2007, see *Hansard*, pp. 4763 – 4765.

<sup>56</sup> <http://www.legco.gov.hk/yr09-10/english/sec/library/0910fs16-e.pdf>, p. 6.

uncertainties in the external economy, it serves little purpose to determine an 'appropriate level' of fiscal reserves".<sup>57</sup>

### **The Budget Cycle and related financial procedures**

12.29 As the Appropriation Bill containing the financial requirement for all services of the Government needs to be passed before or as soon as practicable after the commencement of the financial year to which it relates<sup>58</sup>, an annual planning cycle has been adopted by the Government for drawing up the estimates of expenditure and revenue which will keep the Government's expenditure in line with Hong Kong's economic performance based on a Medium Range Forecast. This planning cycle has also undergone changes over the years but the fundamental steps in the process remain largely the same. The major changes in recent years include the adoption of the "envelope" approach<sup>59</sup> in 2002 and the allocation of additional resources mainly to designated initiatives in the Policy Address starting from 2014.<sup>60</sup>

#### Resource Allocation Exercise

12.30 The budget cycle starts shortly after the passage of an Appropriation Bill, with an internal circular issued by the Financial Services and the Treasury Bureau to all policy bureaux and departments setting out the internal resource allocation procedures for the preparation of the estimates of expenditure for the coming financial year. The exercise covers both recurrent and capital expenditure.<sup>61</sup> In the meantime, Controlling Officers are required to conduct a review of their baseline expenditure as allocated under the approved Estimates of Expenditure and where possible, identify savings<sup>62</sup> and state how such savings are to be redeployed. All bids for recurrent, capital works and non-works capital expenditure are considered by the 'Star Chamber'<sup>63</sup> which makes reference to the projected expenditure ceiling

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<sup>57</sup> <http://www.info.gov.hk/gia/general/201312/04/P201312040318.htm>.

<sup>58</sup> Sections 5(1) and 6(1) of the Public Finance Ordinance (Cap. 2).

<sup>59</sup> The Government announced in August 2002 that for recurrent expenditure in the Resource Allocation Exercise that year, an "envelope" approach would be used. Under this approach, each Director of Bureau was tentatively allocated an envelope of operating expenditure and given the flexibility to deploy resources among his/her various policy areas when preparing the Estimates of Expenditure. Bids for capital expenditure were processed in the usual manner.

<sup>60</sup> See [http://www.fstb.gov.hk/tb/en/docs/pr20141203a\\_e.pdf](http://www.fstb.gov.hk/tb/en/docs/pr20141203a_e.pdf).

<sup>61</sup> See [http://www.fstb.gov.hk/tb/en/docs/pr20141203a\\_e.pdf](http://www.fstb.gov.hk/tb/en/docs/pr20141203a_e.pdf).

<sup>62</sup> For the 2015 Resource Allocation Exercise, bureaux were requested to deliver 1% savings on their respective operating expenditure in 2016-2017 and 2017-2018.

<sup>63</sup> The Star Chamber is chaired by the Chief Secretary for Administration, and comprises the Financial Secretary, Secretary for Financial Services and the Treasury and the Secretary for the Civil Service.

## *12. Financial Procedure*

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derived from the Medium Range Forecast announced in the Financial Secretary's Budget Speech made that year.<sup>64</sup> The Resource Allocation Exercise for a financial year is usually completed between October and December.

### Consultation on the budget

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

12.32 In 1999, in the wake of the Asia financial crises and its impact on public finances, the Financial Secretary decided to adopt a more integrated approach by seeking Members' views on both expenditure and revenue proposals in the same consultation exercise in October. This practice has continued up to the present. In parallel with the consultation with Members, the Government has consulted academics, experts, representatives of the business sector and local districts, and subsequently the general public, on the budget since 2003.<sup>65</sup> In October 2015, consultation with the public on the budget was carried out together with the consultation on the Policy Address. According to the Government, it was to enable more comprehensive discussion with the community.

### Introduction of an Appropriation Bill to the Legislative Council

#### *Contents of an Appropriation Bill*

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

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<sup>64</sup> For practice before and after 2002, refer to <http://www.legco.gov.hk/yr02-03/english/fc/fc/papers/f02-9e.pdf>, para. 7 – 10.

<sup>65</sup> See <http://www.legco.gov.hk/yr02-03/english/counmtg/hansard/cm0305ti-translate-e.pdf>.



comprises only 2 clauses and a schedule.<sup>66</sup> In the schedule, the amounts of appropriation for all heads of expenditure are individually set out. Details of the appropriation for each head are provided in the Estimates of Expenditure which is published at the same time as the Appropriation Bill but is not part of the Bill.

### *Approval for presentation to the Legislative Council*

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

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

### *Historical background on the tabling of the Estimates of Expenditure*

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

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<sup>66</sup> An example is at <http://www.legco.gov.hk/yr14-15/english/bills/b201502251.pdf>.

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12.37 To understand why certain procedural arrangements exist in the legislative process of the Appropriation Bill but not in other bills it is necessary briefly to examine the historical development of the method of presentation of Appropriation Bills to the Legislative Council for approval. The financial procedure in Part L of the Rules of Procedure of the HKSAR Legislative Council first appeared in the 1968 Standing Orders of the pre-1997 Legislature. Before 1969, the Appropriation Bill was introduced to the Legislative Council through various means depending on what the then Government considered suitable at the time. For many decades before 1956, the budget exercise commenced with an address in Council by the Governor<sup>67</sup> in early March on the global economic development, Hong Kong's economic performance and financial needs, followed by the introduction of an Appropriation Bill by the Financial Secretary, giving an account of his revenue and expenditure proposals according to the heads in the Draft Estimates of Revenue and Expenditure which were tabled at the same Council sitting. The Draft Estimates were referred to a select committee which was chaired by the Colonial Secretary and composed of the Financial Secretary and all Unofficial Members. At the next sitting (which took place about 2 weeks later), the select committee tabled its report. The Financial Secretary moved the motion for the second reading of the Bill and a debate took place, during which reference was made to the report of the select committee in which proposals to amend the Bill might have been recommended. There then followed committee stage and third reading.

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

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

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<sup>67</sup> There was no Policy Address at the commencement of a new session before 1948. See Chapter 5, para. 5.15 – 5.18.

and notified Members that his Address in future would take place at the start of a new session in October. The Financial Secretary, who moved the motion for the second reading of the Appropriation Bill at the same sitting, said in his speech <sup>68</sup>.

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

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

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<sup>68</sup> Financial Secretary's speech at the sitting on 26 February 1969 at <http://www.legco.gov.hk/1969/h690226.pdf>.

<sup>69</sup> Standing Order 54(1) of the 1968 Standing Orders.

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

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

### Schedule of Budget meetings

12.42 The schedule of Budget meetings in the Council is determined before the start of a new session. By convention<sup>72</sup>, there are three Budget meetings to deal with an Appropriation Bill:

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

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<sup>70</sup> Paragraph 49 of the Finance Committee Procedure.

<sup>71</sup> In response to a Member's question on whether this would depart from the arrangement set out in the Finance Committee Procedure, the Clerk to the Finance Committee explained in her letter dated 22 February 2002 that having regard to the historical background of Paragraphs 49 to 55 of the Finance Committee Procedure, Paragraph 49 could only be regarded as a description of the then practice. It did not impose a procedural obligation on the Financial Secretary. (<http://www.legco.gov.hk/yr01-02/english/hc/papers/hc0222let-cfc.pdf>)

<sup>72</sup> The convention of scheduling 3 separate meetings to deal with the various stage of the Appropriation Bill can be dated back to 1969 (although from 1973 to 1990, the "3<sup>rd</sup> meeting" was usually held at two sittings) and the same arrangement was adopted by the First Legislative Council of the HKSAR.

- (b) 2<sup>nd</sup> Budget meeting for Members to speak at the resumption of the second reading debate on the Appropriation Bill; and
- (c) 3<sup>rd</sup> Budget meeting for completing the remaining stages on the Bill, including public officers to respond to the speeches made by Members, the Financial Secretary to make his reply and for the Council to vote on the second reading of the Bill, for the committee of the whole Council to deal with all proposed amendments to the Bill and vote on clauses and schedule(s) standing part of the Bill, and for the Council to vote on the third reading of the Bill.

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

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

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

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<sup>73</sup> The Appropriation Bill 2013 was passed at the Council meeting of 15 May 2013 which were held on 4 days on 15, 16, 20 and 21 May 2013.

<sup>74</sup> After the passage of the second reading of the Appropriation Bill 2014, the President adjourned the Council to enable him to have more time to consider the large number of Committee stage amendments.

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

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

### Examination of the Estimates by the Finance Committee

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

### *Written questions prior to special meetings*

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

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<sup>75</sup> Paragraph 49 of the Finance Committee Procedure.

Finance Committee. Controlling Officers are expected to provide written replies to those questions to the Finance Committee before the special meetings held by the Committee for the examination of the estimates. All written questions should be directly related to the Estimates and raised for the purpose of examining the appropriateness of the provision under each head or subhead in the Estimates. Members may raise questions on the amount of the provision requested, justification for such a provision, key performance targets, etc. The questions are vetted by the chairman of the Finance Committee according to the guidelines set out in **Appendix 12-A**, and forwarded to the Government for written replies. Questions which are not directly related to the draft Estimates may still be referred to the Administration for reply by letter outside the context of the draft Estimates exercise.<sup>76</sup>

12.49 The submission of written questions on the Estimates was formalized in the consideration of the Appropriation Bill 2001. At that time, the Government for the first time agreed that it would handle with priority 1 200 written questions on a first-come-first-served basis, which in its view was the optimum level manageable for providing written replies in both the Chinese and English languages before the deadline for written replies (one day before the relevant sessions of the special meetings to be held in a week's time). With the extension of the period for the asking and answering of written questions to about 3 weeks in 2015, the quota for written questions with priority was raised to 3 300.<sup>77</sup> Questions received after the deadline will not be forwarded to the Government for replies, but Members may forward such questions to the Clerk to the Finance Committee as supplementary questions during the special meetings for the Government to provide written replies before the 3<sup>rd</sup> Budget meeting.<sup>78</sup>

### *Schedule of special meetings*

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

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<sup>76</sup> Paragraph 50 of the Finance Committee Procedure.

<sup>77</sup> The quota of 3 300 questions was determined after a review conducted in 2011 when the number of questions raised by Members had exceeded 4 000. Since the 2012 exercise, the Government has undertaken to provide written replies to the first 3 300 questions before the relevant sessions of the special meetings of the Finance Committee.

<sup>78</sup> Paragraph 50 of the Finance Committee Procedure.

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increased from 18 in 2001 to 20 since 2007 and 21 in 2015 with the creation of the Innovation and Technology Bureau, and the duration of each session has also been lengthened to provide more time for discussion. These meetings are open to the public. Directors of Bureaux and Controlling Officers without a Director of Bureaux are invited to attend sessions dedicated to their policy portfolios. Each Director of Bureau or Controlling Officer may bring along any public officers who are in the best position to assist in responding to questions on the Estimates in relation to the heads and subheads under his or her portfolio.

12.51 At the start of each session, the Director of Bureaux responsible for the relevant policy area may make a short introductory speech to highlight the Bureau's priorities for the year ahead and the provisions being sought. Members may ask questions on points made in that speech, the written replies to members' initial questions and the Estimates of Expenditure. The presence of a quorum is required at the start of each meeting, i.e. the chairman and 8 other members, within 15 minutes after the time appointed for the meeting.<sup>79</sup> Members are only summoned if the attention of the chairman is drawn to the lack of a quorum. If after 15 minutes have expired and a quorum is still not present, the chairman must adjourn the meeting.<sup>80</sup>

12.52 A report of the special meetings containing minutes of the proceedings and key points of the questions and answers raised at the meetings will be printed in both the Chinese and English languages for tabling at the Legislative Council after the special meetings.<sup>81</sup>

### Debate on the second reading of the Appropriation Bill

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

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<sup>79</sup> Paragraphs 14 – 15 of the Finance Committee Procedure.

<sup>80</sup> Paragraphs 14 – 15 of the Finance Committee Procedure.

<sup>81</sup> Paragraph 53 of the Finance Committee Procedure.



Procedure in the committee of the whole Council

12.54 In the Appropriation Bill, the estimate for each Head of Expenditure and the amount to be transferred to each fund are set out in the Schedule. During committee stage, consideration of the clauses of the Bill is postponed until after the Schedule has been considered.<sup>82</sup> The Chairman of the committee of the whole Council shall propose "That the sums for the following heads stand part of the schedule" and direct the Clerk to call the numbers of the Heads. When the number or numbers of any Head or group of Heads are called, the question that the sums in that Head or group of Heads stand part of the schedule is deemed to have been moved.<sup>83</sup> A debate will then take place unless an amendment is allowed to be moved by the Chairman under Rule 69 of the Rules of Procedure. After the amendment or amendments to a head or group of heads are moved, the committee of the whole Council will debate each of the amendments or hold a joint debate on the original estimate and the amendments.

*Amendment to heads of expenditure in the Estimates*

12.55 Following the principle that financial initiative should rest with the Government, any amendment which, in the opinion of the Chairman, would increase the sum allotted to any head of expenditure shall only be moved by a designated public officer.<sup>84</sup> Such an amendment, whether in respect of any item or subhead or in respect of the head itself, will take precedence over an amendment to reduce the head in the same respect. If the amendment to increase the sum allotted to a head is carried, no amendment to reduce the head or any item or subhead of the same head shall be moved.<sup>85</sup> Any amendment to increase expenditure tabled by a Member not being a designated public officer, is out of order and inadmissible.

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

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<sup>82</sup> Rule 68(1) of the Rules of Procedure.

<sup>83</sup> Rule 68(3) of the Rules of Procedure.

<sup>84</sup> Rule 69(1) of the Rules of Procedure.

<sup>85</sup> Rule 69(2) of the Rules of Procedure.

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- (a) It is out of order to propose an amendment to leave out a head;<sup>86</sup>
- (b) Where a head is not divided into subheads, it is in order to propose an amendment to reduce a head without reference to a subhead;<sup>87</sup> and
- (c) Where a subhead is not itemized, it is in order to propose an amendment to reduce a head in respect of the subhead or by leaving out the subhead.<sup>88</sup>

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

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

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

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

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<sup>86</sup> Rule 69(6) of the Rules of Procedure.

<sup>87</sup> Rule 69(5) of the Rules of Procedure.

<sup>88</sup> Rule 69(4) of the Rules of Procedure.

<sup>89</sup> Rule 69(7) of the Rules of Procedure.

<sup>90</sup> Rule 69(8) of the Rules of Procedure.

<sup>91</sup> Rule 69(9) of the Rules of Procedure.

<sup>92</sup> Rule 69(10) of the Rules of Procedure.

<sup>93</sup> Rule 68(4) of the Rules of Procedure.

that the clause stands part of the bill shall be deemed to have been proposed. The same procedure also applies to a clause being amended.<sup>94</sup>

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

### *Contents of debates at Committee Stage*

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

### Third reading of the Appropriation Bill

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

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<sup>94</sup> Rule 68(5) of the Rules of Procedure.

<sup>95</sup> Rule 68(6) of the Rules of Procedure.

<sup>96</sup> Rule 68(7) of the Rules of Procedure.

<sup>97</sup> Also Rule 69(10) of the Rules of Procedure.

<sup>98</sup> Rule 69(9) of the Rules of Procedure.

<sup>99</sup> Rule 70 of the Rules of Procedure.

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

12.64 It has been mentioned in Chapter 5<sup>100</sup> that Rule 51 of the Rules of Procedure was amended by the First Legislative Council in June 2000 to provide for an arrangement to implement Article 50 of the Basic Law. Article 50 states that if the Legislative Council refuses to pass a budget introduced by the government, and if consensus still cannot be reached after consultations, the Chief Executive may dissolve the Council. In considering a procedure to enable consensus to be reached in the process of consultations after an Appropriation Bill has been rejected, the Committee on Rules of Procedure recommended that the Council should allow another Appropriation Bill to be introduced to the Council within the same session. This would provide another opportunity for the Government to consider presenting a bill which is more acceptable to the Legislature and for the Legislature to reconsider if the Appropriation Bill, whether revised or not, should be passed before the Chief Executive proceeds to dissolve the Council. This arrangement is now reflected in Rule 51(7A) of the Rules of Procedure.<sup>101</sup>

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

### **Vote on Account Resolution**

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

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<sup>100</sup> Chapter 5, para. 5.79 – 5.80.

<sup>101</sup> Rule 51(7A) of the Rules of Procedure provides that where the motion for the second or third reading of an Appropriation Bill is negatived, another Appropriation Bill containing the same or substantially the same provisions may be presented within the same session.

<sup>102</sup> Article 52(3) of the Basic Law.

specified in the resolution. As mentioned in Chapter 6<sup>103</sup>, this Vote on Account Resolution is usually moved after the tabling of the Estimates of Expenditure and before the start of the financial year to which the Estimates relates. No maximum provision has been stipulated in the Public Finance Ordinance in respect of the expenditure to be charged on the general revenue provided that the expenditure is charged in accordance with heads and subheads shown in the Estimates as though they were the approved Estimates, subject to such conditions and limitations as may be specified in the resolution.<sup>104</sup>

12.67 In February 2008, a subcommittee under the House Committee was formed to study a proposed Vote on Account Resolution to seek authorization for the Government to incur expenditure up to 20% of the recurrent expenditure account and not more than 100% of the capital account shown in the Estimates for 2008-2009. The Subcommittee noted that the arrangement adopted in Hong Kong were different from those in other jurisdictions as the amount sought was based on the "Draft" Estimates instead of the "Approved" estimates as in the case of other jurisdictions. Hence the proposed Vote on Account Resolution could only be moved after the Estimates for the next financial year were published and the notice period for the proposed Resolution had been reduced to 7 days, with limited time given to the Legislature for scrutiny. There was also the question concerning the need for seeking 100% of all capital expenditure shown in the Estimates. In its report, the Subcommittee put forward a series of recommendations to improve the arrangement.<sup>105</sup>

12.68 In February 2009, another subcommittee was formed to study a proposed Vote on Account Resolution for the 2009-2010 financial year. The subcommittee noted that in the light of the recommendations made by the previous Subcommittee, some improvements had been made, including the giving of 14 days' notice instead of 7 days for the Resolution and the lowering of the amounts sought under capital expenditure.<sup>106</sup>

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

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<sup>103</sup> Chapter 6, para. 6.32 to 6.33.

<sup>104</sup> Section 7(2) of the Public Finance Ordinance, Cap. 2.

<sup>105</sup> Refer to paragraph 25 of Report of the 2008 Subcommittee at <http://www.legco.gov.hk/yr07-08/english/hc/papers/hccb1-981-e.pdf>.

<sup>106</sup> Refer to Report of the 2009 Subcommittee at <http://www.legco.gov.hk/yr08-09/english/hc/papers/hccb1-1010-e.pdf>.

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Resolution would be able to be considered by the Council before the start of the next financial year.<sup>107</sup> With the giving of a longer notice for the Vote on Account Resolution in 2009, the Government was requested to withdraw the notice when House Committee decided to form a subcommittee to study the proposed Resolution. As the Vote on Account Resolution is to seek authorization for the Government to incur expenditure in the next financial year prior to the passage of the Appropriation Bill, the Resolution has to be passed before the end of the current financial year.

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

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

### Role of the Finance Committee

12.71 The Finance Committee comprises all Members other than the President.<sup>108</sup> Its functions are those conferred upon it under the Public Finance Ordinance (Cap. 2), any other law, the Rules of Procedure of the Legislative Council and those from time to time conferred on it by the Council.<sup>109</sup> Apart from examining the Estimates of Expenditure referred to it by the President in accordance with Rule 71(11) of the Rules of Procedure, the Finance Committee also has the function to approve proposals to change the approved Estimates of Expenditure presented by the Financial Secretary in accordance with section 8(1) of Cap. 2.<sup>110</sup> Such proposals include:

- (a) the creation of new heads or subheads<sup>111</sup>;
- (b) supplementary provision in approved or new subheads<sup>112</sup>;

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

<sup>108</sup> Rule 71(1) of the Rules of Procedure.

<sup>109</sup> Rule 71(4) of the Rules of Procedure.

<sup>110</sup> Paragraph 1 of the Finance Committee Procedure.

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

- (c) variations in the establishments of posts <sup>113</sup>; and
- (d) increases in the limit to the commitments which may be entered into in respect of expenditure which is not annually recurrent <sup>114</sup>.

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

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

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

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

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

<sup>115</sup> See Government's information paper to the Finance Committee FCRI(2013-14)15, at <http://www.legco.gov.hk/yr13-14/english/fc/fc/papers/fi13-15e.pdf>.

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

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

- (a) meeting the liabilities assumed under paragraph 4 (i.e. liabilities of the Mass Transit Fund, Development Loan Fund and the promissory notes issued to the Asian Development Bank for share subscription) under terms and conditions already approved by the Finance Committee as at 31 March 1990;
- (b) financing loans, advances and investments to or in such persons as may be approved by the Finance Committee, in accordance with such terms and conditions as may be specified by the Finance Committee<sup>117</sup>; or
- (c) repaying or, where appropriate, paying the principal and interest of and expenses incurred in relation to sums borrowed under section 3 of the Loans Ordinance (Cap. 61) where the sums have been credited to the Fund.

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

### *Finance Committee Agenda Items*

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

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<sup>116</sup> See LC Paper No. PWSC33/13-14(01).

<sup>117</sup> An example is the Government's proposal in November 1999 for a commitment to inject funds as equity, to provide a loan from the Capital Investment Fund to Hongkong International Theme Parks Limited and to approve an investment in subordinated equity by the Capital Investment Fund representing land premium for the Phase I site to allow the company to proceed with the development and operation of Hong Kong Disneyland. To safeguard Government's interest in the project, the Government stated in the proposal that apart from the various project agreement entered into, the Government would have a majority on the Board of Directors which would have a supervisory role. Two non-executive independent Directors mutually agreed by both parties would also be appointed to the Board. The proposal and the terms attached to the project were approved by the Finance Committee on 26 November 1999.



officer designated by the Government under Rule 9(2) of the Rules of Procedure or any member may give notice to the Clerk for an item of business to be included in the agenda of the Committee. These designated public officers include the Financial Secretary, the Secretary for Financial Services and the Treasury, the Permanent Secretary for Financial Services and the Treasury (Treasury) or a Deputy Secretary for Financial Secretary and the Treasury (Treasury).<sup>118</sup> The notice should be given at least 6 clear days before the meeting concerned.<sup>119</sup> The discussion papers in relation to the agenda items should be dispatched to members at least 5 clear days before the meeting unless, on grounds of urgency, the chairman directs otherwise.<sup>120</sup>

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

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

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

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<sup>118</sup> Paragraph 21 of the Finance Committee Procedure.

<sup>119</sup> Paragraph 21 of the Finance Committee Procedure. Shorter notice may be given if the chairman so directs.

<sup>120</sup> Paragraphs 21 and 22 of the Finance Committee Procedure.

## *12. Financial Procedure*

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obtain consent from the Chief Executive for motions or amendments which will give rise to a charging effect.<sup>121</sup> Details about charging effect are given in Chapter 10.<sup>122</sup>

### Role of subcommittees of the Finance Committee

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

### *Establishment Subcommittee*

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

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<sup>121</sup> Rule 31(1) of the Rules of Procedure.

<sup>122</sup> Chapter 10, para. 10.45 – 10.46.

<sup>123</sup> Rule 71(5) of the Rules of Procedure.

<sup>124</sup> Paragraph 1 of the Establishment Subcommittee Procedure and Paragraph 2 of the Public Works Subcommittee Procedure.

<sup>125</sup> Paragraph 3 of the Establishment Subcommittee Procedure and Paragraph 4 of the Public Works Subcommittee Procedure.

<sup>126</sup> See Footnote 11.

organizational structure of a department and changes to the civil service ranks and grades. Creation of supernumerary posts held against permanent posts in ranks with a lower notional annual mid-point salary value is also examined by the Establishment Subcommittee.

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

### *Public Works Subcommittee*

12.82 The Public Works Subcommittee examines public works expenditure proposals. Its terms of reference are to recommend to the Finance Committee the upgrading of projects to or downgrading from Category A of the Public Works Programme, approval of new commitments for capital subvention works projects under Head 708<sup>128</sup> of the Capital Works Reserve Fund and changes to the scope and/or approved project estimates of these projects. Any proposals which have been approved to be upgraded to Category A of the Public Works Programme will be included as public works projects under the Capital Works Reserve Fund. Notwithstanding the amount of project estimate approved by the Finance Committee, the fund that is to be included in the Capital Works Reserve Fund for a project for the next financial year is determined in accordance with the projected cash flow and the actual progress of works completed. The total amounts of the funding for all the projects are included as part of Head 184 in the Schedule of the Appropriation Bill "Transfer to Funds" (which covers the total sum to be transferred from the General Revenue Account to the various funds).

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<sup>127</sup> Paragraph 2 of the Establishment Subcommittee Procedure.

<sup>128</sup> Projects under Head 708 include school buildings for the aided sector and private schools, university teaching and research facilities, public hospitals, and other works projects of subvented organizations.

### Capital Works Reserve Fund

12.83 The Capital Works Reserve Fund (Cap. 2A) was established with effect from 1 April 1982 by resolution of the Legislative Council made on 20 January 1982 for the purpose of financing the Public Works Programme and the acquisition of land. Amendments have been made to the Resolution on various occasions, each replacing the previous one, in subsequent years. These amendments include that passed on 15 May 1985 to give effect to arrangements, i.e. the sharing of premium, for implementing paragraph 6 of Annex III to the Joint Declaration of the Government of the UK and the Government of the PRC signed in December 1984.<sup>129</sup> These provisions became obsolete following the reunification on 1 July 1997 and the Resolution was amended on 17 December 1997 to take effect on 1 January 1998. In accordance with the terms of the Resolution, all revenue from land transactions has been paid into the Fund from this date onwards.

### Capital Works Programme

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

### *Public Works Programme*

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

Category C: projects which are accepted in principle to enable client departments<sup>130</sup> to plan their requirements such as providing a conceptual design, a broad order of costs and advising on the technical feasibility of the projects;

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

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<sup>129</sup> <http://www.cmab.gov.hk/en/issues/jd5.htm>.

<sup>130</sup> A client department is the department which will ultimately have control over the facility to be constructed.

assessment, traffic impact studies and for tender preparation to be carried out<sup>131</sup>;

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

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

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

### *Block allocations*

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

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

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<sup>131</sup> In November 2001, the Administration introduced a number of measures to shorten the lead time from inception to commencement of construction of a typical engineering and building project from six years to less than four years. One of the measures was to allow Controlling Officers the option to initiate works-related tendering and consultant selection procedures before funding is secured. The award of any contract or bid must still be subject to funding approval.

## 12. *Financial Procedure*

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- **Subhead 1004CA and Subhead 1100CA under Head 701 – Land Acquisition and Subhead 5001BX (landslip preventive measures)** under Head 705 – Civil Engineering in which the authority delegated by the Finance Committee does not impose a financial limit per project;
- **Subhead A007GX under Head 710 – Computerization** for funding computerization projects in which the Finance Committee has delegated to the Financial Secretary the power to approve items not exceed \$ 10 million each.<sup>132</sup>

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

### *Consultation on public works projects*

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

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<sup>132</sup> This ceiling was raised from \$8 million to \$10 million at the Finance Committee on 25 October 1996.

<sup>133</sup> Prior to 1982, provisions for block allocation were sought in the context of the Estimates. After the Capital Works Reserve Fund Resolution came into force on 1 April 1982, it has been the practice that the Government seeks the Finance Committee's approval for provisions for the block allocation on an annual basis.

discussed by the Subcommittee and then circulated to Panels for an indication whether any of the projects on the list would require discussion by the Panels beforehand. On average, except for the very controversial projects for which strong objections from the community were received, the normal processing period from the time notice is given to the relevant Panel Clerk up to decision made by the Finance Committee is about 3 months. A notice of 7 weeks is expected to be given for the inclusion of any of these items on the agenda of a Panel meeting. Where needed, the relevant Panel may consult any parties or stakeholders that are likely to be affected by the project.

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

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

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<sup>134</sup> The time gap between a meeting of the Public Works Subcommittee and the meeting of the Finance Committee at which its recommendations will be considered is usually 3 weeks, or 2 weeks for urgent items.

## ***12. Financial Procedure***

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hold a special meeting before the Finance Committee meets to consider the proposal.

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

12.93 There is nothing in the Rules of Procedure or in the Procedures of the Finance Committee or its Subcommittees to prevent proposals being submitted to the Finance Committee direct. After a proposal is rejected by a subcommittee, it may be re-submitted to the subcommittee for re-consideration or, if there is an urgent need to do so, re-submitted to the Finance Committee direct for its approval.<sup>135</sup> Thus, it is entirely at the discretion of the Director of Bureau concerned to decide how to deal with a proposal after it has been rejected by a subcommittee of the Finance Committee. It is not uncommon that the Director of Bureau seeks to meet the relevant Panel again with a view to addressing any concerns raised. All members of the Finance Committee are invited to take part in the discussion. Any new arrangements agreed between members and the Government may be set out in a revised proposal or in a supplementary paper alongside the original proposal for submission to the Subcommittee for re-consideration or, where time is critical, to the Finance Committee for approval.

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

12.94 The Public Accounts Committee was set up in 1978 as a standing committee to examine the Director of Audit's reports on the Government's annual accounts, accounts of statutory and other organizations which are required to be laid before the Legislative Council and on serious irregularities which may come to the notice of the Director. In performing his duties, the Director of Audit is required, among other things, to satisfy himself that all issues and payments of public moneys were made in accordance with proper authority<sup>136</sup>, all payments were properly chargeable and are supported by sufficient vouchers or proof of payment or otherwise properly accounted for<sup>137</sup>, the rules and procedures applied to the issue and payment of public moneys are sufficient to secure an effective control over expenditure and such

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

<sup>136</sup> Section 8(2)(b) of the Audit Ordinance (Cap. 122).

<sup>137</sup> Section 8(2)(c) of the Audit Ordinance (Cap. 122).



rules and procedures have been duly observed by the public officers concerned<sup>138</sup>, and any public moneys appropriated by the Legislative Council for a specified purpose and expended by a public officer have been expended in the due application of that purpose and in accordance with the authority under which the appropriation was made.<sup>139</sup>

#### Annual accounts of the Government

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

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

#### Serious irregularities

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

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<sup>138</sup> Section 8(2)(d) of the Audit Ordinance (Cap. 122).

<sup>139</sup> Section 8(2)(e) of the Audit Ordinance (Cap. 122).

<sup>140</sup> Section 11 of the Audit Ordinance (Cap. 122).

<sup>141</sup> Section 12(1)(b) of the Audit Ordinance (Cap. 122).

<sup>142</sup> Section 12(3) of the Audit Ordinance (Cap. 122).

<sup>143</sup> Section 12(2) of the Audit Ordinance (Cap. 122).

<sup>144</sup> Section 12(2A) of the Audit Ordinance (Cap. 122).

## 12. *Financial Procedure*

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

### Value-for-money audits

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

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<sup>145</sup> Section 13(2) of the Audit Ordinance (Cap. 122).

<sup>146</sup> Second Revised Codicil to the Paper "Scope of Government Audit in Hong Kong – 'Value for Money' Studies" tabled by the Chairman of the Public Accounts Committee at the sitting of the Council on 26 July 1995. The Paper was an Agreement which set out the scope of work and guidelines for the Director of Audit to carry out value-for-money audits and was tabled in the pre-1997 Legislative Council sitting on 19 November 1986. By a report of the Chairman of the Public Accounts Committee to the Provisional Legislative Council on 19 November 1997, the Council noted that the 1986 Agreement and its Codicil would continue to be adopted as the basis on which the Director of Audit submits his reports on value-for-money audits from 1 July 1997.

12.99 According to the Director of Audit <sup>147</sup>, for the purpose of value-for-money audits, "economy" is concerned with the acquisition of resources of appropriate quality and quantity at minimum cost; "efficiency" is concerned with the relationship between goods, services or other results (outputs) and the resources used to produce them; and "effectiveness" is concerned with the relationship between the intended goals and the outcome. Thus, value-for-money audit views a public organization in its entirety and tries to measure the extent to which it is meeting its objectives. This is where value-for-money audit differs from financial audit which focuses on the financial performance of the organization. The then Director of Audit considered that under this value-for-money concept, an organization is required to fully account for all its activities, not just its financial conduct, and that this greatly promotes and enhances public accountability.

#### Procedures of the Public Accounts Committee

##### *Pre-hearing arrangements*

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

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

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<sup>147</sup> Meeting of the Panel on Constitutional Affairs on 16 February 1995 and meeting of the Public Accounts Committee on 19 May 1995.

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

## 12. *Financial Procedure*

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

### *Hearings*

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

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

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

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<sup>149</sup> Council sitting on 10 May 1978, *Hansard* p. 903.

### *The Committee's report*

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

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

### *Government Minutes*

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

### *Progress reports on subjects not selected for detailed examination*

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

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<sup>150</sup> An example is the Government Minute in response to the Public Accounts Committee Reports No. 63A (tabled in the Council on 3 June 2015) and No. 64 (tabled in the Council on 8 July 2015) was tabled in the Council on 28 October 2015.

## 12. *Financial Procedure*

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### Relationship between the Public Accounts Committee and the Director of Audit

12.110 Although the Director of Audit is appointed by the Chief Executive, he is required under the Audit Ordinance (Cap. 122) to submit his reports, at least twice a year, to the President of the Legislative Council who in turn is required to table the reports in the Council and to have the Public Accounts Committee to table its reports on the Director of Audit's reports. Unlike select committees, the procedure to be followed by the Public Accounts Committee for conducting its examination of the Director of Audit's reports is not set out in the Rules of Procedure but the Committee has the power to determine its own procedure and practice. The current procedure adopted by the Committee is primarily based on long established conventions and these conventions have been developed having regard to the conventions adopted by the legislatures in other common-law jurisdictions where officers performing a function similar to that of the Directors of Audit are required to report to the legislature concerned.<sup>151</sup> In other words, procedurally, the Public Accounts Committee of the HKSAR Legislature undertakes its examination of the Director of Audit's reports independently with the assistance from the Director of Audit, but it does not make its recommendations solely on the basis of the Director's presentation.

12.111 Extensive discussions have taken place both before and after 1997 between the Government and the Public Accounts Committee over the role of the Director of Audit to ensure that he remains an independent and impartial examiner holding the right of reporting directly to the President of the Legislative Council. Even outside the proceedings of the Committee, it has also been a practice for the Committee to hold informal meetings with the Director of Audit to enable the Committee to suggest areas for value-for-money audits for the Director's consideration. It is in this manner that the Committee and the Director of Audit can each work independently to perform their respective roles under the Basic Law<sup>152</sup> and the Audit Ordinance for the proper and effective use of public funds.

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

<sup>152</sup> Article 58 of the Basic Law provides. "A Commission of Audit shall be established in the Hong Kong Special Administrative Region. It shall function independently and be accountable to the Chief Executive."

**Urgent By Fax**

來函檔號 Your Ref:  
本函檔號 Our Ref:  
電話 Tel: 2869 9205  
圖文傳真 Fax: 2845 2444

立法局秘書處  
Legislative Council Secretariat  
25 June 1996

Hon LEE Cheuk-yan  
2/F, 101-107 Portland Street  
Yaumatei  
Kowloon  
[Fax number: 2332 3584]

Dear Mr LEE,

**President's Ruling  
on**

- (i) **The Sex Discrimination Ordinance (67 of 1995) (Commencement) Notice 1996, laid on the table of the Legislative Council on 15 May 1996**
- (ii) **The Disability Discrimination Ordinance (86 of 1995) (Commencement) Notice 1996, laid on the table of the Legislative Council on 15 May 1996; and**
- (iii) **The District Court Equal Opportunities Rules, laid on the table of the Legislative Council on 5 June 1996**

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

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

Yours sincerely,

[Signed]

( Ray CHAN )  
for Secretary General

Encl

cc: Mr Paul TANG (D of Admin) [Fax number: 2877 0802]  
Mrs Stella HUNG (SHA) [Fax number: 2834 6176]  
Ms Sarah WU (Judiciary Admin) [Fax number: 2869 0640]  
ASG2 (LegCo Secretariat)  
CPIO (LegCo Secretariat)

**President's Ruling**  
**on**  
**Hon LEE Cheuk-yan's proposed motions to amend:**

- (i) The Sex Discrimination Ordinance (67 of 1995) (Commencement) Notice 1996, laid on the table of the Legislative Council on 15 May 1996;**
  - (ii) The Disability Discrimination Ordinance (86 of 1995) (Commencement) Notice 1996, laid on the table of the Legislative Council on 15 May 1996; and**
  - (iii) The District Court Equal Opportunities Rules, laid on the table of the Legislative Council on 5 June 1996**
- 

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

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

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

**Government Notices and Rules**

4. On 4 May 1996, the Secretary for Home Affairs published in the Gazette, as Legal Notice 185 of 1996, the **Sex Discrimination Ordinance (67 of 1995) (Commencement) Notice 1996**, appointing 20



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

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

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

7. The rest of the provisions in the Sex and Disability Discrimination Ordinances, which were not brought into operation by the two Notices, form the body of substantive law relating to discrimination in matters of sex and disability. They create enforceable legal rights and obligations. It is the stated intention of the Administration to bring these provisions into operation when the Equal Opportunities Commission is fully operational, which should be in September this year. For the purposes of this ruling I am not concerned with the merits or otherwise of the Administration's proposed timetable for implementation of the Ordinance

by stages. But, as will be seen later, what is directly relevant to this ruling is that the Administration, through the two specified Secretaries, is lawfully empowered under the two Ordinances to appoint different days for different provisions of the two Ordinances.

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

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

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

10. In regard to the Discrimination Ordinance (86 of 1995) (Commencement) Notice 1996, Mr LEE seeks, in addition to the provisions in the Notice, to appoint 2 September 1996 as the day on

which **all** the remaining provisions of the Ordinance shall come into operation.

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

- (i) to appoint 2 September 1996 as the day on which those Rules shall come into operation; and
- (ii) to add a new section 7 to the Rules, as follows:

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

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

**Relevant Legislative Provisions**

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

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

13. Section 1(2) of the Disability Discrimination Ordinance provides that:

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

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

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

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

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

publication in the Gazette of such resolution."

### **The Administration's views on Mr LEE's proposed amendments**

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

### **Opinion**

*Are commencement notices subsidiary legislation?*

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

legislative act which has legislative effect.

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

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

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

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

(i) **First Interpretation**

This interpretation emphasises "**in any manner whatsoever consistent with the power ...**" and suggests that the Council's power of amendment is as extensive as the scope of the delegate's statutory power to make the commencement notice. Under this interpretation, since the scope of the delegate's power extends to appointing different days for different provisions of the Ordinance, so also does the Council's power of amendment. Hence the Council can properly amend a Commencement Notice by adding

commencement days for other provisions of the Ordinance even though those provisions were specifically excluded from the Commencement Notice by the delegate. It can properly amend the Notice to include other provisions because it is within the original power of the delegate to include them, so the argument runs.

(ii) **Second Interpretation**

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

only some provisions in the Ordinance the Council does not thereby acquire the power under section 34(2) to extend the Commencement Notice to other provisions.

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

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

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



**Conclusion**

24. In conclusion, I rule that the motions proposed by Mr LEE on the Sex Discrimination Ordinance (67 of 1995) (Commencement) Notice 1996 and the Disability Discrimination Ordinance (86 of 1995) (Commencement) Notice 1996 are out of order.

[Signed]

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(Andrew WONG)  
President  
Legislative Council

25 June 1996

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

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

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

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

"51(3) Members may not either individually or jointly introduce a bill which, in the opinion of the President, relates to public expenditure or political structure or the operation of the Government."

"51(4) In the case of a bill which, in the opinion of the President, relates to Government policies, the notice shall be accompanied by the written consent of the Chief Executive in respect of the bill."

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

**Basis on which I form an opinion under Rule 51(3) and (4)**

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

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

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

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

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

#### *The Administration's views*

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

Council has the power and function of making policies.

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

*Hon. LEE Cheuk-yan's views*

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

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

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

*My views*

10. When trying to find out the meaning of BL 74, I note that BL 73 stipulates the powers and functions of the Legislative Council. Without BL 74, it may be concluded that Members of the Legislative Council may introduce bills without any constraints. However, BL 74 clearly says that "Bills which do not relate to public expenditure or political structure or the

operation of the government may be introduced individually or jointly by members of the Council. The written consent of the Chief Executive shall be required before bills relating to government policies are introduced". Therefore whilst Members of the Council may introduce bills into the Council, their ability to do so is subject to the restrictions stipulated in BL 74.

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

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

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

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

14. As regards the general approach, I am of the view that I would be underestimating the difficulty of the task if I were to attempt to give precise

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

"Relate to"

*The Administration's views*

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

*Mr. LEE Cheuk-yan's views*

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

*My views*

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

"Public expenditure"

*The Administration's views*

18. The Administration is of the view that under BL74, the "public

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

*Mr. LEE Cheuk-yan's views*

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

*My views*

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

21. In my opinion, the term "public expenditure" in Rule 51(3) is wider in scope than "the disposal of or charging any part of the revenue or other public moneys of Hong Kong". A bill will relate to public expenditure if the implementation of the bill has the effect of either increasing or reducing public expenditure and the amount so increased or reduced is substantial and is such

that I must not ignore.

## Operation of the government

### *The Administration's views*

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

### *Mr. LEE Cheuk-yan's view*

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

### *My views*

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

## Government policies

### *The Administration's views*

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



*Mr. LEE Cheuk-yan's views*

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

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

*My views*

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

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

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

- (a) policies decided by public officers with delegated authority from the CE; and
- (b) policies promulgated in the Legislative Council or its committees by public officers designated by the CE.

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

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

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

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

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

Does the bill relate to public expenditure?

#### *The Administration's views*

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

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

#### *Mr. LEE Cheuk-yan's views*

37. Mr. LEE refutes the Administration's claim that additional expenditure will be incurred to implement this bill. He is of the view that the authorisation under section 6(5) of the Labour Tribunal Ordinance (Cap. 25) is framed in sufficiently broad and open-ended terms to authorize the increase in expenditure claimed by the Administration. He also does not consider that the

bill will impose new and distinct functions on the Administration; the increase of the caseload of the Labour Tribunal is only incidental consequence on the administration of justice. The services that the Administration claims will be provided are not required to be provided by the bill.

*My opinion*

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

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

Does the bill relate to the operation of the government?

*The Administration's views*

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

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

*Mr. LEE Cheuk-yan's views*

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

*My opinion*

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

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

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

Does the bill relate to government policies?

*The Administration's views*

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

*Mr. LEE Cheuk-yan's views*

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

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

*My opinion*

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

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

**Conclusion**

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

(Mrs Rita FAN)  
President  
Legislative Council

19 July 1999

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

- |                  |  |
|------------------|--|
| 6 November 1998  | Mr LEE submitted the captioned bill and sought a ruling from the President, Legislative Council under Rule 51(3) and (4).  |
| 6 November 1998  | The Administration was requested to give its views on Mr LEE's bill as to whether it related to public expenditure or political structure or the operation of the government or government policies. |
| 16 January 1999  | The Administration sent in its views.  |
| 19 January 1999  | The Administration was requested to provide further particulars on several aspects of its submission.  |
| 15 February 1999 | The Administration sent in its comments on the specific points raised on 19.1.1999.  |
| 26 April 1999    | Mr LEE sent in his comments on the Administration's views on his bill.   |
| 26 April 1999    | Mr LEE's comments were forwarded to the Administration for further comments.   |
| 19 May 1999      | The President met Mr. LEE Cheuk-yan to discuss the bill.   |
| 14 June 1999     | The Administration sent in its further comments on Mr LEE's comments contained in his submission dated 26 April 1999.  |
| 14 June 1999     | The Administration's comments were forwarded to Mr LEE for final comments.   |
| 13 July 1999     | Mr LEE sent in his comments on the Administration's comments contained in its submission dated 14 June 1999.   |

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

**Basic Law**

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

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

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

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



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

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

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

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

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

- (1) To formulate and implement policies;
- (2) To conduct administrative affairs;
- (3) To conduct external affairs as authorized by the Central People's Government under this Law;
- (4) To draw up and introduce budgets and final accounts;
- (5) To draft and introduce bills, motions and subordinate legislation; and
- (6) To designate officials to sit in on the meetings of the Legislative Council and to speak on behalf of the government.

Article 73            The Legislative Council of the Hong Kong Special Administrative Region shall exercise the following powers and functions :

- (1) To enact, amend or repeal laws in accordance with the provisions of this Law and legal procedures;
- (2) To examine and approve budgets introduced by the government;
- (3) To approve taxation and public expenditure;
- (4) To receive and debate the policy addresses of the Chief Executive;
- (5) To raise questions on the work of the government;
- (6) To debate any issue concerning public interests;
- (7) To endorse the appointment and removal of the judges of the Court of Final Appeal and the Chief Judge of the High Court;
- (8) To receive and handle complaints from Hong Kong residents;
- (9) If a motion initiated jointly by one-fourth of all the members of the Legislative Council charges the Chief Executive with serious breach of law or dereliction of duty and if he or she refuses to resign, the Council may, after passing a motion for investigation, give a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigation committee. The committee shall be responsible for carrying out the investigation and reporting its findings to the Council. If the committee considers the evidence sufficient to substantiate such charges, the Council may pass a motion of impeachment by a two-thirds majority of all its members and report it to the Central People's Government for decision; and

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

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

### **Rules of Procedure**

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

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

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

- (a) the Chief Executive; or

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

- 69
- (1) An amendment which, in the opinion of the Chairman, would increase the sum allotted to any head of expenditure whether in respect of any item or subhead or of the head itself shall only be moved by a designated public officer.
  - (2) An amendment to increase a head whether in respect of any item or subhead or of the head itself shall take precedence over an amendment to reduce the head in the same respect, and if it is carried no amendment to reduce the head in that respect shall be called.
  - (3) An amendment to any head of expenditure to reduce the sum allotted thereto in respect of any item therein may be moved by any Member, and shall take the form of a motion "That head ..... be reduced by \$ ..... in respect of (or by leaving out) subhead ..... item .....".
  - (4) An amendment to reduce a head in respect of any subhead or by leaving out a subhead shall only be in order if the subhead is not itemized.
  - (5) An amendment to reduce a head without reference to a subhead therein shall only be in order if the head is not divided into subheads.
  - (6) An amendment to leave out a head shall not be in order and shall not be placed on the Agenda of the Council.
  - (7) In the case of each head, amendments in respect of items or subheads in that head shall be placed on the Agenda of the Council and considered in the order in which the items or subheads to which

they refer stand in the head in the Estimates.

- (8) When notice has been given of two or more amendments to reduce the same item, subhead, or head, they shall be placed on the Agenda of the Council in the order of the magnitude of the reductions proposed, the amendments proposing the largest reduction being placed first in each case.
- (9) Debate on every amendment shall be confined to the item, subhead, or head to which the amendment refers, and after an amendment to an item or subhead has been disposed of no amendment or debate on a previous item or subhead shall be permitted.
- (10) When all amendments standing on the Agenda of the Council in respect of any particular head of expenditure have been disposed of, the Chairman shall again propose the question "That the sum for head ..... stand part of the schedule" or shall propose the amended question "That the (increased or reduced) sum for head ..... stand part of the schedule", as the case may require. The debate on any such question shall be subject to the same limitations as apply to a debate arising under Rule 68(3) (Procedure in Committee of the Whole Council on Appropriation Bill).

- 51(2) In the case of a bill to be presented by a Member, the Law Draftsman, if satisfied that the bill conforms to the requirements of Rule 50 (Form of Bills) and the general form of Hong Kong legislation, shall issue a certificate to that effect.

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

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

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

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

"51(3) Members may not either individually or jointly introduce a bill which, in the opinion of the President, relates to public expenditure or political structure or the operation of the Government."

"51(4) In the case of a bill which, in the opinion of the President, relates to Government policies, the notice shall be accompanied by the written consent of the Chief Executive in respect of the bill."

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

### **Basis on which I form an opinion under Rule 51(3) and (4)**

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

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

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

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

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

#### *The Administration's views*

5. The main theme of the Administration's submission is that BL 74 should be interpreted in the light that the intention of the BL is that the Hong Kong Special Administration Region (HKSAR) be led by the Chief Executive (CE) together with the executive authorities in order to maintain an "executive-led" government. The executive authorities of the HKSAR are vested with the functions of formulating and implementing policies and the introduction of bills and budgets (BL 62) and the CE is vested with the power to reject bills passed by the Legislative Council (BL 49). It is therefore clear that the power of the executive to introduce bills is an unqualified one. As for the

Legislature, whilst the Legislative Council may question and debate government policies and other matters of public interest under BL 64 and 73(4), (5) and (6), this is not the same as formulating policies or introducing bills to implement policies. Besides, BL 73 does not mention that the Legislative Council has the power and function of making policies.

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

*Mr. Andrew CHENG's views*

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

*My views*

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



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

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

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

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

12. As regards the general approach, I am of the view that I would be underestimating the difficulty of the task if I were to attempt to give definitions to these terms. I have taken note of the judgement of a 1985 case in the House of Lords in the United Kingdom in which the Court was examining whether a certain matter was related to a trial on indictment. In the judgement, Lord Bridge said : "If the statutory language is, as here, imprecise, it may well be

impossible to prescribe in the abstract a precise test to determine on which side of the line any case should fall, and therefore, necessary to proceed, ..... on a case by case basis.". The principle that follows from this approach is that my views on these terms should be taken as guidelines only. They are to be applied on a case by case basis and each case would be examined on its own merits.

"Relate to"

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

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

"Government policies"

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

16. Mr. CHENG on the other hand holds the view that "government policies" should be given a construction that distinguishes it from the BL's general use of the term "policies". He considers that a policy is a pre-determined course of action taken in order to achieve an objective and government policies exist solely to guide and determine the actions taken by the executive to achieve an end. He considers that policies being formulated are not government policies. He further submits that to attain the status of government policies, they must be decided on by the CE in Council. He also asserts that "once a bill is enacted into law any government policy that previously existed in place of the bill is extinguished ..... once the law takes effect, the Chief Executive will no longer be able to 'decide on' any change in the policy. The existence of the law and the requirement that the Government abide by the law prohibits such a change".

17. I am of the opinion that government policies referred to in BL 74 are those that have been decided by the CE or CE in Council under BL 48(4) and 56. Policies decided by former Governors or Governors in Council prior to the implementation of the BL which are still in force are also included.

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

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

- (a) policies decided by authorised public officers; and
- (b) policies promulgated by designated public officers in the Legislative Council or its committees.

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

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

#### Opinion on Mr. CHENG's bill

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

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

occurred within the 24 months prior to the date when the employee resigned or was dismissed.

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

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

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

27. I note that the Labour Department has issued a guideline on wage reduction matters as a result of the discussion by the Labour Advisory Board, which is a tripartite consultation machinery established to deal with policies on employer-employee relationship. It is evident that the Administration has taken action in this particular case to achieve the objective of encouraging negotiation between employers and employees instead of regulating such

negotiation through legislation. This process was promulgated at a meeting of the Legislative Council by the Secretary for Education and Manpower on 18 November 1998.

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

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

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

(Mrs. Rita FAN)  
President  
Legislative Council

16 July 1999

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

- |                  |  |
|------------------|--|
| 10 February 1999 | Mr CHENG submitted the captioned bill and sought a private ruling from the President, Legislative Council under Rule 51(3) and (4).  |
| 11 February 1999 | The Administration was requested to give its views on Mr CHENG's bill as to whether it related to public expenditure or political structure or the operation of the government or government policies. |
| 8 March 1999     | The Administration sent in its views.  |
| 8 March 1999     | Mr CHENG was requested to comment on the Administration's views.   |
| 24 April 1999    | Mr CHENG sent in his comments on the Administration's views on his bill. (A corrigendum was sent in on 26 April 1999)  |
| 24 April 1999    | Mr CHENG's comments were forwarded to the Administration for comments.   |
| 14 June 1999     | The Administration sent in its comments on Mr CHENG's comments contained in his submission dated 24 April 1999.  |
| 14 June 1999     | The Administration's comments were forwarded to Mr CHENG for final comments.   |
| 5 July 1999      | Mr CHENG sent in his comments on the Administration's comments contained in its submission dated 14 June 1999.   |

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

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

香港特別行政區行政長官照本法的規定對中央人民政府和香港特別行政區負責。

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

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

第 48(4)條 決定政府政策和發佈行政命令

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

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

行政長官如不採納行政會議多數成員的意見，應將具體理由記錄在案。

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

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

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

第 62 條 香港特別行政區政府行使下列職權:

- (一) 制定並執行政策;
- (二) 管理各項行政事務;
- (三) 辦理本法規定的中央人民政府授權的對外事務;
- (四) 編制並提出財政預算、決算;
- (五) 擬定並提出法案、議案、附屬法規;
- (六) 委派官員列席立法會並代表政府發言。

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

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



accounts;

- (5) To draft and introduce bills, motions and subordinate legislation; and
- (6) To designate officials to sit in on the meetings of the Legislative Council and to speak on behalf of the government.

第 73 條 香港特別行政區立法會行使下列職權:

- (一) 根據本法規定並依照法定程序制定、修改和廢除法律;
- (二) 根據政府的提案, 審核、過財政預算;
- (三) 批准稅收和公共開支;
- (四) 聽取行政長官的施政報告並進行辯論;
- (五) 對政府的工作提出質詢;
- (六) 就任何有關公共利益問題進行辯論;
- (七) 同意終審法院法官和高等法院首席法官的任免;
- (八) 接受香港居民申訴並作出處理;
- (九) 如立法會全體議員的四分之一聯合動議, 指控行政長官有嚴重違法或瀆職行為而不辭職, 經立法會通過進行調查, 立法會可委托終審法院首席法官負責組成獨立的調查委員會, 並擔任主席. 調查委員會負責進行調查, 並向立法會提出報告. 如該調查委員會認為有足夠證據構成上述指控, 立法會以全體議員三分之二多數通過, 可提出彈劾案, 報請中央人民政府決定;
- (十) 在行使上述各項職權時, 如有需要, 可傳召有關人士出席作證和提供證據.

## Article 73

The Legislative Council of the Hong Kong Special Administrative Region shall exercise the following powers and functions :

- (1) To enact, amend or repeal laws in accordance with the provisions of this Law and legal procedures;
- (2) To examine and approve budgets introduced by the government;
- (3) To approve taxation and public expenditure;
- (4) To receive and debate the policy addresses of the Chief Executive;
- (5) To raise questions on the work of the government;
- (6) To debate any issue concerning public interests;
- (7) To endorse the appointment and removal of the judges of the Court of Final Appeal and the Chief Judge of the High Court;
- (8) To receive and handle complaints from Hong Kong residents;
- (9) If a motion initiated jointly by one-fourth of all the members of the Legislative Council charges the Chief Executive with serious breach of law or dereliction of duty and if he or she refuses to resign, the Council may, after passing a motion for investigation, give a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigation committee. The committee shall be responsible for carrying out the investigation and reporting its findings to the Council. If the committee considers the evidence sufficient to substantiate such charges, the Council may pass a motion of impeachment by a two-thirds majority of all its members and report it to the Central People's Government for decision; and
- (10) To summon, as required when exercising the

above-mentioned powers and functions, persons concerned to testify or give evidence.

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

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

# 立法會 Legislative Council

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

(傳真號碼 Fax No : 2810 1691)

## 提交法案 Presentation of Bill

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

(中文名稱) \_\_\_\_\_

(English title) \_\_\_\_\_

2. 請於議程內列明該條例草案將於 \_\_\_\_\_ 年 \_\_\_\_\_ 月 \_\_\_\_\_ 日首讀。

Please put the bill on the Agenda for first reading on \_\_\_\_\_  
(Date of meeting)

- ◆ 3.  \_\_\_\_\_ 事務委員會在下述日期舉行的會議上： \_\_\_\_\_  
\_\_\_\_\_，已得悉/已討論\* 該條例草案在政策方面的影響。  
The policy aspects of the above bill have been noted/discussed \* by the  
\_\_\_\_\_ on \_\_\_\_\_  
(Name of Panel) (Date(s) of meeting(s))

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

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

簽署  
Signature: \_\_\_\_\_

姓名  
Name: \_\_\_\_\_

# 職位名稱  
Post title: \_\_\_\_\_

聯絡人姓名  
Name of contact person: \_\_\_\_\_

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

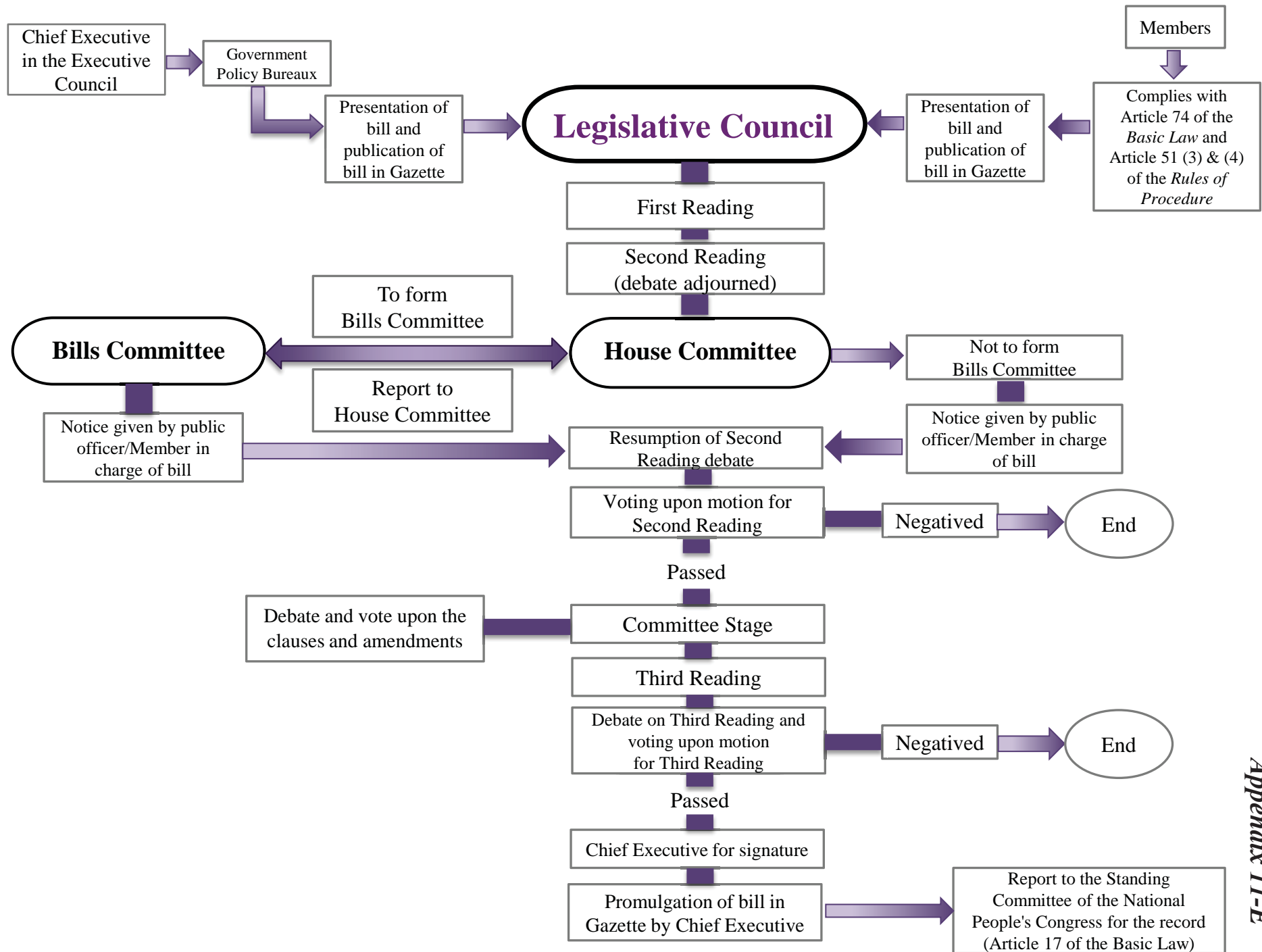
\_\_\_\_\_  
(辦公室電話號碼)  
(office tel. no.)

\_\_\_\_\_  
(手提電話號碼)  
(mobile tel. no.)

\_\_\_\_\_  
(傳真號碼)  
(fax no.)

\_\_\_\_\_  
(電郵地址)  
(e-mail address)

日期  
Date: \_\_\_\_\_



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

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

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

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

(a) Rule 57(4)(a)

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

(b) Rule 57(4)(c)

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

(c) Rule 57(4)(d)

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

(d) Rule 57(6)

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

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

4. The main objection of SHA to the proposed amendments concern Rule 57(4)(a), as detailed in the **Appendix**.

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

### **Opinion of Counsel to the Legislature**

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

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

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

9. Counsel to the Legislature thinks it is clear from the Explanatory Memorandum that the purpose of the Bill is to amend the Building Management Ordinance to facilitate better management of buildings. The expression "through the provisions described as follows" appears to serve the purpose of identifying those provisions in the Bill (i.e. the 9 clauses out of the 15 in the Bill) which are for that purpose. The expression is not intended to limit the scope of the Bill to those specific areas covered by the identified

provisions. This may be borne out by the fact that the long title of the Bill is couched in the broadest possible term: to "amend the Building Management Ordinance". This view is consistent with the policy rationale for the introduction of the Bill as stated in the LegCo Brief on the Bill, i.e. to implement the relevant recommendations in the 1998 public consultation document on "Proposal to improve fire safety in private buildings" and to rectify certain deficiencies in the Building Management Ordinance.

### **My opinion**

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

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

### **Ruling**

12. Having considered the arguments put forth by SHA and the Members concerned, together with the opinion of Counsel to the Legislature, I rule that:

- (a) Hon CHENG Kai-nam may move his proposed amendments in respect of new clause 5A, paragraphs (b) to (e) of the substitute clause 14 and the substitute clause 15, as they are relevant to the subject matter of facilitating better management of buildings.
- (b) Hon CHENG Kai-nam may not move his proposed amendments in respect of new clause 7D, new clause 16A and paragraph (a) of the substitute clause 14, because providing a mechanism by



which an owners corporation may resolve to vary the terms of its deed of mutual covenant is not the subject matter of the Ordinance or of the Bill. To seek, as Mr CHENG does, to provide such a mechanism concerns a substantially new issue which goes beyond the scope of the Bill.

- (c) Hon Albert HO may move his proposed amendments in respect of new clause 7BA, new clause 13B, and the substitute clause 15, as they are relevant to the subject matter of facilitating better management of buildings.
- (d) Hon Albert HO may not move his proposed amendments in respect of clause 2, new clause 9A and new clause 17 because the amendments seek to extend the application of the Ordinance to a new type of building i.e. house-type properties which neither the Ordinance nor the Bill covers. They are not relevant to the subject matter of facilitating better management of flatted buildings or groups of flatted buildings covered by the Ordinance, and exceed the scope of the Bill.
- (e) Hon LEE Wing-tat may move his proposed amendments in respect of clause 3(b), as the intention and the terms of his amendment are not unintelligible or meaningless; the purpose of facilitating the early appointment of a management committee of a corporation after the issuance of an occupation permit or a temporary occupation permit is relevant to the better management of buildings.
- (f) Hon LEE Wing-tat may not move his proposed new clause 7D and new clause 16A (which are a different way to provide a mechanism for varying deeds of mutual covenant which Hon CHENG Kai-nam proposes - see sub-paragraph (b) above). Same as in Hon CHENG Kai-nam's proposed amendment, to seek to provide such a mechanism concerns a substantially new issue which goes beyond the scope of the Bill.

( Mrs Rita FAN )  
President  
Legislative Council

21 June 2000

## Building Management (Amendment) Bill 2000

### Summary of Members' proposed Committee Stage amendments, Secretary for Home Affairs (SHA) comments and Members' responses

Committee Stage Amendments by	SHA's comments	Members' responses
<i>Hon CHENG Kai-nam</i>		
<p><u>New clause 5A</u> To provide that an owners corporation shall establish and maintain a contingency fund.</p>	<p>Amendment is outside the subject matter of the Bill, and the purported mandatory requirement to establish the fund is meaningless as the proposed clause does not provide details of the requirements or the penalty for non-compliance - contravenes Rule 57(4) of the Rules of Procedure.</p>	<p>The establishment of a contingency fund will help meet non-recurrent expenses for building repairs and improve the management of buildings; this is in line with the Bill's proposal to facilitate better management of buildings. Not providing penalty for non-compliance is in line with the provision in section 20(1) of the Ordinance regarding the mandatory establishment and maintenance of a general fund by an owners corporation.</p>
<p><u>New clause 7D</u> <u>New clause 16A</u> <u>Para. (a) of the proposed substitute clause 14</u> To provide a mechanism by which an owners corporation may resolve to vary the terms of its deed of mutual covenant.</p>	<p>Neither the Ordinance nor the Bill provides for a procedure for amending deeds of mutual covenant which are contracts between the parties to the deeds. The amendment is outside the subject matter of the Bill. It also puts a burden on the Lands Tribunal to adjudicate on the variations to the terms of the deeds proposed by the owners and so has a charging effect - contravene Rules 57(4) and 57(6).</p>	<p>The proposal is relevant to the Bill's purpose to facilitate better management of buildings, by helping minority owners overcome difficulties caused by unfair terms in the deeds.</p>

<b>Committee Stage Amendments by</b>	<b>SHA's comments</b>	<b>Members' responses</b>
<p>Paras. (b) to (e) of the proposed substitute <u>clause 14</u></p> <p>To amend the Third Schedule relating to calculation of a quorum at meetings of an owners corporation.</p>	<p>The amendments are outside the scope of the Bill - contravenes Rule 57(4).</p>	<p>The amendment will make it easier for a quorum to be present for meetings of an owners corporation for making decisions, and is relevant to building management.</p>
<p><u>Substitute clause 15</u></p> <p>To amend the provisions in the Seventh Schedule concerning the termination of a manager's appointment.</p>	<p>The new clause is outside the scope of the Bill and of the Seventh Schedule. Cross-referencing to the Third Schedule, which is not part of the mandatory terms in deeds of mutual covenant covered in the Seventh schedule, makes the amendment unintelligible and hence not implementable - contravenes Rule 57(4).</p>	<p>The procedure concerning the termination of a manager's appointment relates to building management and is relevant to the Bill. The reference to the Third Schedule is in order, as the Schedule makes it clear that decisions at meetings of a corporation shall be made by a majority of votes of the owners, including the termination of a manager's appointment.</p>
<b><i>Hon Albert HO</i></b>		
<p>Clause 2 New clause 9A New clause 17 to add a new <u>Eleventh Schedule</u></p> <p>To amend the definitions of "owner" and "building" so that the Ordinance also covers house-type properties and their owners, and to make consequential changes for the determination of owner's shares and the calculation of owners.</p>	<p>The amendments seek to extend the application of the Ordinance to house-type developments and are outside the scope of the Ordinance and of the Bill - contravenes Rule 57(4).</p>	<p>The long-title of the Ordinance is wide enough to cover house-type developments. The Administration has adopted too narrow a view in reading the Ordinance. It is fair and equitable to give owners of house-type development a formal mechanism to form owners corporations.</p>

<b>Committee Stage Amendments by</b>	<b>SHA's comments</b>	<b>Members' responses</b>
<p><u>New clause 7BA</u> To provide that owners of undivided shares of the common parts of buildings and who do not pay fees for such under the deed of mutual covenant shall not have voting rights or constitute to a quorum.</p>	<p>The amendment is outside the scope of the Bill which does not cover section 34I of the Ordinance which the Member seeks to amend - contravenes Rule 57(4).</p>	<p>The drafting guidelines issued by the Lands Department relating to deeds of mutual covenants already impose an obligation on the drafting solicitors to ensure that no voting rights should be allocated to undivided shares of the common parts if such shares do not carry the obligation to pay fees. The amendment is in keeping with the principles of the guidelines.</p>
<p><u>New clause 13B</u> To amend the Second Schedule relating to composition of management committees, to require holders of offices in a management committee shall retire together with members of the committee.</p>	<p>The amendment is outside the scope of the Bill - contravenes Rule 57(4).</p>	<p>The amendment addresses a deficiency in the Ordinance and is within scope as it relates to better management.</p>
<p><u>New clause 15</u> To amend the Seventh Schedule relating to the termination of a manager's appointment.</p>	<p>The amendment is outside the scope of the Bill - contravenes Rule 57(4).</p>	<p>The amendment addresses a deficiency in the Ordinance and is within scope. A proposed new clause by the Administration also deals with the same issue.</p>
<b><i>Hon LEE Wing-tat</i></b>		
<p><u>Clause 3(b)</u> To facilitate the early appointment of a management committee of a corporation after the issue of an occupation permit or a temporary occupation permit.</p>	<p>The amendment is unclear because the term "unit" in the amendment is not defined, neither is "occupation of a unit" defined. This makes it unclear how the "40% of the units occupied" is to be worked out under the amendment - contravenes Rule 57(4).</p>	<p>The term "unit" is a commonly used term in everyday language, so are the terms "occupied" and "occupation". There is no lack of clarity.</p>

<b>Committee Stage Amendments by</b>	<b>SHA's comments</b>	<b>Members' responses</b>
<p>New clause 7D  <u>New clause 16A</u>            To provide a mechanism by which an owners corporation may resolve to vary the terms of its deed of mutual covenant.</p>	<p>The amendments are outside the scope of the Ordinance or Bill. By assigning new duties to SHA and the Lands Tribunal, they also have a charging effect - contravene Rules 57(4) and 57(6).</p>	<p>The amendments have the purpose of introducing mandatory terms to the deed of mutual covenants to address deficiencies in the Ordinance, one of which is the lack of a procedure for amending the deeds.</p>

**President's ruling on Committee stage amendments  
proposed by six Members to the Appropriation Bill 2013**

Hon Frederick FUNG, Hon Gary FAN, Hon WONG Yuk-man, Hon Albert CHAN, Hon CHAN Chi-chuen and Hon LEUNG Kwok-hung have respectively given notices to move a total of 762 Committee stage amendments ("CSAs") to the Schedule to the Appropriation Bill 2013 ("the Bill") at the Council meeting of 24 April 2013 as follows:

- (a) one CSA proposed by Hon Frederick FUNG to reduce the provision for one Head of Expenditure;
- (b) seven CSAs proposed by Hon Gary FAN to reduce the provisions for seven Heads of Expenditure;
- (c) 81 CSAs proposed by Hon WONG Yuk-man to reduce the provisions for 22 Heads of Expenditure;
- (d) 141 CSAs proposed by Hon Albert CHAN to reduce the provisions for 25 Heads of Expenditure;
- (e) 154 CSAs proposed by Hon CHAN Chi-chuen to reduce the provisions for 15 Heads of Expenditure; and
- (f) 378 CSAs proposed by Hon LEUNG Kwok-hung to reduce the provisions for 44 Heads of Expenditure.

2. In considering whether the CSAs proposed by the six Members are in order under the Rules of Procedure, I invited the Administration to comment on the CSAs and the Members to respond to the Administration's comments on their individual CSAs. The Administration's written views on the CSAs proposed to the Bill have been provided to the Members.

**The Administration's comments**

3. The Administration's views on the CSAs proposed to the Bill are in the **Appendix**. In gist, the Administration raises two questions. First, when some Members' avowed intent for the introduction of numerous amendments is to filibuster the Bill, whether the admissibility of those proposed CSAs should be considered in the context of the President's

constitutional power and function to preside over meetings of the Legislative Council (“LegCo”) under Article 72(1) of the Basic Law (“BL 72(1)”). Second, whether the meaning of the term “an amendment” in Rule 57(4)(d) of the Rules of Procedure should include “a series of amendments”. The Administration submits that the answers to these two questions are in the affirmative.

4. The Administration also points out that:

- (a) at least 135 CSAs seeking to reduce by different permutations certain expenditure under a Head of Expenditure would produce mutually conflicting and unintelligible results;
- (b) at least 93 CSAs involving expenditure cuts would have the effect of rendering the relevant departments totally inoperable. These CSAs, if ruled in and endorsed by LegCo, would put public services into total disarray; and
- (c) 51 CSAs appear to refer to sums not included in the Bill or not included under the Heads/Subheads of Expenditure quoted.

5. The Administration invites me to rule out as frivolous or meaningless under Rule 57(4)(d) of the Rules of Procedure all those amendments or series of amendments proposed by Members with the avowed intent of delaying the legislative process. The Administration also contends that all those CSAs falling within the descriptions in paragraph 4 above should be ruled out, so as to ensure the proper exercise and discharge of the powers and functions of LegCo provided under BL 73.

6. The Administration does not have comments on the CSA proposed by Hon Frederick FUNG and those proposed by Hon Gary FAN.

### **Members’ response**

#### Hon Frederick FUNG’s response

7. Hon Frederick FUNG withdrew his notice for moving the CSA.

#### Hon WONG Yuk-man's response

8. Hon WONG Yuk-man withdrew his notice for moving the 20 CSAs falling within the description in paragraph 4(c) above. He has no comment on the Administration's views.

#### Hon Albert CHAN's response

9. Hon Albert CHAN has not responded to the Administration's views.

#### Hon CHAN Chi-chuen's response

10. Hon CHAN Chi-chuen withdrew his notice for moving one of his proposed CSAs falling within the description in paragraph 4(c) above. He has no comment on the Administration's views.

#### Hon LEUNG Kwok-hung's response

11. Thirty CSAs by Hon LEUNG Kwok-hung refer to sums not included in the Bill or the Heads/Subheads of Expenditure quoted. He has asked for my leave for him to revise 15 of his CSAs of this nature to rectify the inaccuracy. He has no comment on the Administration's views.

#### **My opinion**

12. Before forming my opinion on the admissibility of the CSAs, the number of which is unprecedented for an appropriation bill, I have revisited my powers and functions as President of LegCo conferred by the Basic Law and supplemented by the Rules of Procedure. Among other things, I have the constitutional powers and functions to preside over meetings under BL 72(1). It has all along been my understanding that such powers must include the power and function to exercise proper authority or control over meetings, including the orderly, fair and proper conduct of meetings. This understanding, on which I have acted, has been reaffirmed by the Court of Appeal in the case of *Leung Kwok Hung v the President of the Legislative Council of the Hong Kong Special Administrative Region* (CACV 123 of 2012).

13. One of my other powers and functions as prescribed in the Rules of Procedure is to rule on the admissibility of proposed amendments to a bill. In the exercise of this power, I fully respect the right of Members to participate in the legislative process. In the context of an appropriation bill,



the power of LegCo to examine and approve budgets introduced by the Government under BL 73(2) forms the basis for Members to debate the appropriation bill and the relevant estimates of expenditure which are subject to the Council's examination as part and parcel of the legislative process for enacting the appropriation bill, and to propose amendments to such a bill in accordance with the Rules of Procedure and the relevant practices.

14. Rule 69 of the Rules of Procedure governs amendments that may be proposed by Members to an appropriation bill. Counsel to the Legislature has pointed out to me that this rule does not explicitly limit the number of amendments that may be moved by each Member in respect of each head of expenditure included in an appropriation bill, and there is no past practice that limits the number of amendments moved by each Member in respect of each head of expenditure. Subject to good and cogent reasons to depart from such practice, it appears that a Member may propose multiple amendments to reduce the provision for a specific head to be appropriated in such a bill. Counsel has also advised me that Rule 57 of the Rules of Procedure should apply generally to amendments to bills including appropriation bills. Therefore, in deciding the admissibility of the 740 proposed amendments to the Bill (after Members have withdrawn notice for moving 22 out of the 762 CSAs), I need to form an opinion as to whether they comply with the requirements under both Rules 57 and 69.

15. A substantial number of amendments proposed by three Members fall into series in which each amendment seeks to reduce the appropriation to a particular Head of Expenditure by a sequentially varying amount. Rule 69 does not disallow such amendments. In determining whether amendments proposed in such a manner fall within the description of “frivolous” and “meaningless” under Rule 57(4)(d), I asked myself two questions. First, whether the passage of any one of such amendments in a series would serve any substantive purpose; and second, whether the passage of one such amendment vis-a-vis another in the same series would make any material difference. It appeared to me that the passage of any one of the amendments in question would achieve a substantive result, and that the passage of one such amendment would achieve an effect materially different from that of another in the same series. I therefore could not consider the amendments frivolous or meaningless, either taken individually or collectively.

16. While taking note of the concern expressed by the Administration about the avowed intent of some Members to filibuster by way of proposing numerous CSAs to the Bill, I must stress that the motive of Members proposing amendments has never been a relevant consideration in past

rulings. I must also point out that in my past rulings and those of my predecessors, the merits of the proposed CSAs, including their possible impact on the Government or Government operation, are not factors that have been taken into account.

17. In my view, unless the admission of certain proposed amendments would have the demonstrable effect of prolonging the legislative process to the extent of preventing LegCo from properly exercising and discharging its powers and functions under the Basic Law, I should not deprive Members' right to propose these amendments. At this stage, I am yet to be satisfied that the admission of the proposed CSAs to the Bill by the four Members will give rise to such a situation. Should such a possibility emerge in the course of the proceedings on the Bill, I will not hesitate to exercise my power to ensure the orderly, fair and proper conduct of meetings, including the taking of necessary steps to end the debates, and enabling the proposed CSAs to be voted upon by the Committee of the whole Council.

18. Thirty CSAs submitted by Hon LEUNG Kwok-hung refer to sums not included in the Bill or the Heads/Subheads of Expenditure quoted. As all CSAs to the Bill seek to reduce the provisions for specific Heads or Subheads, the accuracy of the Heads/Subheads quoted is fundamental to the integrity of the proposed CSAs. Hon LEUNG Kwok-hung has asked for my leave for him to revise 15 of his CSAs to rectify the inaccuracy. I do not consider it justified to grant leave as the notice requirement should not be dispensed with unless in very exceptional circumstances.

### **My ruling**

19. I rule that:

- (a) the 30 CSAs by Hon LEUNG Kwok-hung falling within the description in paragraph 4(c) above are inadmissible; and
- (b) the other 710 CSAs proposed by the five Members are admissible.



(Jasper TSANG Yok-sing)  
President  
Legislative Council

22 April 2013

財經事務及庫務局局長



香港金鐘添美道二號  
政府總部二十四樓

SECRETARY FOR FINANCIAL  
SERVICES AND THE TREASURY

24/F, Central Government Offices,  
2 Tim Mei Avenue, Admiralty  
Hong Kong

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來函檔號 Your Ref. : CB(3)/B/FST/1 (12-13)

18 April 2013

Mr Kenneth Chen, SBS  
Secretary General  
Legislative Council  
Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong

Dear Secretary General,

### **Appropriation Bill 2013**

Thank you for your letters dated 9, 11, 12, 15 and 16 April 2013, inviting the Administration's views in the context of Rules 57(4), 57(6) and 69 of the Legislative Council (LegCo)'s Rules of Procedure regarding the Committee Stage Amendments (CSAs) proposed to the 2013 Appropriation Bill.

I write to set out the Administration's views on the aggregate number of 762 CSAs proposed to the Bill, which collectively seek to reduce the provisions for 57 out of the total of 83 expenditure heads covered under the Bill.

### **The Power and Function of the President to Exercise Proper Authority or Control over the Legislative Process**

Without prejudice to the Administration's position on Article 74 of the Basic Law (BL 74), our views on the proposed CSAs to the Appropriation Bill are set out below.

The question of whether some LegCo Members, whose avowed intention for the introduction of the numerous amendments is to filibuster the Appropriation Bill, may be allowed to move those proposed CSAs, should be considered in the proper context of the President of LegCo's constitutional power and function to preside over meetings of the LegCo under BL 72(1). It has been widely reported in the press that hundreds of CSAs are proposed by certain Members with the sole intention of delaying the passage of the Appropriation Bill.

As decided by the Court of Appeal (CA) in *Leung Kwok Hung v The President of the Legislative Council of the Hong Kong Special Administrative Region*, CACV 123/2012, such power and function of the President of LegCo must, as a matter of interpretation or necessary implication, include the power and function to exercise proper authority or control over the legislative process. The orderly, fair and proper conduct of LegCo proceedings must be within the province of the President. Moreover, the CA also held that the power under BL 72(1) is supplemented by other powers and functions as prescribed in the Rules of Procedure ("RoP"). Whatever may be the effect of those rules interpreted on their own, they must be read subject to the constitutional power and function of the President under BL 72(1) to preside over meetings.

Under Rule 57(4)(d) of the RoP, an amendment which is frivolous or meaningless may not be moved. We note that the President has previously ruled that Rule 57(4)(d) applied only to individual amendments but did not apply to a series of amendments. In his ruling on the amendments proposed by Hon Albert Chan and Hon Wong Yuk-man to the proposed resolution under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) dated 18 June 2012, the President said the following in paragraph 9:

*"Regarding Mr CHAN's 59 amendments, each of which is seeking to change respectively the effective date of the proposed resolutions to the first day of the 59 months that follow July 2012, it is not the first time that he proposes amendments in such a manner. Mr CHAN explains that his amendments are to allow Members to choose the most appropriate date for the proposed resolution to take effect. My view is that even if each of these amendments taken individually may serve a particular purpose, it is obvious that when the 59 amendments are taken together, they can be regarded as frivolous and may have the effect of*

*prolonging Council proceedings more than is necessary for providing a fair choice for Members. I have serious reservation, as on a similar occasion recently, on whether such a series of amendments should be allowed to proceed without being subjected to any restrictions at all.* However, unless and until clear rules are provided in our Rules of Procedure to apply the restriction against a frivolous or meaningless amendment under Rule 57(4)(d) also to a series of amendments to motions, I have no option but to allow these 59 amendments to proceed in accordance with past rulings.” (emphasis added)

The above interpretation that Rule 57(4)(d) did not apply to “a series of amendments” was adopted by the President prior to the judgment of the CA in CACV 123/2012. It is submitted that in the light of the latest jurisprudence, there is scope to adopt a purposive interpretation of the term “an amendment” in Rule 57(4)(d) to include “a series of amendments” so that the President may rule out those amendments which, when taken together, can be regarded as frivolous or meaningless.

Further support to the above purposive interpretation of the term “an amendment” can be gained from the general rule of interpretation that “words and expressions in the singular include the plural and words and expressions in the plural include the singular.” (see for reference section 7(2) of the Interpretation and General Clauses Ordinance (Cap 1)).

The CA has held that the effect of an individual rule in the RoP, whatever that may be when interpreted on its own, must be read subject to the constitutional power and function of the President under BL 72(1) to preside over meetings. The Court of First Instance has also held in the same case of *Leung Kwok Hung v The President of the Legislative Council* [2012] 3 HKLRD 470 at 471 that on a purposive construction of BL 73(1) and 75(2), there is no constitutional right to filibuster. This is confirmed by the CA (at para 44) where the CA has further stated as follows:

“... Indeed there is much to be said for the view that the very continuance of a filibustering exercise would be *contrary to the proper exercise and discharge of the powers and functions of the Legislative Council* provided under article 73 of the Basic Law, and would constitute an infringement of other legislators' constitutional rights ... to participate in the legislative process in a meaningful manner.” (emphasis added)

Therefore, in order to ensure the proper exercise and discharge of the powers and functions of the LegCo provided under BL 73, in particular the orderly, fair and proper conduct of proceedings, it is considered that (in addition to the President's powers and functions under RoP 57(4)(d) as construed in the light of BL 72(1) above), it is within the constitutional power and function of the President (to preside over meetings) under BL 72(1) and his power under RoP 92 to rule out a CSA which, whether on its own or taken together with other CSAs, is in the opinion of the President (a) frivolous or meaningless or (b) intended or likely to unduly delay the legislative process (ie to filibuster).

The act of proposing amendments is very proximate to the meeting and forms part of the meeting. We are of the view that in making a ruling on a series of amendments which will have adverse effect on the conduct of a meeting, the President is exercising the power given by the Basic Law to preside over meetings. In light of the fact that certain Members have openly admitted that their CSAs are proposed for the purpose of filibustering, the proposed amendments should be scrutinised carefully under RoP 57(4)(d) as part of the proper exercise of the power and function of the President to preside over meeting.

It is submitted that whether an amendment is frivolous or meaningless should also be looked at from the point of its effect on the legislative process where the purpose of an amendment or a series of amendments is intended to delay the legislative process. Previous experience has shown that filibustering has adversely affected the effective and efficient operation of the Legislative Council.

In short, on the basis of (a) RoP 57(4)(d) as construed in the light of BL 72(1) above, and further or in the alternative, (b) the President's constitutional power and function (to preside over meetings) under BL 72(1) and his power under RoP 92, we would invite the President to rule out the amendments that are frivolous/meaningless and/or intended (or likely) to unduly delay the legislative process relating to the passage of the Appropriation Bill, having regard in particular to the avowed intent of some members to filibuster by way of such amendments. The Financial Secretary has already explained the importance of the early passage of the Bill in his letter of 18 April 2013.

### **Impact on public expenditure and operation of the Government**

Insofar as the proposed amendments seek to reduce the provisions included in the Appropriation Bill 2013 from the relevant Heads of Expenditure, they are similar to those which some LegCo Members proposed in relation to past Appropriation Bills. We maintain our views on BL 74 as set out in the Administration's letter dated 23 March 1999, commenting on similar amendments seeking to reduce provisions to be appropriated.

We would be most grateful if the LegCo President can take into account the views of the Administration when considering the CSAs Members proposed in relation to the Appropriation Bill.

We will revert under separate cover on the Administration's other observations on individual CSAs.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'K.C.Chan', with a long horizontal flourish extending to the right.

( Professor K C Chan )  
Secretary for Financial Services and the Treasury

**President's ruling on Committee stage amendments  
proposed by 14 Members to the Appropriation Bill 2014**

Fourteen Members have respectively given notices to move a total of 1 917 Committee stage amendments (“CSAs”) to the Schedule to the Appropriation Bill 2014 (“the 2014 Bill”) at the Council meeting of 16 April 2014<sup>1</sup> as follows:

- (a) Hon SIN Chung-kai, Hon LEE Cheuk-yan and Hon CHEUNG Kwok-che each proposes one CSA to reduce the provisions for three Heads of Expenditure;
- (b) Hon James TO, Dr Hon Fernando CHEUNG and Hon Cyd HO each proposes two CSAs to reduce the provisions for four Heads of Expenditure;
- (c) Dr Hon Helena WONG and Hon WU Chi-wai each proposes three CSAs to reduce the provisions for five Heads of Expenditure;
- (d) Hon Claudia MO proposes four CSAs to reduce the provisions for three Heads of Expenditure;
- (e) Hon Gary FAN proposes 10 CSAs to reduce the provisions for eight Heads of Expenditure;
- (f) Hon WONG Yuk-man proposes 120 CSAs to reduce the provisions for 35 Heads of Expenditure;
- (g) Hon Albert CHAN proposes 129 CSAs to reduce the provisions for 27 Heads of Expenditure;
- (h) Hon CHAN Chi-chuen proposes 132 CSAs to reduce the provisions for 23 Heads of Expenditure; and
- (i) Hon LEUNG Kwok-hung proposes 1 507 CSAs to reduce the provisions for 58 Heads of Expenditure.

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<sup>1</sup> The President adjourned the Council meeting of 16 April 2014 after the motion on the Second Reading of the 2014 Bill was passed. The CSAs to the Bill are to be moved at the Council meeting of 30 April 2014.



2. In considering whether the CSAs proposed by the 14 Members to the 2014 Bill are in order under the Rules of Procedure, I invited the Administration to comment on the CSAs and the Members to respond to the Administration's comments on their CSAs. The Administration's written comments on the CSAs have been provided to the Members.

### **The Administration's comments**

3. The Administration's views on the proposed CSAs are in **Appendix I**. The Administration is of the view that:

- (a) most of the 1 507 CSAs proposed by one Member seeking to reduce by different permutations certain expenditure under a wide spectrum of Heads of Expenditure are frivolous;
- (b) at least 148 CSAs proposed by individual Members, if taken together, would produce mutually conflicting and unintelligible results;
- (c) at least 206 CSAs involving expenditure cuts would have the effect of rendering the relevant bureaux and departments totally inoperable. These CSAs, if ruled in and endorsed by the Legislative Council ("LegCo"), would put public services into total disarray;
- (d) at least 17 CSAs appear to refer to sums not included in the 2014 Bill or not included under the Heads/Subheads of Expenditure quoted; and
- (e) at least nine pairs of CSAs proposed by one Member are identical.

4. Taking into account the proceedings on the Appropriation Bill 2013 ("the 2013 Bill"), the avowed intent of some Members to filibuster by proposing CSAs and the substantial increase in the number of proposed CSAs to the 2014 Bill, the Administration considers that the admission of the CSAs would have the demonstrable effect of prolonging the legislative process to the extent of preventing LegCo from properly exercising and discharging its powers and functions under Article 73 of the Basic Law ("BL"). Given the importance of the timely passage of the 2014 Bill to ensure the availability of funds to support committed public services, the Administration invites me to exercise my powers under BL 72(1) and Rule

92 of the Rules of Procedure to rule out the CSAs which are frivolous or meaningless or intended or likely to unduly delay the legislative process, in order to ensure the proper exercise and discharge of the powers and functions of LegCo.

### **Members' responses**

5. Except Hon LEUNG Kwok-hung, the other 13 Members either have no comments on or have not responded to the Administration's views.

6. Hon LEUNG Kwok-hung contends that the purpose of his moving of the proposed CSAs is to discharge the powers and functions of Members of LegCo under BL 73(1), (2) and (6) to amend, examine, approve and debate appropriation bills and budgets introduced by the government, and that his proposed CSAs mainly target at public officers with poor performance, unnecessary operating expenditures of Government departments, unnecessary posts or new posts, and unnecessary projects or activities. Hon LEUNG Kwok-hung also contends that his proposed CSAs to the 2014 Bill are almost identical to those proposed by him to the 2013 Bill, which were ruled admissible, and are therefore not frivolous or meaningless. He argues that given its constitutional status under BL, LegCo should not be pressurized by the Administration to accept its views but should instead act independently as usual.

### **My opinion**

7. I have noted that among the 1 507 CSAs proposed by Hon LEUNG Kwok-hung, 909 CSAs are grouped into 116 sequences each of which comprises three or more CSAs seeking to reduce the appropriation to a Head of Expenditure for a specific purpose by sequentially varying amounts ("sequential CSAs") (**Appendix II**). This is not the first time that a sequence of amendments in such a manner is proposed by individual Members to a bill or a motion. In the past two years, I dealt with such amendments on three occasions.

8. In May 2012, a total of 1 232 CSAs were proposed by one Member to the Legislative Council (Amendment) Bill 2012 which sought to disqualify a person who had resigned as a Member of LegCo from standing for a by-election held within six months of his resignation. These CSAs fell into groups of amendments, each of which represented one class of exception to the disqualification rule provided in the Legislative Council (Amendment) Bill 2012. Among these CSAs, some 720 were drafted in such a way that

the disqualification would not apply if certain specified factors in a sequentially varying degree occurred, for example, if the resigning Member agreed to pay a sequentially varying percentage of the cost of the by-election. All these CSAs were ruled admissible by me under the Rules of Procedure.

9. Shortly thereafter, in June 2012, 167 amendments were proposed to be moved by a Member to a proposed Government resolution under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) to effect transfer of statutory functions pursuant to the Chief Executive-elect's proposals to re-organise the Government Secretariat. The same approach was adopted by the Member in 59 of his proposed amendments, each of which sought to change respectively the effective date of the proposed resolution to the first day of the 59 months that followed July 2012. These amendments, as claimed by the Member, were to allow Members to choose the most appropriate date for the proposed re-organisation to take effect. In ruling these amendments admissible, I expressed my view that when taken together, the 59 proposed amendments could be regarded as frivolous and might have the effect of prolonging Council proceedings more than was necessary for providing a fair choice for Members. However, I decided that these proposed amendments should be admitted for debate until the Rules of Procedure make it clear that there should be restrictions against a series of proposed amendments which are frivolous or meaningless.<sup>2</sup>

10. Last year, six Members proposed a total of 762 CSAs to the 2013 Bill. Again, some 220 CSAs were grouped into 22 sequences with each sequence containing three or more CSAs that sought to reduce the appropriation to a particular Head of Expenditure for a specific purpose by sequentially varying amounts. I considered each of those CSAs and examined their intended effect. I could not conclude that these CSAs were "frivolous" or "meaningless" within the meaning of Rule 57(4)(d) of the Rules of Procedure.<sup>3</sup> I also assessed whether the admission of those sequential CSAs would have the demonstrable effect of prolonging the legislative process to the extent of preventing LegCo from properly exercising and discharging its powers and functions under BL. My view then was that at that stage, I was yet to be satisfied that there would be such demonstrable effect. The sequential CSAs were therefore ruled admissible.<sup>4</sup>

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<sup>2</sup> Paragraph 9 of the President's ruling on 18 June 2012 on the amendments proposed by Hon Albert CHAN and Hon WONG Yuk-man to the proposed resolution under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1).

<sup>3</sup> Paragraph 15 of the President's ruling on 22 April 2013 on Committee stage amendments proposed by six Members to the Appropriation Bill 2013.

<sup>4</sup> Paragraph 17 of the President's ruling on 22 April 2013 on Committee stage amendments proposed by six Members to the Appropriation Bill 2013.

11. This year, 909 sequential CSAs are proposed to the 2014 Bill. Before forming my opinion on the admissibility of these 909 sequential CSAs, I reminded myself that in the first four debates on 134 proposed CSAs to a Head of Expenditure in the 2013 Bill, 105 were sequential CSAs. I noted that in those four debates lasting over 31 hours in total, the proposers of such sequential CSAs hardly explained the difference between the successive amendments in the sequential CSAs and there was no exchange of views among Members on such sequential CSAs. Other than the proposers, an overwhelming majority of Members voted against all sequential CSAs. This convinced me that instead of providing fair and genuine choices for Members, the moving of those sequential CSAs achieved no purpose other than taking up the Council's time in completing the necessary proceedings.

12. As President, the constitutional powers and functions that I should exercise and discharge are provided in BL 72, which include presiding over meetings, deciding on the agenda, and exercising other powers and functions as prescribed in the Rules of Procedure. Such powers and functions must include the power to exercise proper authority or control over meetings, including ensuring the orderly, fair and proper conduct of meetings and ruling on the admissibility of CSAs. Therefore, I consider it incumbent upon me to ensure that the admission of CSAs is in accordance with the Rules of Procedure and would not prevent LegCo from properly exercising and discharging its powers and functions under BL.

13. The experience of the Council in the disposal of sequential CSAs has convinced me that the Member who proposes to move such sequential CSAs is not inviting the committee of the whole Council to examine any fair and genuine choices of proposed reductions to the respective Heads of Expenditure as part of its functions to discuss the details of a bill under Rule 56 of the Rules of Procedure. The 909 sequential CSAs do not serve any purpose reasonably connected with the function of the committee of the whole Council. In my opinion, the sequential CSAs infringe Rule 57(4)(d) of the Rules of Procedure for being frivolous or meaningless when each of them is considered in the context of the other amendments also being proposed by the same Member in respect of the same head or sub-head of expenditure and the experience of last year's debates on sequential CSAs to the 2013 Bill.

14. Further, in the light of what transpired in the debates on sequential CSAs to the 2013 Bill as mentioned in paragraph 11 above, I am of the view that the admission of the 909 sequential CSAs to the 2014 Bill would have the demonstrable effect of prolonging the legislative process to the extent of preventing LegCo from properly exercising and discharging its powers and

functions under BL. Therefore, they should not be allowed to be moved for this reason as well.

15. I have also examined in detail the 26 pairs of CSAs to the 2014 Bill proposed by Hon LEUNG Kwok-hung, each of which seeks to reduce the appropriation to a Head of Expenditure for a specific purpose with the amounts representing respectively the expenditure for one and six months, or one and twelve months. Given the material difference in the proposed amounts to be reduced within each pair, such CSAs may plausibly be considered as providing fair and genuine choices for Members. I would therefore allow them to be moved.

16. In the light of my decision not to admit the 909 sequential CSAs, if Hon LEUNG Kwok-hung is minded to select not more than two out of each of the 116 sequences of his proposed CSAs to be moved, I would be prepared to give leave to waive notice and to consider the admissibility of his selected CSAs provided that they are submitted to me by 22 April 2014 noon.

17. In reaching the above decisions, my consideration is to strike a proper balance between respecting the right of individual Members to propose amendments and ensuring the efficient conduct of the Council as a law making institution.

18. While noting the Administration's concerns about the avowed intent of some Members to filibuster by way of proposing numerous CSAs and the possible impact of some CSAs, if passed, on the Government or Government operation, I maintain the view as stated in my previous ruling that the motive of Members proposing amendments and the merits of CSAs are not relevant to the consideration of admissibility of CSAs. However, as I have elaborated in paragraphs 11 to 14 above, I cannot ignore the new developments including the Council's experience in the disposal of the sequential CSAs to the 2013 Bill when considering the admissibility of the 909 sequential CSAs to the 2014 Bill. I am convinced that the admission of the 909 sequential CSAs to the 2014 Bill would give rise to a situation where LegCo would be prevented from its proper exercise and discharge of its constitutional powers and functions.

19. Twenty CSAs proposed by Hon LEUNG Kwok-hung refer to sums not included in the 2014 Bill or the Heads/Subheads of Expenditure or refer to purposes not specified in the Estimates for the year ending 31 March 2015 (**Appendix III**). As the accuracy of such information is fundamental to the integrity of the proposed CSAs, these CSAs cannot be moved.

Hon LEUNG Kwok-hung has submitted 28 duplicate CSAs which also cannot be moved (**Appendix IV**).

**My ruling**

20. I rule that:

- (a) the 957 CSAs proposed by Hon LEUNG Kwok-hung in **Appendices II to IV** (not attached) are inadmissible; and
- (b) the remaining 550 CSAs proposed by Hon LEUNG Kwok-hung and all the 410 CSAs proposed by the other 13 Members are admissible.



(Jasper TSANG Yok-sing)  
President  
Legislative Council

17 April 2014

財經事務及庫務局局長



香港金鐘添美道二號  
政府總部二十四樓

**SECRETARY FOR FINANCIAL  
SERVICES AND THE TREASURY**

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來函檔號 Your Ref. : CB(3)/B/FST/3 (13-14)

9 April 2014

Mr Kenneth Chen, SBS  
Secretary General  
Legislative Council  
Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong

Dear Secretary General,

### **Appropriation Bill 2014**

Thank you for your letters dated 31 March, 2, 4 and 7 April 2014, inviting the Administration's views on the proposed Committee Stage Amendments (CSAs) to the Appropriation Bill 2014 against the provisions in Rules 57(4), 57(6) and 69 of the Legislative Council (LegCo)'s Rules of Procedure (RoP).

I write to set out the Administration's views on the aggregate number of **1 917** CSAs proposed to the Bill, which collectively seek to reduce the provisions for 69 out of the total of 83 expenditure heads covered under the Bill.

### **The Power and Function of the President to Exercise Proper Authority or Control over the Legislative Process**

Without prejudice to the Administration's position on Article 74 of the Basic Law (BL 74), our views on the proposed CSAs to the Appropriation Bill are set out below.

The Court of Appeal has in *Leung Kwok Hung v The President of the Legislative Council of the Hong Kong Special Administrative Region* (CACV123/2012) confirmed that the LegCo President has the power and function to exercise proper authority or control over the legislative process. It is within the province of the President to ensure the orderly, fair and proper conduct of LegCo proceedings. It was also held that the Members' right to speak or participate in the legislative process must be read with, and subject to, the power of the President to preside over meetings under BL 72(1).

In his ruling of 22 April 2013 on the CSAs proposed by six Members to the Appropriation Bill 2013, the President held the view that if the admission of certain proposed amendments would have the demonstrable effect of prolonging the legislative process to the extent of preventing LegCo from properly exercising and discharging its powers and functions under the Basic Law, he will not hesitate to exercise his power to ensure the orderly, fair and proper conduct of meetings.

For the Appropriation Bill 2014, one Member has proposed some 1 500 CSAs, most of which are similar and interdependent CSAs to cut certain expenditure under a Head of Expenditure by different permutations. The Administration is of the view that most of these amendments, when considered together as a series of amendments to each individual Head or to a wide spectrum of Heads, are **frivolous** and if admitted would have the effect of **prolonging the legislative process** to the extent of preventing LegCo from properly exercising and discharging its powers and functions. That Member is among the few Members who have stated publicly the avowed intention to filibuster and delay the passage of the Appropriation Bill (as is clear from their public statement issued in the past week). The effect of prolonging legislative process was demonstrated in the past when similar CSAs were proposed by the same few Members in the proceedings on the Appropriation Bill 2013.

Many of the CSAs proposed by individual Members, if taken together, would produce **mutually conflicting and unintelligible** results. By way of example, a Member has proposed concurrently to reduce the salary of a Director of Bureau by one month, two months, three months, ... . Obviously, if the CSA on a one-month cut is accepted, it would be in conflict with the other CSAs this Member has proposed in this same series. Taken together, these CSAs from the individual Member are frivolous and/or have the intended/likely



effect of unduly delaying the legislative process. Other examples of CSAs involving mutually exclusive permutations are set out below –

- (a) 28 CSAs (number 10, 12 – 18, 20, 27, 30, 35, 41, 46, 47, 51, 53, 55, 57, 58, 60, 64, 68, 70, 73, 78, 80 and 83 in **Annex A**) from three Members, seeking to reduce the honoraria for non-official Members of the Executive Council in different permutations in terms of number of members involved and number of months of expenditure covered;
- (b) 12 CSAs (number 349, 352, 359, 363, 365, 368, 374, 377, 382, 393, 402 and 411 in **Annex A**) from a Member, seeking to reduce the salary expenses for Secretary for Home Affairs by one month to 12 months;
- (c) 12 CSAs (number 1204 – 1208, 1212, 1216, 1219, 1225, 1231, 1236 and 1242 in **Annex A**) from a Member, seeking to reduce the salary expenses for the Secretary for Constitutional and Mainland Affairs by one month to 12 months;
- (d) 12 CSAs (number 1210, 1211, 1213, 1217, 1218, 1222, 1226, 1229, 1233, 1237, 1240 and 1244 in **Annex A**) from a Member, seeking to reduce the salary expenses for the Under Secretary for Constitutional and Mainland Affairs by one month to 12 months;
- (e) 12 CSAs (number 637 – 640, 643, 647, 649, 652, 654, 659, 662 and 664 in **Annex A**) from a Member, seeking to reduce the salary expenses for the Secretary for Justice by one month to 12 months; and
- (f) 72 CSAs (number 1645, 1648, 1653, 1657, 1662, 1667, 1674, 1686, 1699, 1708, 1715, 1720, 1724, 1727, 1731, 1737, 1740, 1744, 1745, 1748, 1750, 1754 – 1756, 1764, 1767, 1779, 1780, 1782, 1783, 1785, 1790 – 1793, 1799, 1800, 1804 – 1806, 1808, 1820 – 1822, 1825, 1830, 1831, 1836, 1838 – 1841, 1846, 1850 – 1853, 1855 – 1857, 1861 – 1863, 1865, 1869 – 1874, 1876 and 1877 in **Annex A**) from a Member, seeking to reduce the salary expenses for various ranks of officers responsible for vehicle registration in the Transport Department by one month to 12 months.

A few Members have proposed multiple CSAs involving expenditure cuts to 69 numbers of the Heads of Expenditure, which would have the **effect of rendering the relevant bureaux and departments** (e.g. Chief Executive's Office, Hong Kong Police Force and Education Bureau) **totally inoperable**. These CSAs, if ruled in and endorsed by LegCo, would put public services into total disarray. As these provisions are essential to the continued operation of the relevant bureaux and departments, these CSAs relate to the "operation of the Government" and hence should not be introduced. Examples of these are set out below –

- (a) 100 CSAs (number 695 – 794 in **Annex A**) from two Members, seeking to reduce either entirely or to one-month operating expenditure a series of major expenditure provisions for the Leisure and Cultural Services Department;
- (b) 56 CSAs (number 102 – 119, 125 – 136, 137 – 146 and 228 – 243 in **Annex A**) from five Members, seeking to reduce either entirely or to \$1,000 a series of major expenditure provisions for the Architectural Services Department, Correctional Services Department, Customs and Excise Department and Environmental Protection Department;
- (c) 21 CSAs (number 795 – 815 in **Annex A**) from two Members, seeking to remove entirely the major expenditure provisions for the Economic and Trade Offices;
- (d) 19 CSAs (number 816 – 834 in **Annex A**) from two Members, seeking to reduce either entirely or to \$100 the major expenditure provisions for the Marine Department;
- (e) 9 CSAs (number 430 – 438 in **Annex A**) from a Member, seeking to reduce to \$10, \$100, \$1,000 or \$10,000 the major expenditure provisions for the Government Logistics Department; and
- (f) 1 CSA (number 1544 in **Annex A**) from a Member, seeking to remove the entire expenditure for the Government Secretariat: Development Bureau (Works Branch) to implement the transformation of Kowloon East into an attractive premier business district under the programme - Energizing Kowloon East.

We also note that some CSAs appear to refer to sums not included in the Appropriation Bill 2014 or not included under the subhead of Expenditure quoted. These include the CSAs to reduce the salary for Director of Housing, the provision for which is not included in the Appropriation Bill, and the CSA to cut the entire provisions for various programmes under Legislative Council Commission from its subhead 000, the provisions for which are included under various subheads in addition to subhead 000. More details are set out in **Annex B**. Furthermore, we note that 15 pairs of identical CSAs are proposed by the same Member. We consider these duplicate CSAs superfluous, frivolous and having the effect of prolonging Council proceedings. More details are set out in **Annex C**.

The President may well recall that during the course of proceedings on the Appropriation Bill 2013 (especially during the debates in relation to CSAs), the legislative process was unduly prolonged by filibustering to the extent that the President exercised his power under BL 72(1) to apply Rule 92 of the RoP to set a timetable for the rest of proceedings on the Bill to be completed. Paragraphs 11 and 13 of the President's ruling on allocation of time for the remaining proceedings on the Appropriation Bill 2013 dated 16 May 2013 reflect how the admission of 710 CSAs to the Appropriation Bill 2013 and the debates that followed had seriously disrupted the proper functioning of the LegCo, and the President considered it appropriate to exercise his power under BL 72(1) to ensure the orderly, fair and proper conduct of meetings so that LegCo would not be prevented from properly exercising and discharging its powers and functions under the Basic Law.

We note that the CSAs proposed to the Appropriation Bill 2014 are similar in nature to those proposed to the Appropriation Bill 2013 in terms of the proposing Members as well as their substance, nature and coverage of Expenditure Heads. Taking into account the process during the Committee Stage of the Appropriation Bill 2013, the intention expressed by the same few Members concerned and the substantial increase in the number of proposed CSAs on this occasion, it is reasonable to anticipate that the CSAs would give rise to a similarly, if not more, protracted debating process on the Appropriation Bill 2014 in the Council this year. We therefore consider that the admission of these CSAs would have the demonstrable effect of prolonging the legislative process to the extent of preventing LegCo from properly exercising and discharging its powers and functions under the Basic Law.

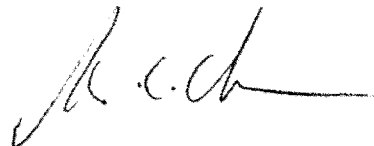
### **Importance of Timely Passage of Appropriation Bill 2014**

It is the responsibility of the Government to exercise the powers and functions conferred on it under Article 62 of the Basic Law. It is also the responsibility of the Government to assure the community that funds would be available in an orderly, predictable and timely manner to support committed public services. This duty to the community would be compromised if LegCo were to allow the passage of the Appropriation Bill to be unduly held back by avowed filibustering attempts from a few individual Members.

In view of the above, in order to ensure the proper exercise and discharge of the powers and functions of the LegCo provided under BL 73, in particular the orderly, fair and proper conduct of proceedings, we consider that it is within the constitutional power and function of the President (to preside over meetings) under BL 72(1) and his power under RoP 92 to rule out the CSAs which are in the opinion of the President (a) frivolous or meaningless or (b) intended or likely to unduly delay the legislative process (i.e. to filibuster).

I should be grateful if the President could take the above analysis into account in considering whether to allow the CSAs under the relevant provisions in the Basic Law and the RoP.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'K. C. Chan', with a long horizontal flourish extending to the right.

( Professor K C Chan )  
Secretary for Financial Services and the Treasury



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來函檔號 Your Ref. : CB(3)/B/FST/3 (13-14)

9 April 2014

Clerk to the Legislative Council  
(Atth: Mr Thomas Wong)  
Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong

Dear Mr Wong,

### **Appropriation Bill 2014**

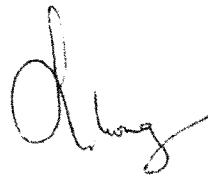
I refer to the letter dated 9 April 2014 from the Secretary for Financial Services and the Treasury to the Secretary General of the Legislative Council Secretariat on the above subject.

In the light of further study on the Committee Stage Amendments (CSAs), in particular the last batch of 1 445 CSAs sent to us in late afternoon on 7 April 2014, we have updated **Annexes A and C** to the aforesaid letter as follows –

- (a) **Annex A** – textual amendments to the column of “objectives as understood” for eight CSAs (number 93, 700, 717, 726, 789, 794, 820 and 1491); and
- (b) **Annex C** – the number of duplicate CSAs is changed from 15 pairs to 9 pairs, in the light of the job descriptions and titles of the posts concerned.

Please supersede **Annexes A and C** to the aforesaid letter accordingly.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Charlix Wong', written in a cursive style.

( Charlix Wong )

for Secretary for Financial Services and the Treasury

**President's ruling on Committee stage amendments  
proposed by 17 Members to the Appropriation Bill 2015**

Seventeen Members have respectively given notice to move a total of 3 904 Committee stage amendments (“CSAs”) to the Schedule to the Appropriation Bill 2015 (“the 2015 Bill”) at the Council meeting of 22 April 2015 as follows:

- (a) Hon WU Chi-wai proposes one CSA to reduce the provision for one Head of Expenditure;
- (b) Dr Hon Helena WONG proposes two CSAs to reduce the provisions for two Heads of Expenditure;
- (c) Hon Albert HO proposes three CSAs to reduce the provisions for two Heads of Expenditure;
- (d) Hon Emily LAU and Hon CHEUNG Kwok-che each proposes three CSAs to reduce the provisions for three Heads of Expenditure;
- (e) Hon James TO proposes four CSAs to reduce the provisions for one Head of Expenditure;
- (f) Hon Claudia MO proposes four CSAs to reduce the provisions for three Heads of Expenditure;
- (g) Dr Hon Kenneth CHAN and Dr Hon Fernando CHEUNG each proposes four CSAs to reduce the provisions for four Heads of Expenditure;
- (h) Dr Hon KWOK Ka-ki proposes six CSAs to reduce the provisions for six Heads of Expenditure;
- (i) Hon LEE Cheuk-yan proposes nine CSAs to reduce the provisions for four Heads of Expenditure;
- (j) Hon Cyd HO proposes 10 CSAs to reduce the provisions for four Heads of Expenditure;

- (k) Hon Gary FAN proposes 11 CSAs to reduce the provisions for 10 Heads of Expenditure;
- (l) Hon WONG Yuk-man proposes 100 CSAs to reduce the provisions for 18 Heads of Expenditure;
- (m) Hon CHAN Chi-chuen proposes 191 CSAs to reduce the provisions for 35 Heads of Expenditure;
- (n) Hon Albert CHAN proposes 200 CSAs to reduce the provisions for 42 Heads of Expenditure; and
- (o) Hon LEUNG Kwok-hung proposes 3 349 CSAs to reduce the provisions for 80 Heads of Expenditure.

2. In considering whether the CSAs proposed by the 17 Members to the 2015 Bill are in order under the Rules of Procedure (“RoP”), I invited the Administration to comment on the CSAs and the Members to respond to the Administration’s comments on their CSAs. The Administration’s written comments on the CSAs have been provided to the Members.

### **The Administration’s comments**

3. The Administration’s views on the proposed 3 904 CSAs to the 2015 Bill are in **Appendix I**. In gist, the Administration is of the view that all the CSAs should not be admitted for the following reasons –

- (a) the CSAs, if admitted, would unduly prolong the legislative process and prevent the Legislative Council (“LegCo”) from properly exercising and discharging its function to examine and approve budgets introduced by the Government under Article 73(2) of the Basic Law (“BL 73(2)”);
- (b) the contents of all the 3 740 CSAs proposed by Hon LEUNG Kwok-hung, Hon Albert CHAN and Hon CHAN Chi-chuen bear no relationship with their purported goals of filibustering, and none of their purported goals is relevant to the subject matter of the 2015 Bill and hence the proposed CSAs infringe Rule 57(4)(a) of the RoP;



- (c) it would be wrong in principle if not wholly unconstitutional for LegCo to admit and consider 2 371 CSAs the effect of which will hinder the Government from meeting its obligations to implement laws passed by the Council under BL 64 or subject the Government to the potential risk of breaching its contractual obligations as an Employer;
- (d) it would be contradictory for LegCo to consider 28 CSAs which seek to withhold the funding for the relevant schemes that have been separately approved by LegCo or the Finance Committee;
- (e) 2 843 CSAs proposed by a single Member which seek to reduce a series of major expenditure provisions across 69 bureaux/departments, if admitted and passed, would seriously disrupt the operation of the Government. As these CSAs relate to the operation of the Government, they cannot be introduced under BL 74; and
- (f) 240 sets of CSAs proposed by different Members are identical and 68 CSAs are technically inaccurate.

4. The Administration also submits that the timely passage of the 2015 Bill is critical as the interim funding secured through the Vote on Account resolution pending the passage of the 2015 Bill would only be sufficient to sustain public services for the months of April and May 2015. The Administration therefore invites me to exercise my powers under BL 72(1) and the RoP to rule out all the CSAs in the wider public interest.

### **Members' responses**

5. Except Dr Hon Kenneth CHAN, Dr Hon KWOK Ka-ki and Hon LEUNG Kwok-hung, the other 14 Members either have no comments on or have not responded to the Administration's views.

### Dr Hon Kenneth CHAN's response

6. Dr Hon Kenneth CHAN considers that the Administration's views on Members' proposed CSAs have shown its arrogance and complacency by asking LegCo to do what it says about the CSAs, and its intention to bulldoze the 2015 Bill through LegCo as fast as it can. He urges me to remind the Administration that it has no role in how LegCo plans its proceedings on the 2015 Bill.

Dr Hon KWOK Ka-ki's response

7. Dr Hon KWOK Ka-ki expresses strong dissatisfaction with the Administration's comments. He hopes that I can safeguard Members' right to monitor the Government's governance, and allow Members to move their CSAs.

Hon LEUNG Kwok-hung's response

8. Hon LEUNG Kwok-hung disagrees with the Administration's views on the proposed CSAs for the following reasons –

- (a) each of his CSAs is relevant to the 2015 Bill with an objective of targeting at public officers who have performed poorly, unnecessary operating expenditures of Government departments, unnecessary posts or new posts, or unnecessary projects or activities;
- (b) the Administration has no grounds to judge whether the CSAs are meaningless until the proposers explain the CSAs in committee of the whole Council;
- (c) the Government is accountable to LegCo, even if the passage of a CSA will render it unable to implement laws passed by LegCo under BL 64;
- (d) the merits of CSAs and their impact on public services should not be relevant to the consideration of admissibility of the CSAs;
- (e) his CSAs are proposed in the light of my ruling on the CSAs to the Appropriation Bill 2014 ("the 2014 Bill") to provide fair and genuine choices for Members; and
- (f) notwithstanding his proposing of a voluminous number of CSAs, I may control the time for debate in the exercise of my power under BL 72(1) to ensure that LegCo will not be prevented from its proper exercise and discharge of its constitutional functions.

9. In gist, Hon LEUNG Kwok-hung submits that his proposed CSAs are not frivolous or meaningless.

## **My opinion**

10. Under BL 73(2), LegCo has the power and function to examine and approve budgets introduced by the Government. Proposing amendments to and debate on an appropriation bill and the relevant estimates of expenditure which are subject to the Council's examination are part and parcel of the legislative process for enacting the bill.

11. The legislative process for the examination, deliberation and enactment of an appropriation bill is set out in Rules 67 to 70 of the RoP. Following the presentation of an appropriation bill and the estimates containing the details of expenditure for the relevant financial year by the Financial Secretary to the Council under Rule 52(2) of the RoP, the Second Reading debate on the bill is adjourned and the estimates of expenditure are referred by me to the Finance Committee for examination before consideration of the bill in committee of the whole Council pursuant to Rule 71(11) of the RoP. The Finance Committee holds a series of special meetings and Members raise written questions seeking information on details of public expenditure.

12. Under Rule 69 of the RoP, Members may move amendments to any head of expenditure contained in the appropriation bill to reduce the sums allotted thereto in respect of any subhead/item therein, provided that the amendments comply with the prescribed form. The proposer of an amendment to reduce the appropriation to a particular head of expenditure is not required by the RoP to set out the objective to be achieved by reducing the proposed amount. Over the years, however, the Council has established the practice for the proposer to expressly state the objective of his/her amendment in giving notice, to facilitate Members to focus their deliberation on the proposed amendment in committee of the whole Council. This notwithstanding, the passage of a proposed amendment has the effect of only reducing the amount of appropriation to the specified head of expenditure, and the Administration is not mandated to implement the objective of the amendment as intended by the proposer.

13. This is the third successive year in which a large number of CSAs are proposed by a few Members to an appropriation bill. The total number of CSAs proposed to such a bill has risen from 762 in 2013 to 1 917 in 2014 and further to 3 904 this year. Before deciding on the admissibility of the voluminous number of CSAs to the 2015 Bill, it is incumbent upon me to first review the Council's experience in the disposal of the proposed amendments in the past two years.

14. In 2013, I ruled admissible a total of 220 sequential CSAs to the Appropriation Bill 2013 (“the 2013 Bill”), each of which sought to reduce the appropriation to a particular Head of Expenditure for a specific purpose by a sequentially varying amount. I did not consider them to be frivolous or meaningless under Rule 57(4)(d) of the RoP. In my view then, the passage of any one of such amendments in a series would serve a substantive purpose and the passage of one such amendment vis-a-vis another in the same series would make a material difference<sup>1</sup>. I categorically stated in my ruling that I should not deprive Members’ right to propose certain amendments unless the admission of those amendments would have the demonstrable effect of prolonging the legislative process to the extent of preventing LegCo from properly exercising and discharging its powers and functions under BL<sup>2</sup>.

15. The Council’s experience, however, convinced me that the moving of sequential CSAs achieved no purpose other than taking up the Council’s time in completing the necessary proceedings. In the long debates lasting 67 hours on the proposed amendments to the 2013 Bill in committee of the whole Council, the proposers hardly explained the difference between the successive amendments in the sequential CSAs, and there was no exchange of views among Members on those CSAs. All the sequential CSAs were voted down by an overwhelming majority of Members.

16. In the light of the Council’s experience in the disposal of the sequential CSAs to the 2013 Bill, I considered that the Member proposing the sequential CSAs was not inviting committee of the whole Council to examine any fair and genuine choices of proposed reductions to the respective Heads of Expenditure. The moving of such CSAs was not reasonably connected with the functions of committee of the whole Council to discuss the details of a bill under Rule 56 of the RoP. I also formed the view that the admission of the sequential CSAs would give rise to a situation where LegCo would be prevented from its proper exercise and discharge of its constitutional powers and functions under BL. Therefore, I ruled all the 909 sequential CSAs to the 2014 Bill proposed by Hon LEUNG Kwok-hung to be infringing Rule 57(4)(d) of the RoP for being frivolous or meaningless<sup>3</sup>.

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<sup>1</sup> Paragraph 15 of the President’s ruling on Committee stage amendments proposed by six Members to the Appropriation Bill 2013 dated 22 April 2013.

<sup>2</sup> Ibid, paragraph 17.

<sup>3</sup> Paragraphs 13 and 14 of the President’s ruling on Committee stage amendments proposed by 14 Members to the Appropriation Bill 2014 dated 17 April 2014.

17. I noted then that Hon LEUNG Kwok-hung also proposed 26 pairs of CSAs each of which sought to reduce the appropriation to a Head of Expenditure for a specific purpose with the amounts representing the expenditure for one and six months, or one and 12 months. I allowed such CSAs to be moved on the assumption that they might be considered as providing fair and genuine choices for Members<sup>4</sup>. Given my decision to rule inadmissible all the 909 sequential CSAs, I waived the notice requirement and allowed Hon LEUNG Kwok-hung to select two CSAs out of each sequence, totaling 232 CSAs, which I subsequently admitted.

18. However, the subsequent experience during the protracted debates on the proposed amendments to the 2014 Bill, which lasted 83 hours in committee of the whole Council, convinced me that the moving of the CSAs in pair, same as the sequential CSAs, also achieved no purpose other than taking up the Council's time in completing the necessary proceedings. During this time, I observed little exchange of views among Members on those CSAs in pair. While providing broad-brush reasons for proposing reduced appropriation to a particular Head of Expenditure for a specific purpose, the proposer of such CSAs rarely articulated the reasons for proposing two amendments with the same objective and only with a difference in the amount to be reduced. The few Members who participated in the debates on the proposed amendments also did not articulate how the CSAs in pair had provided fair and genuine choices for Members. Like the sequential CSAs to the 2013 Bill, all the CSAs in pair to the 2014 Bill were voted down by an overwhelming majority of Members.

19. This year, out of the 3 904 proposed CSAs, Hon LEUNG Kwok-hung proposed a total of 3 349 CSAs. Five CSAs proposed by Hon LEUNG Kwok-hung refer to sums not included in the 2015 Bill or the Heads of Expenditure or refer to purposes not specified in the Estimates for the year ending 31 March 2016 (**Appendix II**). As the accuracy of such information is fundamental to the integrity of the proposed CSAs, these CSAs cannot be moved. Another two CSAs proposed by Hon LEUNG Kwok-hung have no material difference, and the one slightly lesser in the proposed reduced amount should not be moved.

20. Among the remaining 3 342 CSAs proposed by Hon LEUNG Kwok-hung, 3 280 fall into 1 640 pairs, each of which seeks to reduce the appropriation to a Head of Expenditure for a specific purpose with the amounts representing respectively the expenditure for six and 12 months, or three and six months (**Appendix II**). Hon LEUNG Kwok-hung has

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<sup>4</sup> Ibid, paragraph 15.

evidently taken advantage of my admission of his proposed CSAs in pair to the 2014 Bill and proposes CSAs of the same form in a voluminous number to the 2015 Bill. His avowed intent is to force the Administration to accede to his demands with a filibuster.

21. While the motive of Members proposing the CSAs is not relevant to my consideration of admissibility of the CSAs, the impact of the admission of certain CSAs on LegCo in its efficient conduct as a law making institution is definitely relevant. As President, one of the constitutional powers and functions that I should exercise and discharge under BL 72 is to preside over meetings to ensure the orderly, efficient and fair disposition of LegCo's business<sup>5</sup>. It is incumbent upon me to ensure that the admission of CSAs is in accordance with BL and the RoP. In the exercise of my powers and functions under BL and the RoP, I fully respect Members' right to participate in the legislative process, and this right, as affirmed by the Court of Appeal<sup>6</sup>, must be read with, and subject to, the power of the President to preside over meetings under BL 72(1).

22. It is incumbent upon LegCo to complete examining and voting on an appropriation bill within a reasonable time at the start of the financial year in order to discharge its power and function under BL 73(2), given that a Vote on Account resolution moved by the Administration under the Public Finance Ordinance (Cap. 2) and passed by this Council would roughly be sufficient to meet about two months' Government recurrent expenditure.

23. My assessment is that were the above-mentioned 3 280 CSAs proposed to the 2015 Bill allowed to be moved, they would take up considerable time of the Council for completing the necessary proceedings. In addition to the time required for debate on these CSAs, considerable time will be spent by the Council to vote on these CSAs.

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<sup>5</sup> Paragraph 22 of the judgment of the Court of Final Appeal on *LEUNG Kwok-hung v The President of the Legislative Council* FACV 1/2014 (on appeal from CACV 123/2012). In paragraph 52 of the judgment of the Court of Appeal on *LEUNG Kwok-hung v The President of the Legislative Council* (CACV 123 of 2012), the Court held that the "orderly, fair and proper conduct of proceedings must be within the province of the President."

<sup>6</sup> Paragraph 45 of the judgment of the Court of Appeal on *LEUNG Kwok-hung v The President of the Legislative Council* (CACV 123 of 2012). In paragraph 25 of the judgment of the Court of Final Appeal on *LEUNG Kwok-hung v The President of the Legislative Council*, the Court held that "art. 73(1) does not confer on a member of LegCo a constitutional right to participate in its legislative processes by speaking. We agree with the conclusion reached by the Court of Appeal on this point and with Hartmann J in *Leung Kwok Hung v President of Legislative Council* who said: 'The powers and functions described in art. 73 are not given to members of LegCo as individuals but to LegCo itself sitting as a legislative body.'"

24. As borne out by the Council's experience, the moving of the CSAs in pair does not connect with the function of the committee of the whole Council under Rule 56 of the RoP. These CSAs do not provide any fair and genuine choices of proposed reductions to the respective Heads of Expenditure for examination by Members in committee of the whole Council. In my opinion, the 3 280 CSAs to the 2015 Bill infringe Rule 57(4)(d) of the RoP for being frivolous or meaningless. The admission of such CSAs would have the demonstrable effect of prolonging the legislative process to the extent of preventing LegCo from properly exercising and discharging its powers and functions under BL. I could not allow these CSAs to be moved.

25. In making the decision, I have duly considered the constitutional powers and functions of LegCo to examine and approve budgets under BL, the time-critical nature of an appropriation bill, the right of Members to participate in the legislative process and the Council's experience in the disposal of the CSAs to the 2013 Bill and the 2014 Bill. I have struck a proper balance between respecting the right of individual Members to propose amendments and ensuring the efficient conduct of the Council as a law making institution.

26. I note the Administration's concerns about the possible impact of some CSAs, if passed, on Government operation or Government's fulfillment of certain legal or contractual obligations, or ongoing programmes or schemes previously approved by the Legislature. The 2015 Bill in its entirety is subject to approval by the Council. I do not accept that it would be "wrong in principle if not wholly unconstitutional" as suggested by the Administration for the Council to deal with CSAs that, if passed, would have the effect of hindering the Government from meeting its obligations under BL 64 to implement laws passed by the Council. Nor would I accept that it would be inappropriate for the Council to deliberate CSAs that, if passed, would subject the Government to the potential risk of breaching its statutory or contractual obligations as an Employer. The merits of CSAs are not relevant to my consideration of admissibility of CSAs.

27. Moreover, I could not agree with the Administration's understanding of Rule 57(4)(a) of the RoP. This rule requires a proposed amendment to be relevant to the subject matter of the bill and the subject matter of the clause to which it relates. It does not concern the relevancy of the purported goal of the proposer of an amendment to the subject matter of the bill.

28. I note that there is disagreement between the Legislature and the Executive Authority on the interpretation of BL 74. It is incumbent upon me as President to apply the Council's view that BL 74 does not apply to my consideration of admissibility of proposed CSAs to bills in accordance with the RoP. I have made my decision on the admissibility of the CSAs to the 2015 Bill in the exercise of my powers and functions in accordance with BL 72 and the RoP.

### **My ruling**

29. I rule that:

- (a) the 3 286 CSAs in Appendix II (not attached), proposed by Hon LEUNG Kwok-hung, are inadmissible; and
- (b) the remaining 63 CSAs proposed by Hon LEUNG Kwok-hung and the 555 CSAs proposed by the other 16 Members are admissible.



(Jasper TSANG Yok-sing)  
President  
Legislative Council

20 April 2015



財經事務及庫務局局長



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**SECRETARY FOR FINANCIAL  
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17 April 2015

Mr Kenneth Chen, SBS  
Secretary General  
Legislative Council  
Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong

Dear Secretary General,

### **Appropriation Bill 2015**

Thank you for your letters dated 2, 10 and 13 April 2015 inviting the Government's views on the proposed Committee Stage Amendments (CSAs) to the Appropriation Bill 2015 ("the 2015 Bill") against the provisions in Rules 57(4), 57(6) and 69 of the Legislative Council (LegCo)'s Rules of Procedure (RoP).

### **Responsibilities of the Government and Legislative Council**

2. It is the responsibility of the Government to exercise the powers and functions conferred on it under Article 62 of the Basic Law (BL 62). It is also the responsibility of the Government to assure the community that funds would be available in an orderly, predictable and timely manner to support committed public services. This duty to the community, which we are sure is also shared by LegCo, would be compromised if the passage of the Appropriation Bill is unduly held back by avowed filibustering attempts through an unreasonably large number of frivolous or vexatious CSAs.

3. In order to ensure the proper exercise and discharge of the powers and functions of LegCo provided under BL 73, in particular the orderly, fair and proper conduct of proceedings, it would be, in our view, within the constitutional power and function of the President of LegCo (to preside over meetings) under BL 72(1) and his power under the Rules of Procedure of the Legislative Council (RoP) to rule out CSAs which are in the opinion of the President frivolous or meaningless, or intended or likely to unduly delay the legislative process (i.e. to filibuster), or has the effect of preventing LegCo from properly exercising and discharging its powers and functions under the Basic Law.

4. In addition, it would be within the constitutional competence of the LegCo President to take a robust approach to rule the above CSAs inadmissible under the relevant provisions of the LegCo RoP, having regard to the principles laid down by the Court of Final Appeal in *Leung Kwok Hung v The President of the Legislative Council of the HKSAR* FACV No 1 of 2014. In particular -

*'... the courts will recognize the exclusive authority of the legislature in managing its own internal processes in the conduct of its business, in particular its legislative processes. The corollary is the proposition that the courts will not intervene to rule on the regularity or irregularity of the internal process of the legislature but will leave it to determine exclusively for itself matters of this kind ("the non-intervention principle")' (at paragraph 28) and*

*'... the court will exercise jurisdiction to determine the existence of a power, privilege or immunity of LegCo. We also arrived at the conclusion that the courts will exercise jurisdiction to determine the existence of a power, privilege or immunity of the President of LegCo. We arrived at this conclusion in the light, not only of art 73(1), but also of the provisions of art 72 of the BL and the important powers and functions which it confers on the President, particularly the power to "preside over meetings". The courts, however, will not exercise jurisdiction to determine the occasion or the manner of exercise of any such powers, privileges or immunities either by LegCo or the President.' (at paragraph 43).*

Whilst the CFA decision and above principles are laid down in the context of the President's power to set limits to and terminate a debate (paragraph 46 of the judgment), they are, in our view, similarly applicable in the interpretation and application of the relevant Rules in the RoP in respect of filibustering cases i.e. there is the avowed intention of the Member(s) concerned to filibuster for purposes irrelevant to the subject matter, as in the present case of the 2015 Bill.

5. In short, the principle of non-intervention as outlined above would lend support to the President's power and function to take a robust approach in the present case in determining the admissibility of the proposed CSAs under the relevant Rules in the RoP. This would be within the constitutional competence of the President under BL 72(1) (to preside over meetings) and BL 72(6) (to exercise other powers and functions as prescribed in the rules of procedure of the LegCo). We consider that it would be in the wider public interest for the President to do so.

### **Government's views on the 3,904 CSAs**

6. Having examined the 3,904 CSAs across 80 (of 83) Heads of Expenditure under the 2015 Bill, the Government is of the firm and clear view that the CSAs are of the same nature as described in paragraphs 3 to 5 above and therefore should **not** be admitted. Our reasons are set out below.

#### **(A) Preventing LegCo from properly exercising and discharging its function "to examine and approve budgets introduced by the government" under BL 73(2)**

7. Based on LegCo's experience in handling the 1,192 CSAs proposed to the 2014 Appropriation Bill ("2014 Bill"), voting alone on the 3,904 CSAs to the 2015 Bill, if admitted, would require **12 days** spanning across **four weeks**, assuming LegCo meets ten hours a day and three days a week on the subject. Admitting the CSAs in question would unduly prolong the legislative process and clearly undermine the performance of the powers and functions of LegCo under BL 73(2).

8. Without prejudice to the Government's position on BL 74, we note that the President had already ruled on 22 April 2013 that CSAs which would have the demonstrable effect of prolonging the legislative process to the extent of preventing LegCo from properly exercising and discharging its powers and functions under the Basic Law should **not** be allowed to be moved. We further note that the President ruled on 17 April 2014 not to admit 909 sequential CSAs on the following grounds –

- (a) the sequential CSAs would not serve any purpose reasonably connected with the function of the committee of the whole Council, hence infringing RoP 57(4) for being **frivolous or meaningless**. In paragraph 13 of the ruling, the President stated that "*[t]he 909 sequential CSAs do not serve any purpose reasonably connected with the function of the committee of the whole Council. In my opinion, the*

*sequential CSAs infringe Rule 57(4)(d) of the Rules of Procedure for being frivolous or meaningless when each of them is considered in the context of the other amendments also being proposed by the same Member in respect of the same head or sub-head of expenditure and the experience of last year's debates on sequential CSAs to the 2013 Bill*"; and

- (b) as demonstrated from the committee stage deliberations on the Appropriation Bill in 2013 ("2013 Bill"), these CSAs were hardly explained and achieved no purpose other than taking up the Council's time in completing the necessary proceedings. In paragraph 14 of the ruling on the 2014 Bill, the President stated that "*in the light of what transpired in the debates on sequential CSAs to the 2013 Bill ..... the admission of the 909 sequential CSAs to the 2014 Bill would have the demonstrable effect of prolonging the legislative process to the extent of preventing LegCo from properly exercising and discharging its powers and functions under BL*".

9. The Government is of the view that the same situation will occur in relation to debates on the 2015 Bill, and the same principles should be applied to the 3,904 CSAs proposed to the 2015 Bill, including 3,349 from a single Member, as they would have the same effect of prolonging and delaying the LegCo proceedings on the Appropriation Bill and would prevent LegCo from properly exercising and discharging its powers and functions under BL 73. The overriding majority of the proposed CSAs are presented in different forms of sequences. They would not achieve any purpose reasonably connected with the function of the committee of the whole Council other than taking up or prolonging the Council's time in examining and approving the budget, and are in breach of RoP 57(4)(d) for being "**frivolous or meaningless**". For consistency in the application of the President's rulings, the following proposed CSAs should not be allowed -

- (a) 30 CSAs (*Annex A1*) seeking to reduce the full-year and half-year honorarium for one to 15 non-official Executive Council members; and
- (b) 3,254 CSAs, presented as 1,627 pairs, seeking to cut the full-year and half-year provisions, or the half-year and quarterly provisions, for a random mix of expenditure figures under 78 Heads of Expenditure (*Annex A2*).

10. In item (b) of paragraph 9 above, we note that the total of 1,192 admitted CSAs are seeking to reduce a random mix of expenditure provisions by different permutations across 69 Heads of Expenditure under the 2014 Bill. Of this total, some 280 are similar CSAs proposing both full-year and half-year cuts to the same expenditure provisions. Same as the President's observation made in paragraph 11 of the ruling on proposed CSAs to the 2014 Bill, we note that the debate of the committee of the whole Council on the 2014 Bill proved beyond doubt that the non-targeted CSAs presented in such patterns were frivolous and meaningless – the proposers had hardly given any clear explanation of or justification for the differences between reducing the full-year and reducing the half-year provisions in each of the CSA pairs. There was hardly any substantial exchange of views or deliberations specifically on the differences amongst these CSAs within each of the Heads of Expenditure. These proposed CSAs (both the total number and number of Heads affected have substantially increased this year) should therefore be ruled out in the same way as those sequential CSAs disallowed last year. In our view, they all have the effect of prolonging the legislative process to the extent of preventing LegCo from properly exercising and discharging its powers and functions.

**(B) Avowed intention of filibustering for purposes irrelevant to the subject matter of the Appropriation Bill 2015**

11. Hon Leung Kwok-hung has moved 3,349 CSAs, Hon Albert Chan 200 CSAs and Hon Chan Chi-chuen 191 CSAs. At a media briefing held on 14 April, the three Members admitted that the CSAs were tactics to filibuster the passage of the 2015 Bill, and were intended to exert pressure on the Government to implement universal retirement protection, review the Comprehensive Social Security System, disburse a cash grant of \$10,000 per head, legislate for maximum working hours, and withdraw the plan on the Third Runway system. Extracts of their comments as reported in various papers are in **Annex B**. The first four purported goals involve fundamental policy changes and substantial increases in government expenditure clearly straddling beyond the year 2015-16; none of these is relevant to the Appropriation Bill for 2015-16. The last purported goal on the Third Runway is also irrelevant because the Third Runway would not be financed through the appropriations for 2015-16. In any event, the contents of the CSAs bear no relationship with the

purported goals of the filibustering moves. They serve no purpose other than delaying the passage of the 2015 Bill. This is essentially a repeat of the tactic deployed in respect of the 2014 Bill which proved to have led to no consequences other than delaying proceeding in LegCo. It is noted that in his ruling on CSAs proposed to the 2014 Bill, the President stated that while the motive and the merits of CSAs were not relevant to the consideration of admissibility of CSAs, he could not ignore the new developments including the Council's experience in the disposal of the sequential CSAs when considering the admissibility of sequential CSAs (paragraph 18 of the ruling). The experience of the similar debates in the past shows that the admission of the proposed sequential CSAs would give rise to a situation where LegCo would be prevented from its proper exercise and discharge of its constitutional powers and functions. We invite the President to rule out the CSAs moved by the three Members in this context.

12. We also submit that the avowed intention and irrelevance of the purported goals of Members for moving the proposed CSAs should be taken into account by the President when considering admissibility under Rule 57(4)(a) of the RoP. In this context the CSAs moved by the three Members are irrelevant to the 2015 Bill and infringe Rule 57(4)(a) of the RoP.

**(C) Hindering the Government from discharging its obligation to “implement laws passed by the Council” under BL 64 and from fulfilling contractual obligations**

13. 2,371 CSAs seek to cut in entirety or by the half-year provision the Government's statutory contribution to the Mandatory Provident Fund, pension payments for retired civil servants and judicial officers, and the salaries and allowances for the public servants under various Heads of Expenditure. Specifically -

- (a) 2,020 CSAs seek to cut the personal emoluments (including salaries, allowances and job-related allowances) either for the relevant Bureaux or Departments and/or for specific individuals or categories of directorate or non-directorate civil service or non-civil service posts under various Heads of Expenditure (*Annex CI*);

- (b) 339 CSAs seek to cut personnel related expenses (including Mandatory Provident Fund contribution, Civil Service Provident Fund contribution and Disturbance allowance) (*Annex C2*); and
- (c) 12 CSAs seek to cut pension-related provisions, including public and judicial service pension benefits and compensation, contract gratuities, surviving spouses' and children's pensions and widows' and orphans' pensions, volunteer and defence force pensions (*Annex C3*).

14. It would be **wrong in principle if not wholly unconstitutional** for LegCo to admit and consider CSAs that would have the effect of hindering the Government from meeting its obligation under BL 64 "to implement laws passed by the Council". It would also be inappropriate for LegCo to admit and consider CSAs that would subject the Government to the potential risk of breaching its statutory and contractual obligations as an Employer.

**(D) Curtailing social security and other fundamental public services in such a way as to contradict earlier decisions of LegCo and FC**

15. 28 CSAs seek to wipe out in entirety or by the half-year provision the funding for Comprehensive Social Security Assistance Scheme, the Social Security Allowance Scheme (including the Old Age Living Allowance), the Public Transport Fare Concession Scheme for the Elderly and Eligible persons with Disabilities, subvention for rehabuses, legal aid costs and purchase of water etc. **Annex D** is relevant. If admitted and endorsed, these CSAs would effectively curtail the operation of these schemes, much to the detriment of all the needy individuals and families. These proposed CSAs would not be consistent with the earlier deliberations of LegCo and FC on these schemes. Unless LegCo or FC agreement has been reached to undo the schemes concerned, as a matter of principle, it would be **contradictory** for LegCo to consider CSAs to the Appropriation Bill that would withhold funding for the schemes that have been separately approved by LegCo/FC.

**(E) Affecting public expenditure and the operation of the Government**

16. 2,843 CSAs (**Annex E**) from a single Member seek to reduce a series of major expenditure provisions across 69 bureaux/departments (including the Education Bureau, Social Welfare Department, Immigration Department, Transport Department, Water Supplies Department, Fire Services Department and Leisure and Cultural Services Department, etc.), including full-year subvention provisions for all aided primary and secondary schools, Hospital Authority, all University Grants Committee-funded institutions and all non-governmental organisations. If admitted and endorsed, these CSAs would have the material effect of putting public services into total disarray and seriously disrupting the operation of the Government. Given that these provisions are essential to the continued operation of the relevant bureaux and departments, these CSAs relate to the “operation of the Government” and should not be introduced.

17. In line with the Government’s established position on BL 74, as set out in our letter of 23 March 1999 to LegCo, we would reiterate that CSAs to the Appropriation Bill relating to public expenditure and the operation of the Government **cannot** be introduced.

**(F) Duplicative, unintelligible or wrong**

18. We note that around 240 sets of identical CSAs are proposed by different Members and that 68 CSAs are technically inaccurate. As accuracy is fundamental to the integrity of the proposed CSAs, we submit that these should be ruled out. More details are set out in **Annex F1 and Annex F2**.

**Timely Passage of Appropriation Bill 2015**

19. The timely passage of the Appropriation Bill is critical. Scheduled payments due in early June 2015 would be affected if the Appropriation Bill could not be passed by LegCo by mid May of 2015. The interim funding secured through the Vote on Account Resolution pending the passage of the 2015 Bill would only be sufficient to sustain public services for the months of April and May 2015.



20. We should be grateful if the President could take the above views and analysis into account in considering whether to allow the proposed CSAs under the relevant provisions of the Basic Law and the RoP.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'K. C. Chan', with a long horizontal flourish extending to the right.

( Professor K C Chan )  
Secretary for Financial Services and the Treasury

**Extract from the Finance Committee Procedure**

**Procedure of Special Meetings to Examine the Estimates of Expenditure**

49. The Financial Secretary formally presents the annual Estimates of Expenditure to the Council at the meeting at which the Appropriation Bill is read the first time and provides advance copies of the Estimates of Expenditure to members a few days before that meeting. The President may then refer the Estimates of Expenditure to the Committee for its examination at special meetings before consideration of the Appropriation Bill in a committee of the whole Council [Rule 67 and 71(11)]. The purpose of the examination is to ensure that the provision sought is no more than is necessary for the execution of approved policies.

50. Prior to the special meetings, members may raise questions on the Estimates of Expenditure for written replies from Controlling Officers, through their respective Directors of Bureau as appropriate. Directors of Bureau and Controlling Officers will deal with any supplementary questions arising from these written replies either orally at the special meetings or in writing afterwards. *(FCR(2003-04)17)*

51. The Committee normally holds the special meetings in public over three full days after the First Reading of the Appropriation Bill. Directors of Bureau and Controlling Officers without a Director of Bureau appear in different sessions of these meetings. Directors of Bureau will attend with their key Controlling Officers. Directors of Bureau and Controlling Officers without a Director of Bureau may make a short introduction to highlight their policy areas, the priorities for the year ahead and the requested resources. *(FCR(2003-04)17)*

52. Members then ask questions on points made during the introduction, the written replies to members' initial questions and the Estimates of Expenditure. The Directors of Bureau and Controlling Officers in attendance answer members' questions and provide supplementary information in writing after the meetings, if necessary.

*(FCR(2003-04)17)*

53. After the special meetings, the Chairman shall present a report on the proceedings of the meetings to the Council.

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rules and practices of the Legislative Council of  
the Hong Kong Special Administrative Region**

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**Part II**

**Conduct of business in the Council and committees  
(Chapter 13 to Chapter 14)**

**&**

**Part III**

**Partnership with people**

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## Chapter 13

### Conduct of business in committees

13.1 The Legislature of Hong Kong has a unique committee system. As explained in Chapter 6<sup>1</sup>, when Members-elect of the First Legislative Council considered the draft Rules of Procedure in June 1998, they made a conscious decision to retain the historical Westminster type of committees as well as the OMELCO committees (which were made committees of the Council in 1992 and 1993) in the Rules of Procedure of the HKSAR Legislature. The modes of operation of these two groups of committees were originally quite different but they have evolved over the years to become more integrated with each other. This Chapter explains the functions of committees and how they conduct their business within the Council. The roles of committees in assisting the Council in performing its constitutional functions have been briefly described in Chapter 6 and also in other chapters when the relevant committees are referred to. This Chapter focuses on the details of their operations, i.e. how meetings of committees are held, how parliamentary rules and practices apply to the way they determine their agendas and consider the matters before them, and how they work with one another to avoid duplication of work. To enable readers to understand how some of the new practices have come into place, background information on their development is also provided.

13.2 The practices and rules explained in this Chapter do not apply to the committee of the whole Council, details of which have already been described in Chapter 11 (Legislative Process). The rules which apply to all other committees of the Council can be found in the Rules of Procedure, House Rules and the procedures adopted by individual committees pursuant to the power given to them in the Rules of Procedure. To offer readers a more comprehensive account of the rules which apply to the day-to-day operations of committees, this Chapter also provides an overview of the procedural framework which governs the operations as well as the similarities and differences in their practices. To facilitate easy reference, a summary of the key features of the committees, such as their functions, memberships, quorum requirements, meeting arrangements and voting rights of the respective chairmen of committees, is provided in **Appendix 13-A**.

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<sup>1</sup> Chapter 6, para. 6.1 and 6.15.

### 13. Conduct of business in committees

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#### **Powers and functions of committees**

13.3 It is a common practice and more efficient for the functioning of a deliberative assembly that work is done in small groups that would otherwise be difficult to accomplish in the full assembly.<sup>2</sup> The responsibilities of the committees of a legislative body are primarily to scrutinize the legislative proposals put before the legislature, monitor the activities of the government, examine issues of public concern, and review past and future expenditure. Committees provide a more informal setting which enables Members to exchange views among themselves and with others concerned, such as the government and interested parties. They also provide a direct channel of communication with the public so as to draw to their attention any new policies or legislation which may have an impact on stakeholders and the public at large.

13.4 Committees in the Hong Kong Legislature had existed in the pre-1997 Legislature for over a century before the same committee system was adopted by the First Legislative Council in its Rules of Procedure in July 1998. Whilst Article 73 of the Basic Law stipulates the powers and functions of the Legislative Council, it makes no mention of whether those powers and functions may be performed by its committees. Article 75 nevertheless empowers the Legislative Council to make its rules of procedure on its own provided such rules do not contravene the Basic Law. The question whether the powers and functions of the Legislative Council may be exercised by its committees came before the High Court in 2009 in the case of *CHENG Kar Shun and Another v LI Fung Ying and Others*<sup>3</sup> ("*CHENG Kar Shun case*") in relation to committees' power to summon persons to give evidence.

13.5 In its judgment in the *CHENG Kar Shun* case, the Court stated,

*"Again, it must be emphasised that the Basic Law does not create a new legislature out of a vacuum. The committee system has been around for a long time and was still under development in 1990 when the Basic Law was promulgated. The Basic Law expressly leaves it to the new Legislative Council to make its own Rules of Procedure. Both as a matter of history and development as well as a matter of the nature of the substantive powers and functions to be performed, that at least some of the powers and functions described in article 73(1) to (9) may be exercised at committee level must have been something fully envisaged by the drafters of the Basic Law."*<sup>4</sup>

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<sup>2</sup> See for example, *House of Commons Procedure and Practice* (Canada), 2<sup>nd</sup> Edition, pp. 950 – 951.

<sup>3</sup> [2011] 2 HKLRD 555.

<sup>4</sup> Judgment in *CHENG Kar Shun* case, para. 123.

and

*"Finally, how the powers and functions are to be exercised may be governed by legislation, whether passed before or after 1997, so long as it is compatible with the provisions in the Basic Law. Subject to its compatibility with the Basic Law, the Ordinance [the Legislative Council (Powers and Privileges) Ordinance] is such a piece of legislation."*<sup>5</sup>

13.6 As regards the power of the Legislative Council to delegate its power and function to summon witnesses under Article 73(10) of the Basic Law, the Court, in the light of the affidavit given by the Clerk to the Legislative Council and having considered the submission made on behalf of the Secretary for Justice<sup>6</sup>, stated,

*"... like many overseas jurisdictions, both the legislature and the Government in Hong Kong have regarded the power to summon witnesses to appear before the Legislative Council's committees as essential for the proper performance of the constitutional role of the Legislative Council, and ultimately for the good governance of Hong Kong in the 21<sup>st</sup> century<sup>7</sup>.... [It] must be remembered that a select committee is formed by the full body of the Legislative Council in the first place. Whether it is appropriate to give the committee the power to summon witnesses is again a matter to be resolved by the Legislative Council sitting as a full body.... [T]he work of the select committee including how it exercises its power to summon witnesses, is always under the supervision of the full body of the Legislative Council."<sup>8</sup>*

and concluded that<sup>9</sup>,

*"On its proper interpretation, article 73(10) provides for the exercise by the Legislative Council, whether sitting as a full body, or, functioning through a select committee in accordance with its Rules of Procedure, the power to summon, as required when exercising the powers and functions set out in article 73(1) to (9), persons concerned to testify or to give evidence before the full body, or (as the case may be) the committee, of the Legislative Council."*

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<sup>5</sup> Judgment in *CHENG Kar Shun* case, para. 130.

<sup>6</sup> Judgment in *CHENG Kar Shun* case, para. 191 – 193.

<sup>7</sup> Judgment in *CHENG Kar Shun* case, para. 194.

<sup>8</sup> Judgment in *CHENG Kar Shun* case, para. 198.

<sup>9</sup> Judgment in *CHENG Kar Shun* case, para. 200.

### *13. Conduct of business in committees*

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13.7 In the legislation of Hong Kong, references to the committees of the Legislative Council can be found in various Ordinances which existed before 1997 and have continued to be in force in the HKSAR. These Ordinances include the Public Finance Ordinance (Cap. 2)<sup>10</sup>, Audit Ordinance (Cap. 122)<sup>11</sup>, Legislative Council (Powers and Privileges) Ordinance (Cap. 382)<sup>12</sup>, Administrative Instructions for Regulating Admittance and Conduct of Persons (Cap. 382A)<sup>13</sup>, etc. Details about the committees' exercise of the power to summon witnesses are given in Chapter 2<sup>14</sup> and further explained in Chapter 14.

#### **Nature of the practice and procedure of committees**

13.8 The historical background of the development of the committee system of the Hong Kong Legislature has been provided in Chapter 6.<sup>15</sup> The various types of committees in place in the HKSAR Legislature include standing committees and select committees which had long existed in the Hong Kong Legislature, and the House Committee, Panels and Bills Committees which were originally committees under the OMELCO structure, as well as the Committee on Rules of Procedure, Investigation Committee and the Committee on Access to the Legislature's Documents and Records which only came into existence after the establishment of the HKSAR in 1997.<sup>16</sup> As mentioned in paragraph 13.1, for historical reasons these committees have their own practice and procedure. It is therefore useful to understand how their practices and procedures have developed over the years to allow clearer delineation of responsibilities and more uniformity in the way they carry out their functions.

13.9 Standing committees are permanent in nature and they are charged with specific functions. There are three standing committees in the Legislative Council: Finance Committee, Public Accounts Committee and Committee on Members' Interests. Select committees, which may also be charged with a specific responsibility, such as the study of a bill or the inquiry of a matter referred by the Council, are ad hoc in nature and the committees are dissolved

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<sup>10</sup> Section 8 and others of the Public Finance Ordinance (Cap. 2).

<sup>11</sup> Section 12 (2A) of the Audit Ordinance (Cap. 122).

<sup>12</sup> Section 2 and others of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

<sup>13</sup> Section 1 and others of the Administrative Instructions for Regulating Admittance and Conduct of Persons (Cap. 382A).

<sup>14</sup> Chapter 2, para. 2.24 – 2.27.

<sup>15</sup> Chapter 6, para. 6.3 – 6.16.

<sup>16</sup> Chapter 6, para. 6.17 – 6.18.

upon the completion of their work. Standing committees were first mentioned in the 1884 Standing Orders while select committees were included in the Standing Orders in 1929 to replace the original special committees. By virtue of their being the committees of a colonial legislature, the standing committees and select committees (when appointed) also enjoyed the powers and privileges given to the legislature for the performance of its functions prescribed in the Letters Patent and the Royal Instructions. The general provisions in the pre-1997 Standing Orders relating to committees were also intended to apply to these committees. These general provisions were those included in Part H (Rules of Debate)<sup>17</sup> and Part I (Rules of Order)<sup>18</sup> of the Standing Orders. However, as the provisions in these two Parts of the Standing Orders were primarily provided for conducting business in the Council and committee of the whole Council, it was for the committees to decide how these provisions should be adapted to suit the needs of their day-to-day operation. However, in the case of select committees, since bills could be committed to them for clause-by-clause study in the same way as to a committee of the whole Council, details of how a select committee should conduct its proceedings had been provided for in the Standing Orders from 1929 onwards.

#### Finance Committee

13.10 The Finance Committee was established as early as July 1872 although its name only appeared in the 1884 version of the pre-1997 Legislature's Standing Orders. The procedures provided in the then Standing Orders for the Finance Committee were very brief. It was in the 1968 Standing Orders that detailed procedures were provided for the Finance Committee, which was at that time the only standing committee of the Council<sup>19</sup>. The Finance Committee sat in private except for the examination of the Estimates when the public officers responsible for the services provided under any head of the Estimates were called to give evidence. In February 1985, the Council amended its Standing Orders to provide that the sittings of the Finance Committee should be open to the public unless decided otherwise by the Committee.

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<sup>17</sup> Standing Order 32A of the pre-1997 Legislature provided that the rules in Part H shall apply to the proceedings in a standing or select committee unless the chairman of the committee ordered otherwise.

<sup>18</sup> Standing Orders 33 and 34 of the pre-1997 Legislature also applied to any standing or select committee.

<sup>19</sup> Although the Finance Committee was regarded as "a committee of the Council" in Standing Order No. 60(1), clarification was made by the Chief Secretary at the Council sitting on 18 July 1984 that amendment was proposed to the Standing Order to make it clear that the Finance Committee was a standing committee of the Council.

### *13. Conduct of business in committees*

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13.11 In April 1994, with the setting up of the independent Legislative Council Secretariat, it was decided that the chairmanship and clerkship of the Finance Committee<sup>20</sup> should be taken up by the Members and staff of the Legislative Council. This was also in anticipation of the change in the membership of the Council in October 1995 when the Chief Secretary, who was then chairman of the Finance Committee, and the Financial Secretary would no longer be Members of the Council. The Council passed a resolution on 6 July 1994 to amend the Standing Orders to enable the chairman and deputy chairman of the Finance Committee to be elected by and from amongst its members, other than the ex-officio Members of the Council. On 8 July 1994, the Finance Committee approved its own procedures which took effect on 1 October 1994. The election of the first non-Government chairman and deputy chairman of the Finance Committee took place on 3 October 1994.

13.12 In addition to the adoption of the Finance Committee Procedure, the Finance Committee also determined the Procedures of its two Subcommittees, namely the Public Works Subcommittee and the Establishment Subcommittee on 11 March 1994 and 13 May 1994 respectively. The three sets of Procedures at that time were largely based on the practice guides issued to Members and Government officers when the Chief Secretary was the chairman of the Finance Committee.

13.13 The mode of deliberation in the Finance Committee had been by convention a question-and-answer type of communication between Members and Government officers over the financial proposals submitted to the Committee for its approval. Whilst the Finance Committee Procedure had set out formal provisions for the committee to follow, the need for resorting to them in the committee's normal operation had been rare. However, with the greater participation of Members in the discussion of financial proposals, especially after October 1994, more procedural issues, such as adjournment of discussion, time of speaking, etc. which normally arose in the course of debates on motions, began to emerge and were dealt with by the chairman of the Finance Committee in the course of proceedings in the same way as the President dealt with similar procedural issues in the Council. Where a situation was not provided for in the Standing Orders or Rules of Procedure and no reference could be made to the rulings of the President, general parliamentary principles would be followed.

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<sup>20</sup> The Finance Committee, which is one of the standing committees with the power to summon witnesses, performs such functions conferred upon it by the Public Finance Ordinance (Cap. 2), any other laws and the Rules of Procedure and resolutions of the Council. Its functions include the examination of the Estimates and approving changes to the approved Estimates.

13.14 The Finance Committee remains a standing committee in the Rules of Procedure endorsed by the First Legislative Council of the HKSAR. Its responsibility, as prescribed in Rule 71(4) of the Rules of Procedure, is to perform such functions as are conferred upon it by the Public Finance Ordinance (Cap. 2), any other law and the Rules of Procedure and such other functions as may be referred to the committee by resolution of the Council. On 10 July 1998, the Finance Committee approved its Procedure which was modeled on the 1 October 1994 version used in the pre-1997 Legislature. In Paragraph 1 of the Procedure, it is highlighted that its functions include the examination of the Estimates of Expenditure in accordance with the Rules of Procedure<sup>21</sup> and the approving of proposals to change the approved Estimates in accordance with Cap. 2.<sup>22</sup> Changes to the Procedures were made from time to time where needed.

13.15 In 2007, it was found necessary to conduct a review of the procedures of the Finance Committee and its Subcommittees to make them more suited to current needs and more consistent with the practices of other committees. Further details about these changes are provided in the latter part of this Chapter<sup>23</sup>. In reviewing the procedures, the practice has been that the chairmen and deputy chairmen of the Finance Committee and the two Subcommittees sit as a task group to study the rules with the help of the relevant clerks. Where amendments to the Rules of Procedure are required, the proposed changes would be forwarded to the Committee on Rules of Procedure for consultation before the task group consults members of the Finance Committee and the Government, if appropriate. After consultation, a proposal which is presented as an agenda item is placed on the agenda of the Finance Committee after all Government items. In accordance with the Rules of Procedure, the practice and procedure of the subcommittees of the Finance Committee are determined by the Committee.<sup>24</sup>

#### Public Accounts Committee

13.16 The Public Accounts Committee is also a standing committee of the Council. Its main function is to consider reports of the Director of Audit on the accounts of the Government.<sup>25</sup> It does not have a separate set of procedures other than that provided in Rule 72 of the Rules of Procedure

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<sup>21</sup> Rules 67 and 71(11) of the Rules of Procedure.

<sup>22</sup> Section 8(1) of the Public Finance Ordinance (Cap. 2).

<sup>23</sup> Paragraph 13.126.

<sup>24</sup> Rule 71(13) of the Rules of Procedure.

<sup>25</sup> Rule 72(1)(a) of the Rules of Procedure. Also see Chapter 12, para. 12.94 – 12.111.

### *13. Conduct of business in committees*

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which is also modeled on the relevant Standing Order governing the operation of the Committee in the pre-1997 Legislature. The Public Accounts Committee was first established in 1978. When the Chief Secretary moved in the Council on 10 May 1978 to add a new provision in the Standing Orders for establishing this Committee, he explained the procedural steps expected to take place between the Committee and the Director of Audit after the Director's report on the Government's annual accounts was available and how the Government should take into account the Committee's comments and recommendations. He also highlighted the responsibility of each Head of Department to attend before the Committee in person and be responsible for the evidence given to the Committee. At that time, the meetings of the Committee to receive evidence were held in private. These procedural steps were followed and recorded in each of the reports of the Committee under the heading "Procedure".

13.17 In July 1984, on the initiative of Unofficial Members, the procedure of the Public Accounts Committee was amended to cater for the admission of members of the public and of the press at meetings attended by persons called by the Committee to give evidence. The Committee was also required to table its report within three months of the laying of the Director's report. This latter provision was enshrined in legislation (section 12(2A) of the Audit (Amendment) Bill), also on the initiative of Unofficial Members. In the 1985-86 session, the Committee also began to take evidence from persons outside the civil service and the subvented sector, and the Committee was no longer constrained to make recommendations on a case solely on the basis of the Director of Audit's presentation.<sup>26</sup> In July 1987, the Standing Orders were revised to expand the scope of the work of the Public Accounts Committee to cover value for money audits. In July 1992, when the House Committee was set up under the Council, it was empowered to determine an election procedure for electing Members for appointment by the President as chairman, deputy chairman and members of the Public Accounts Committee. All these changes were reflected in the Standing Orders while the procedural steps were recorded in the reports of the Public Accounts Committee. These arrangements continue to be followed.

13.18 The Public Accounts Committee has adopted some practices and procedures to cater for special circumstances. On each occasion, the Committee deliberated and decided on the practice and/or procedure and recorded it in its report. An example is the practice to declare direct and

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<sup>26</sup> Report No. 8 of the Public Accounts Committee published in January 1986.



indirect interests, be they pecuniary or otherwise, before deciding whether a member should be able to chair or participate in the obtaining and examination of evidence.<sup>27</sup> On 14 May 2003, when the Public Accounts Committee held a public hearing on the Director of Audit's Report No. 40 concerning the staff remuneration packages and stipends of the University Grants Committee-funded institutions, the chairman and 3 other members declared personal interests in two chapters of the Report. In order to avoid any conflict of interest and in order that the impartiality and integrity of the Committee could be maintained, the Committee agreed that the four members be exempted from the examination of the relevant chapters and would not participate in the public hearing, nor in the discussion and compilation of the Committee's report on these chapters.

13.19 Another example is the method of investigating premature disclosure of evidence and discussion of evidence held in private. Following an investigation conducted by the Public Accounts Committee on press reports which speculated on the results of the Committee's internal deliberation in relation to the Director of Audit's Report No. 45 on the development of a site at Sai Wan Ho, the Committee considered it necessary to enhance its confidentiality undertaking mechanism.<sup>28</sup> From April 2006 onwards, all members of the Public Accounts Committee have been required to jointly sign a confidentiality undertaking upon appointment to the Committee.<sup>29</sup>

#### Committee on Members' Interests

13.20 The Committee on Members' Interests was first established as a standing committee under the Standing Orders of the pre-1997 Legislature in 1991 as part of the mechanism for the registration and declaration of Members' interests<sup>30</sup> and adopted by the First Legislative Council in its Rules of Procedure in July 1998. Its main function, apart from examining the arrangements for the registration of Members' interests, is to consider any complaint made in relation to the registration and declaration of Members' interests and, following deliberation, to investigate such complaint. In July 2006, its terms of reference were expanded to cover consideration of any complaint made in relation to the conduct of Members in making claims for

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<sup>27</sup> Public Accounts Committee Report No. 59 – Chapter 4 of Part 7.

<sup>28</sup> Legislative Council meeting on 15 February 2006, Speech of the Chairman of the Public Accounts Committee, Page 4488.

<sup>29</sup> The signing of confidential undertaking is also required by the Committee on Members' Interests (Part VI of its Practice and Procedure at **Appendix 13-B**) and the Committee on Access to the Legislature's Documents and Records (para 23 of its Practice and Procedure at **Appendix 16-H**).

<sup>30</sup> See Chapter 3, para. 3.59.

### *13. Conduct of business in committees*

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reimbursement of operating expenses or applying for advance of operating funds.<sup>31</sup> The committee is also responsible for considering matters of ethics in relation to the conduct of Members in their capacity as a Member of the Legislative Council and to give advice and issue guidelines on such matters.<sup>32</sup>

13.21 When the Committee on Members' Interests of the First Legislative Council was established, the Committee considered it necessary to draw up a detailed procedure for handling complaints and conducting investigation so as to ensure fairness to both the Members under complaint and the complainant to guard against abuse or favouritism by any dominant political party or grouping in the Committee when dealing with such complaints. A document entitled "The procedure of the Committee on Members' Interests for handling complaints received in relation to the registration and declaration of Members' interests" was endorsed by the Committee and issued to Members in August 1999. It has been updated and re-issued to all Members at the start of each term. In December 2014, the procedure was substantially revised and was re-titled "Procedure of the Committee on Members' Interests for Handling Complaints". The procedure is attached at **Appendix 13-B**.

#### Select committees

13.22 Detailed procedures are provided for select committees in the Rules of Procedure on how they should conduct their business. As mentioned in Chapter 1<sup>33</sup>, select committees existed even before 1858. Their main function originally was to study the details of a bill clause by clause and consider amendments to the bill (which was a common practice in other parliaments which followed the Westminster model) and their procedure in the Standing Orders was therefore similar to that of a committee of the whole Council. However, as it had become the practice of the Hong Kong Legislature to commit a bill to a committee of the whole Council for clause-by-clause consideration, the Standing Orders were substantially revised in 1968 to provide for, among other things, discontinuing the practice of referring the Draft Estimates of Revenue and Expenditure to a select committee but allowing a petition presented before the Legislative Council to be referred to a select committee if at least 10 Members<sup>34</sup> rose to support such a referral.

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<sup>31</sup> Rule 73(1)(a) of the Rules of Procedure; also see Chapter 3, para. 3.91 and Chapter 4, para. 4.79 – 4.80.

<sup>32</sup> Rule 73(1)(d) of the Rules of Procedure.

<sup>33</sup> Chapter 1, para. 1.57.

<sup>34</sup> The number of Members required for referring a petition to a select committee was increased to 20 members in 1983 to reflect the expansion of the Council membership. The membership size of the Legislative Council in 1983 was 48 (up to a maximum of 58).

Subsequently the main responsibility of a select committee became the study of matters referred to it by the Council or by the President in the form of an inquiry. The current procedure of select committees, as provided in Rules 60 to 62 (for the study of a bill) and Rule 79 (for general application) of the Rules of Procedure, is modeled on the relevant provisions in the Standing Orders of the pre-1997 Legislature.

13.23 For the conduct of inquiries, a select committee, after being appointed, draws up its work plan having regard to its terms of reference as set out in the resolution passed by the Council setting up the committee. It is a common practice for a select committee to devise a set of written practice and procedures based on the relevant provisions in the Rules of Procedure and past operational experience of previous select committees. This is especially so in matters relating to the summoning of witnesses to give evidence to the select committee if that select committee is given the relevant special authorization to summon. Certainty, transparency and fairness as to how the select committee conducts its investigation should thereby be ensured. The select committee may in the course of its work supplement other procedural and operational arrangements provided that such arrangements are consistent with the Rules of Procedure and the principle of fairness upheld by committees conducting any inquiry. A sample of the practice and procedures developed by a select committee which is given authorization to summon is given in **Appendix 13-C**. Some select committees may not be given such authorization, such as some of those responsible for studying matters referred to them under Rule 20(6) of the Rules of Procedure (Presentation of Petitions). They also adopted similar practice and procedure to ensure certainty, transparency and fairness. A sample is given in **Appendix 13-D**.

13.24 The power of select committees to summon witnesses has been discussed in paragraphs 13.4 – 13.6 of this Chapter. Since the enactment of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) in 1985, special authorization from the Council for the exercise of such power by a committee is required. In other words, the appointment of a select committee by the Council does not necessarily mean that the select committee has the power to summon witnesses. The conferment of such power upon a select committee must be by a resolution of special authorization passed by the Council under section 9(2) of Cap. 382. Such authorization may be included in the same resolution for the appointment of the select committee or in a separate resolution to be put before the Council when such a need arises in the course of the work of the select committee.

#### House Committee, Bills Committees and Panels

13.25 It has been explained in Chapter 6 that during the 20 years between

### 13. *Conduct of business in committees*

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early 1970s and early 1990s, in parallel with the standing committees and select committees, there existed quite a substantial number of committees operating under the then UMELCO<sup>35</sup> structure. These committees, including the LegCo In-house, Ad hoc Groups and Panels, subsequently became committees of the Council respectively in 1992 and 1993<sup>36</sup>, to undertake the same responsibilities as they had been performing in the past two decades outside the boundary of the Standing Orders, namely:

- (a) LegCo In-house became the House Committee to oversee the processing of bills and decide on any matters relating to the business of the Council;
- (b) Ad hoc Groups became Bills Committees concentrating solely on the scrutiny of bills; and
- (c) Panels, which had been standing groups to deal with subjects of continuing importance such as civil service, public relations, housing, transport, education, security, health services, social services, etc. continued to be called Panels to monitor Government policies and examine issues of public concern.

13.26 These committees, which originally conducted their business in private and were outside the protection of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), became "committees" within the meaning of the Ordinance and, if authorized by the Council, could exercise the power to summon witnesses to give evidence.<sup>37</sup> To ensure minimum disruption to the work of these committees which had been operating effectively for many years, only those practices which were essential to their functioning such as membership, chairmanship, quorum, etc., were provided for in the Rules of Procedure, while many of the operational details were kept as house rules or provided for in other work manuals.<sup>38</sup>

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<sup>35</sup> UMELCO stands for the Unofficial Members of the Executive and Legislative Councils. It was renamed as OMELCO in 1985.

<sup>36</sup> In 1991, an Ad Hoc Group was set up in OMELCO to conduct a comprehensive review of the committee structure. Following the endorsement by the LegCo In-house of the recommendations of the Ad Hoc Group, the Council amended the Standing Orders in 8 July 1992 to provide for a new House Committee to take over the duties of the former OMELCO and LegCo In-House meetings, and bills committees to replace Ad Hoc Groups. On 19 February 1993, panels were also incorporated into the Council's formal committee structure.

<sup>37</sup> Section 2 of Cap. 382 and Rule 80 of the Rules of Procedure.

<sup>38</sup> Chapter 1, para. 1.48.

13.27 House Committee, Bills Committees and Panels continue to be the backbone of the committee structure of the HKSAR Legislature. They continue to maintain the same interactive and informal mode of deliberations as in the past although more practices have been codified as rules in recent years either in the Rules of Procedure or in the House Rules to minimize inconsistent handling by different committees. The rules, procedures and practices of these committees are available in the Rules of Procedure<sup>39</sup>, House Rules and, in the case of Panel, Bills Committees and subcommittees of the House Committee on subsidiary legislation, also in the handbooks for chairmen of these committees which are available on the official website of the Legislative Council. More details about their operation are provided in paragraphs 13.161 – 13.187 of this Chapter.

#### Committee on Rules of Procedure

13.28 The Committee on Rules of Procedure is one of the two committees included in the Rules of Procedure by the First Legislative Council. Its functions are to review the Rules of procedure of the Council and the committee system, and to propose to the Council such amendments or changes as are considered necessary. The Committee may examine matters of practice and procedure relating to the Council referred by the Council or its committees or the President, or raised by its own members.<sup>40</sup> The functions undertaken by the Committee were previously undertaken by the Subcommittee on Procedural Matters under the House Committee before establishment of the HKSAR Legislature. During the term of the Provisional Legislative Council, a Committee on Rules of Procedure was set up to undertake, among other functions, the drafting of the Rules of Procedure for consideration by Members of the First Legislative Council in order that the new Council could function immediately upon assumption of office by Members. Like all other committees, the Committee on Rules of Procedure also determines its own practice and procedure, subject to the Rules of Procedure.<sup>41</sup> It has adopted the mode of operation of the Subcommittee on Procedural Matters and has continued to meet in private.<sup>42</sup> However, to make its operation transparent to other Members and the public, the Committee presents discussion papers to the House Committee (which conducts its meeting in public) before making its decisions and it presents progress reports to the Council at least once in every session.

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<sup>39</sup> Rules 75, 76 and 77 of the Rules of Procedure.

<sup>40</sup> Rule 74(1) of the Rules of Procedure.

<sup>41</sup> Rule 74(6) of the Rules of Procedure.

<sup>42</sup> Rule 74(4) of the Rules of Procedure.

### *13. Conduct of business in committees*

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13.29 Like other committees of the Council (except standing committees), the Committee on Rules of Procedure is required to seek special authorization of the Council in order to have the power to summon witnesses. The rules on the operation of committees in the House Rules do not apply to the Committee on Rules of Procedure but they may be referred to by the Committee in determining its own procedure, whilst key matters such as the Committee's terms of reference, method of appointment of members, quorum, etc. are set out in Rule 74 of the Rules of Procedure and are explained in the latter part of this Chapter.<sup>43</sup>

#### Investigation Committee

13.30 Provisions for the establishment of an Investigation Committee were included in the Rules of Procedure by the First Legislative Council on 28 April 1999 as part of the whole package of procedural arrangements for implementing Article 79(7) of the Basic Law, i.e. disqualifying a Member from office when he or she is censured for misbehaviour or breach of oath.<sup>44</sup> The Investigation Committee is formed when a motion (signed by 4 Members) to censure a Member is moved. The Committee's responsibility is to establish the facts stated in the motion and give its views on whether or not the facts as established constitute grounds for the censure.<sup>45</sup> The Committee is dissolved as soon as it has completed the investigation referred to it and has reported to the Council, but may be revived by resolution of the Council if necessary.<sup>46</sup> The essential principles of how the Committee should conduct its investigation are laid down in Rule 73A of the Rules of Procedure. Subject to the Rules of Procedure, the Investigation Committee may determine its own practice and procedures.

13.31 In the case of the Investigation Committee established in the Fourth Legislative Council in 2008, before it began its substantive work a set of practice and procedure was first adopted as it considered that without any precedents to follow, it was necessary to formulate practical principles on the basis of the framework of procedural provisions of the Rules of Procedure. During the process of drawing up the practice and procedure, the Investigation Committee made reference to some generally applicable principles of natural justice as well as the procedures adopted by other committees in conducting

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<sup>43</sup> Para. 13.45, 13.50 – 13.51, 13.110.

<sup>44</sup> Progress Report of the Committee on Rules of Procedure (July 1998 to April 1999), para. 2.39 – 2.66.

<sup>45</sup> See Chapter 3, para. 3.119 – 3.120.

<sup>46</sup> Rule 73A(12) of the Rules of Procedure.

investigations. Amendments were made to the practice and procedure in the course of investigation in the light of experience and changes in circumstances, and these were explained in the Investigation Committee's report tabled in the Council on 28 March 2012. The practice and procedure adopted by the Investigation Committee established in 2008 is attached as a sample at **Appendix 13-E**.

#### Committee on Access to the Legislature's Documents and Records

13.32 The Committee on Access to the Legislature's Documents and Records was added into the Rules of Procedure by the Fifth Legislative Council on 21 March 2014.<sup>47</sup> The functions of the Committee are to determine that a document or record of the Legislature (or its committee) should be made available for access earlier than the expiry of the closure period set out in the Policy on Access to the Legislature's Documents and Records (Schedule 2 to the Rules of Procedure), to set guidelines for implementing the access policy and to consider any objection against a denial of access by the Clerk under Rule 6(5A)(b) of the Rules of Procedure. More information about the way the Committee performs its functions is provided in Chapter 16.

#### **General practice and rules for committees**

13.33 As mentioned in Chapter 1<sup>48</sup>, the Rules of Procedure provide only a general framework for the operation of committees. Whilst specific rules have been made in the Rules of Procedure for individual committees, these rules are mostly related to their functions, membership, chairmanship, quorums and how the committees relate to one another and to the Council. For some committees in particular those that succeeded the former OMELCO committees, their mode of operation is generally guided by the House Rules.

13.34 The House Rules first came into existence in 1988 as a Members' Guide issued by the OMELCO Secretariat setting out how the committees functioned. On 6 July 1998, the House Committee of the First Legislative Council adopted the House Rules which have been applied to the operation of most of the committees of the Council to date. The arrangements set out in the House Rules have become the general practice for those committees and

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<sup>47</sup> Rule 74A of the Rules of Procedure.

<sup>48</sup> Chapter 1, para 1.55.

### *13. Conduct of business in committees*

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are often referred to by other committees when adopting their own practice and procedure. For example, in July 2002, the Finance Committee amended the Procedures of its two Subcommittees to make their arrangements for signification of membership consistent with the relevant rules in the House Rules.<sup>49</sup>

#### **Formation of committees**

13.35 Decisions of the Council are made at Council meetings but the preparatory and scrutiny work is often carried out by its committees. With the exception of the Finance Committee which has been given the power to approve changes to approved Estimates of Expenditure under the Public Finance Ordinance (Cap. 2), decisions made by committees are not binding on any Member, whether in Council, in a committee of the whole Council or in the House Committee.<sup>50</sup> From time to time, Members may consider it necessary to set up a new committee to undertake certain responsibilities or to study a particular matter in detail. If the committee is expected to meet on a regular and continuous basis to perform a specific function, the House Committee may refer the matter to the Committee on Rules of Procedure for a more in-depth study. Where the setting up of the committee requires amendments to the Rules of Procedure, a resolution of the Council is needed.

13.36 If the proposed committee is to be formed for a specific task and is to be dissolved after its work is completed, it is common practice to form a subcommittee under the House Committee or, if the task is related to a matter within the terms of reference of a Panel, to form a subcommittee under the relevant Panel. In the event that an inquiry is to be conducted into a policy matter or a matter of public concern, the inquiry may be undertaken by the relevant Panel or its subcommittee, or a subcommittee of the House Committee or, in most cases, a select committee. A resolution of the Council is required for the appointment of a select committee<sup>51</sup> and, if the power to summon witnesses is considered necessary, a special authorization of the Council for the committee to do so will be sought.

13.37 A committee set up for a particular task, such as a select committee or a Bills Committee, is required to report to the Council upon the completion of

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<sup>49</sup> See Finance Committee Paper FCR(02-03)36 at <http://www.legco.gov.hk/yr01-02/english/fc/fc/papers/f02-36e.pdf>.

<sup>50</sup> Rules 76(10) and 77(13) of the Rules of Procedure.

<sup>51</sup> Rule 78(1) of the Rules of Procedure.



its work. In the case of Panels and the Committee on Rules of Procedure which meet on a regular and continuous basis, they report to the Council at the end of each session.<sup>52 53</sup> Subcommittees are also required to report to the committees by which they have been appointed upon the completion of their work or, if their work cannot be completed within a session, at the end of the session. The discretion of whether the work of a subcommittee may continue in the following session rests with the committee which appointed the subcommittee. There is also a mechanism to limit the number of subcommittees (other than those to consider subsidiary legislation) that may be working at any one time. The mechanism is set out in Rule 26 of the House Rules (Activation and Operation of Subcommittees) and is explained in detail in the latter part of this Chapter.<sup>54</sup>

13.38 The House Committee plays an important role in providing a forum for Members to discuss whether a committee is to be appointed, its terms of reference, membership and whether the committee should be given the power to summon witnesses. The House Committee may appoint a subcommittee to discuss the details of the proposal and to consider whether the formation of a committee is the most appropriate course of action to deal with the matter concerned. Any Members who are interested in the subject may join the subcommittee. Where the Council's approval is required for appointing the committee, the subcommittee may also propose a draft of the resolution (which for practical purposes sets out the terms of reference of the committee) and propose the membership size of the new committee.<sup>55</sup>

13.39 Notwithstanding a prior decision of the House Committee against supporting the appointment of a select committee, any Member may give notice to move a motion in the Council for appointing a select committee under the Council and, if needed, seeking the Council's authorization for the committee to summon witnesses to give evidence. In these cases, the normal rules governing the moving of motions under Part G (Motions) of the Rules of Procedure will apply.

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<sup>52</sup> The House Committee presents its reports to the Council on its consideration of subsidiary legislation and other instruments at the Council meeting immediately before the expiry of the period for amendment of such subsidiary legislation and instruments. Rule 49D of the Rules of Procedure.

<sup>53</sup> The Finance Committee presents its report to the Council after its examination of the Estimates referred to it by the President under Rule 71(11) of the Rules of Procedure.

<sup>54</sup> Paragraphs 13.183 – 13.187.

<sup>55</sup> An example is the recommendation of the Subcommittee to prepare for the operation of the select committee on the petition presented at the Council meeting of 25 June 2014. See Report of the Subcommittee at <http://www.legco.gov.hk/yr14-15/english/hc/papers/hc20141107cb1-181-e.pdf>.

### *13. Conduct of business in committees*

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13.40 Also, as mentioned in Chapter 7<sup>56</sup>, a petition is referred to a select committee if no less than 20 Members rise to support such a request made by a Member immediately after the petition has been presented to the Council. The preparatory work for the select committee, if a petition is so referred, is undertaken in the same manner as that described in paragraph 13.38 above.<sup>57</sup>

#### Responsibilities and terms of reference of committees

13.41 The responsibilities of committees of the Legislative Council are provided for in the Rules of Procedure which are determined by the Council. A summary of the provisions relating to the functions and responsibilities of committees is provided at **Appendix 13-A**.

13.42 These responsibilities are sometimes referred to as the terms of reference of the committees. However, in the case of individual committees within a generic type, such as Panels, select committees and Bills Committees, each committee will have its own terms of reference. For example, Rule 77(2) of the Rules of Procedure specifically provides that the terms of reference of a Panel shall be recommended by the House Committee and approved by the Council although the responsibility of a Panel has been set out in Rule 77(3). Each Panel has a policy area(s) which corresponds with the portfolio of one or more Directors of Bureaux in the Government Secretariat. A change in the Government structure may therefore entail changes to the terms of reference of Panels. The House Committee provides a forum for such discussion. Since the first resolution to determine the terms of reference of the 18 Panels of the HKSAR Legislature was passed by the Council on 8 July 1998, 5 other resolutions have been passed in the Council to amend the terms of reference of some of the Panels.<sup>58</sup>

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<sup>56</sup> Chapter 7, para. 7.57 – 7.59.

<sup>57</sup> On 8 May 2013, Mr Dennis Kwok presented to the Council a petition in relation to the handling of duty visits, official entertainment and gifts by Mr Timothy TONG while he was serving as Commission of the Independent Commission Against Corruption. At the meeting, 25 Members rose in support of Ms Cyd HO's proposal to refer the petition to a select committee. On 24 May 2013, the House Committee appointed a subcommittee to undertake preparatory work for the operation of the select committee, including drawing up the terms of reference to reflect the substance of the petition, the membership size and the nomination procedure in respect of the select committee. The subcommittee held one meeting and reported to the House Committee on 7 June 2013. Since then, the approach adopted by the subcommittee in undertaking preparatory work for the operation of select committees has been adopted by subsequent preparatory subcommittees.

<sup>58</sup> The terms of reference of Panels were amended on 26 January 2000, 21 December 2000, 9 October 2002, 11 July 2007 and 3 July 2008.

13.43 The same also applies to select committees. The substance of the terms of reference of a select committee is found in the resolution of the Council or in the petition that stands referred to it at a Council meeting under Rule 20(6) of the Rules of Procedure. The terms of reference provide a framework for the work to be undertaken by the select committee and allow Members to have a common understanding of the scope of its work when considering whether to support the appointment of, or referral to, a select committee. On occasions, if the proposal to set up a select committee comes from a Panel, the Panel may draw up the proposed terms of reference for the select committee and present its proposal to the House Committee for discussion.<sup>59</sup> Where a resolution of the Council is required, the motion is usually moved by the chairman of the Panel or the subcommittee which has undertaken the preparatory work or the chairman of the House Committee if so decided by the House Committee.

13.44 In respect of Bills Committee, according to Rule 76(7) of the Rules of Procedure, the terms of reference of a Bills Committee are to consider the general merits and principles, and the detailed provisions of the bill allocated to it by the House Committee under Rule 75(4) of the Rules of Procedure. The Bills Committee may also consider relevant amendments.<sup>60</sup>

## **Membership of committees**

### Membership size

13.45 The membership size of committees varies according to the nature of the committees and their purposes. The Finance Committee, which is a standing committee vested with the power to approve changes to the estimates approved by the Council under the Public Finance Ordinance (Cap. 2), comprises all Members except the President. The House Committee, which provides a forum for Members to consider any matters relating to the business of the Council, also comprises all Members except the President. It is only in the case of those committees which are assigned with a specific responsibility

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<sup>59</sup> An example is the Panel on Housing's proposal to set up a select committee to inquire into the building problems in the production of public housing units in November 2000. The draft motion was provided in its proposal and was accepted by the House Committee at its meeting on 5 January 2001. Another example is Panel on Home Affairs' proposal to the House Committee on 20 February 2004 to set up a select committee to inquire into the incidents which had affected the credibility of the Equal Opportunities Commission and related issues. The proposed motion which provided the terms of reference of the select committee did not have the support of the House Committee.

<sup>60</sup> Rule 76(7) of the Rules of Procedure.

### *13. Conduct of business in committees*

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or task and are expected to report back to the Council on the progress or outcome of their work that a smaller number of members is stipulated in the Rules of Procedure, as in the following cases:

- Public Accounts Committee: a chairman, deputy chairman and 5 other Members appointed by the President in accordance with an election procedure determined by the House Committee;<sup>61</sup>
- Committee on Members' Interests: a chairman, deputy chairman and 5 other Members appointed by the President in accordance with an election procedure determined by the House Committee;<sup>62</sup>
- Investigation Committee: a chairman, deputy chairman and 5 other Members appointed by the President in accordance with an election procedure determined by the House Committee;<sup>63</sup>
- Committee on Rules of Procedure: a chairman, deputy chairman and 10 other Members appointed by the President in accordance with an election procedure determined by the House Committee;<sup>64</sup> and
- Committee on Access to the Legislature's Documents and Records: the President (as chairman); the Chairman of House Committee (as deputy chairman), the Deputy Chairman of the House Committee and not more than 10 other Members elected at a House Committee meeting in such manner as the House Committee may determine.<sup>65</sup>

13.46 There are other committees which perform specific functions stipulated in the Rules of Procedure where membership is open to any Member of the Council except the President. These committees are Panels, Bills Committees and their subcommittees as well as subcommittees of the House Committee and Finance Committee. Generally speaking, there is an understanding that any committee or subcommittee should not consist of less than 3 members including the chairman. However in the case of Panels, the minimum requirement is 6 members including the chairman. The minimum membership requirements for Bills Committees and Panels are set out in the

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<sup>61</sup> Rule 72(3) of the Rules of Procedure.

<sup>62</sup> Rule 73(2) of the Rules of Procedure.

<sup>63</sup> Rule 73A(1) of the Rules of Procedure.

<sup>64</sup> Rule 74(2) of the Rules of Procedure.

<sup>65</sup> Rule 74A(2) of the Rules of Procedure.

Rules of Procedure<sup>66</sup> and in the House Rules<sup>67</sup>. As a matter of practice the minimum requirement of no less than 3 members including the chairman also applies to subcommittees of the House Committee although this has not been formally provided for in the Rules of Procedure or House Rules. As the House Committee may determine the practice and procedure of its subcommittees<sup>68</sup>, it may decide on the membership size of any of its subcommittees.<sup>69</sup>

13.47 The question of whether there should be an upper limit on the membership size of Panels, Bills Committees and subcommittees of the House Committee has been raised from time to time at the House Committee and Committee on Rules of Procedure. It has been considered by some Members that a committee should not consist of so large a membership as to make deliberations unmanageable and a quorum difficult to obtain. However, there is also the concern that Members' discretion to join a committee, which is open to all Members, should not be restricted by the setting of a limit on the membership size. It is particularly important that those Members who do not belong to any major political parties or affiliations can also have the same opportunities to join any committees of their choice.

13.48 For a select committee undertaking an inquiry, the general practice has been that it should be made up of 11 to 15 members with the same membership serving on the select committee until it presents its final report to the Council.

#### President not to take part in the work of committees

13.49 With the exception of the Committee on Access to the Legislature's Documents and Records ("CoA") and the committee of the whole Council both of which are chaired by the President himself, the President is not a member of any committees of the Council. This arrangement is to ensure impartiality on the part of the President who has to preside over meetings of the Council and, as Chairman, also meetings of the committee of the whole Council in an orderly, efficient and fair manner. As the President is not party to the deliberation of bills and other matters handled by committees, he is well

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<sup>66</sup> Rule 76(3) and Rule 77(8) of the Rules of Procedure.

<sup>67</sup> Rule 21(b) and Rule 22(b) of the House Rules.

<sup>68</sup> Rule 75(18) of the Rules of Procedure.

<sup>69</sup> At the House Committee meeting on 10 October 2008, Members discussed the membership size of the Parliamentary Liaison Subcommittee and considered that given the nature of the Subcommittee, it was not necessary to limit the membership size of the Subcommittee. On 17 October 2008, by a show of hands without the need for nomination and election, 10 Members joined the Subcommittee.

### *13. Conduct of business in committees*

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positioned to rule on the admissibility of motions and amendments for consideration by the Council or committee of the whole Council with complete impartiality. The President has been made the ex officio chairman of CoA in order to recognize his role as President in regulating public access to documents and records laid before the Council under the Rules of Procedure. This is in line with common practices in overseas parliaments where the authority to review and determine matters relating to granting public access to closed parliamentary documents and records rests with the Speaker or the Clerk.<sup>70</sup>

#### Appointment of committee members by the President

13.50 Members of the Public Accounts Committee<sup>71</sup>, Committee on Members' Interests<sup>72</sup>, Committee on Rules of Procedure<sup>73</sup>, Investigation Committee<sup>74</sup> and select committees are appointed by the President. While the first 4 committees are to be appointed in accordance with an election procedure determined by the House Committee, there is no such requirement for appointing members of select committees. Under Rule 78(2) of the Rules of Procedure, the President decides the size of every select committee and appoints the chairman, deputy chairman and members taking into account the recommendations of the House Committee.

13.51 An election procedure was endorsed by the House Committee of the First Legislative Council on 6 July 1998 for making recommendations to the President on the Members to be appointed to the Public Accounts Committee, Committee on Members' Interests and the Committee on Rules of Procedure. The election procedure which has been revised and fine-tuned over the years is as follows:

- (a) The nomination and election of Members to be appointed to any one of these committees shall be conducted at a meeting of the House Committee, the date of which shall be appointed by the House Committee;

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<sup>70</sup> Report of the Committee on Rules of Procedure dated 14 March 2014 at <http://www.legco.gov.hk/yr13-14/english/procedur/reports/crop0319crop-53-e.pdf>, para 10 and 14.

<sup>71</sup> Rule 72(3) of the Rules of Procedure.

<sup>72</sup> Rule 73(2) of the Rules of Procedure.

<sup>73</sup> Rule 74(2) of the Rules of Procedure.

<sup>74</sup> Rule 73A(1) of the Rules of Procedure.

- (b) A valid nomination shall be made orally by a Member, seconded by at least one other Member who should not be the Member being nominated, and accepted by the Member being nominated. A Member who nominates a Member who is absent from the meeting when the nomination is made may only do so if the former states that the absent Member's acceptance of the nomination has been secured;
- (c) If the number of nominations exceeds that required for appointment, a poll shall be taken and Members shall cast their votes by using the Electronic Voting System. A Member may vote for as many nominees as, but not more than, the number required for appointment. If a Member has voted for a number of nominees which exceeds the number required for appointment, none of the votes which the Member has cast will be counted. The nominees who get the highest numbers of votes will be declared elected;
- (d) After election, the meeting of the House Committee shall be suspended for 10 to 15 minutes to enable the elected members to elect their chairman and deputy chairman from amongst themselves; and
- (e) The House Committee will then resume and be asked to endorse the election results. The Chairman of the House Committee will then submit the names of the chairman, deputy chairman and other members to the President for his appointment.

13.52 Since the membership appointed to the Public Accounts Committee, Committee on Members' Interests and Committee on Rules of Procedure hold office for the entire term, the election is usually held at the third meeting of the House Committee in the term after the respective election procedure has been agreed to at the second meeting.

13.53 As regards select committees, the same procedure was adopted by the House Committee on 24 July 1998 for electing Members for nomination to the President for appointment as chairman, deputy chairman and members of a

### 13. Conduct of business in committees

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select committee<sup>75</sup>. Since then, the procedure for putting forward nominations to the President for appointment to select committees has been the same as that for the Public Accounts Committee, Committee on Members' Interests and the Committee on Rules of Procedure as described in paragraph 13.51 above.<sup>76</sup>

13.54 The election procedure for an Investigation Committee is however different from all these committees. The procedure was drawn up by a preparatory subcommittee appointed by the House Committee and approved at the meeting of the House Committee on 11 December 2009. The procedure, which is similar to the nomination procedure for the election of members of The Legislative Council Commission<sup>77</sup>, is as follows:

- (a) The election should be held at a meeting of the House Committee, the date of which should be appointed by the House Committee;
- (b) Nominations are to be made in writing and delivered to the Legislative Council Secretariat by the deadline for nomination before the election date. Where the number of nominations made in writing is less than seven, further nominations may be made orally at the House Committee meeting at which the election is conducted;
- (c) Where the total number of valid nominations made in writing or orally is more than seven, a poll should be taken at the House Committee meeting by a show of hands to determine which of the Members should be nominated;
- (d) In cases where a nominee would have been elected but for there being one or more other nominees having been given the same number of votes (i.e. "tied votes"), a further round of poll should be taken to resolve the tied votes; and if there are still tied votes

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<sup>75</sup> Select Committee to Inquire into the Circumstances Leading to the Problems Surrounding the Commencement of the Operation of the New Hong Kong International Airport at Chek Lap Kok since 6 July 1998 and Related Issues.

<sup>76</sup> An example is the procedure endorsed by the House Committee at its meeting on 21 November 2008 for the nomination of Members for appointment by the President to the Select Committee to Inquire into Matters relating to the Post-service Work of Mr LEUNG Chin-man. Another example is the procedure endorsed by the House Committee at its meeting on 7 November 2014 for nominating Members for appointment by the President to the select committee to study the delay in the construction of the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link.

<sup>77</sup> See Appendix 4-A.



after that further round, lots will be drawn by the chairman of the House Committee to determine which of the Members should be nominated;

- (e) After the election of Members for appointment to the investigation committee, the meeting of the House Committee should be suspended for 10 minutes to enable the elected Members to elect amongst themselves the chairman and deputy chairman of the investigation committee; and
- (f) The President appoints the chairman, deputy chairman and five members of the investigation committee in accordance with the election results.

#### Election of members to committees

##### *Committee on Access to the Legislature's Documents and Records*

13.55 The composition and size of membership of the CoA are modelled on those of The Legislative Council Commission, i.e. the President who shall be the chairman, the chairman of the House Committee who shall be the deputy chairman, the deputy chairman of the House Committee and not more than 10 other members to be elected to CoA. This is to ensure that the membership of CoA is balanced and broadly representative of that of the Council.

13.56 At its meeting on 28 March 2014, the House Committee decided that the method of election to the CoA should be the same as that for electing the members of The Legislative Council Commission.<sup>78</sup>

#### Signification of membership

##### *Panels*

13.57 The need to provide a procedure for signification of memberships is mentioned in the rules for Panels. Rule 77(4) of the Rules of Procedure provides that the members of a Panel shall be those members (other than the President) who signify membership in accordance with procedural rules

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<sup>78</sup> Details of the election procedure are in Appendix 4-A.

### 13. *Conduct of business in committees*

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(which shall provide only for the manner and timing of such signification)<sup>79</sup> decided by the House Committee. Pursuant to a similar provision in the Standing Orders of the pre-1997 Legislature, the House Committee of the pre-1997 Legislature provided a procedure in the House Rules for Members to signify membership for the Panels they wished to join. This procedure was subsequently adopted by the First Legislative Council. On 4 October 2000, the House Committee adopted the standing arrangements for signification of Panel membership and advised that:

- (a) All Members, except the President of the Council, shall be invited to signify membership for the Panels of their choice at the beginning of a new term. The deadline shall be noon on the Saturday immediately following the first Council meeting of the new term; and
- (b) Members shall be given the opportunity to re-signify membership for the Panels of their choice at the beginning of each of the subsequent sessions of the term. The deadline shall be noon on the Saturday immediately prior to the first Council meeting in each of the subsequent sessions of the term.

13.58 As most of the returns to signify membership are sent by fax, to ensure that there is no omission in the receipt of returns, the Legislative Council Secretariat usually provides a summary of the returns at the House Committee meeting held on the Friday immediately before the deadline for cross-checking by Members.

13.59 On 16 March 2001, the House Committee further clarified that membership of a Panel, once signified, last for a whole term unless the Member resigns from that Panel. Rule 22 of the House Rules<sup>80</sup> was amended to provide that for each of the remaining sessions of the term, a Member who wishes to join any Panel(s) in addition to those he has joined may do so by submission of a return to the Legislative Council Secretariat by noon on the Saturday immediately before the first Council meeting of that session and his membership of such additional Panel(s) shall take effect on the deadline for submission of return.

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<sup>79</sup> The words in brackets were inserted into Rule 77(4) of the Rules of procedure to reinforce the important principle that Members should be free to join any Panels of their choice. The procedural rules relating to signification of membership decided by the House Committee should be limited to the manner and timing of signification.

<sup>80</sup> Rule 22(c) of the House Rules.

*Subcommittees of the Finance Committee*

13.60 The method of signification of Panel membership was adopted by the Finance Committee on 12 July 2002 for its two subcommittees, namely the Establishment Subcommittee and the Public Works Subcommittee.<sup>81</sup> Prior to July 2002, the deadline for signifying membership was not less than seven days before the first meeting of the Subcommittee in the session, which was a long-standing arrangement when the two Subcommittees were still chaired by public officers. As the date of the first meeting of the term was subsequently determined by the Member who had the highest precedence in the Council, this Member was obliged to become a member of both Subcommittees in order that he could call the first meetings and preside over the election of the chairmen of the two Subcommittees, after which he could resign. The adoption of the Panel signification method has streamlined the process and removed this anomaly. Unlike Panels, the membership of the two Subcommittees is for a session; therefore a fresh exercise is conducted for each session. The deadline for signifying membership of the two Subcommittees is currently the same as that for Panels, i.e. by noon on the Saturday immediately following the first Council meeting of a new term and for the remaining sessions of the term, by noon on the Saturday immediately prior to the first Council meeting of each session.<sup>82</sup>

*Bills Committees*

13.61 Bills Committees may be formed at any time during a session. The procedure for joining a Bills Committee is provided in Rule 21(c) of the House Rules. Members may join a Bills Committee by a show of hands at the House Committee meeting at which a bill is allocated to that Bills Committee. The Member who has the highest precedence among these Members is responsible for calling the first meeting of the Bills Committee. Signification of membership by other Members is by the submission of a return to the Secretariat by the deadline set by the clerk to the Bills Committee, which is normally one clear day before the day of the first meeting of the Bills Committee.

*Subcommittees of the House Committee, Panels and Bills Committees*

13.62 No formal procedure has been drawn up for the signification of

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<sup>81</sup> Finance Committee paper FCR(2002-03)36 approved on 12 July 2002.

<sup>82</sup> Paragraph 3 of the Establishment Subcommittee Procedure; paragraph 4 of the Public Works Subcommittee Procedure.

### *13. Conduct of business in committees*

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membership of subcommittees. It is for the committee which appoints a subcommittee to determine the practice and procedure of the subcommittee. Generally speaking, the method of signification of membership for Bills Committees is followed, especially in the case of subcommittees on subsidiary legislation under the House Committee. The nature of work of these subcommittees is similar to that of Bills Committees and the decision to allocate an item of subsidiary legislation to a subcommittee is also made at a House Committee meeting.

13.63 Panels may appoint subcommittees to study specific issues.<sup>83</sup> The membership of a Panel's subcommittee is confined to members of the Panel. Invitation for signification of membership is usually done by circular after it is known that the subcommittee can commence work. (see "Activation of the work of subcommittees" in the latter part of this Chapter<sup>84</sup>). The deadline for membership is usually one clear day before the day of the first meeting of the subcommittee.

13.64 The closing time for signification of membership is midnight on a working day or noon on a Saturday. In order that Members may check if the returns they sent to the Secretariat have been received, it has been a practice since March 2004 that the clerk of the relevant committee would issue a preliminary membership list at noon on the due day if it is on a weekday and noon on the working day immediately preceding the due day if it is a Saturday. An updated membership list is issued as soon as practicable after the due day.<sup>85</sup>

#### Late membership

13.65 Generally speaking, a Member joining a committee after the work of the committee has begun is exceptional and late membership is only accepted on exceptional grounds. A new Member who is returned to the Legislative Council through a by-election is requested to signify membership of any existing Panels, Bills Committee or subcommittees of the House Committee within one month of the date on which he is declared as Member of the Legislative Council.<sup>86</sup> The membership of any Panels or committees he joins takes effect on the date his signification is received by the Secretariat. This is not regarded as an application for late membership, but if the new Member wishes to join any committee after one month of his becoming a Member of

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<sup>83</sup> Rule 22(s) of the House Rules.

<sup>84</sup> Para. 13.183 – 13.187.

<sup>85</sup> Progress Report of the Committee on Rules of Procedure (July 2003-June 2004), para. 3.9 – 3.14.

<sup>86</sup> Rule 21(d) and Rule 22(c) of the House Rules.

the Council, his application will be treated in the same manner as other Members who apply to join a committee outside the given timeframe.

13.66 For Panels, Bills Committees and subcommittees of the House Committee, Rule 23 of the House Rules provides that:

- (a) An application for late membership is only considered after the election of the chairman and deputy chairman of the relevant committee has taken place;
- (b) If the ground for application for late membership is indisposition or absence from Hong Kong during the time when a Member should signify his membership, it is for the chairman of the relevant committee to decide whether such application should be accepted;
- (c) If the ground for application for late membership is other than that referred to in (b) above, it is for the relevant committee to decide whether such application should be accepted and such application shall only be accepted if there exist sufficient grounds for doing so;
- (d) A Member who has failed to be admitted as a member of the relevant committee under Rule 23 of the House Rules may put the case to the House Committee for decision.

13.67 The application procedure for late membership only applies to those committees for which a deadline has been imposed for signification of membership. It therefore does not apply to committees the membership of which is by President's appointment. There has been question about whether new members should be appointed to a select committee if vacancies have arisen in the course of its work. At the House Committee meeting on 26 February 2010, noting that a vacancy in a select committee had arisen as a result of the resignation of a Member, Members considered it not necessary to fill the vacancy since the select committee had already completed its hearings and was in the report drafting stage.<sup>87</sup>

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<sup>87</sup> The discussion at the House Committee meeting on 26 February 2010 was related to the Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man which commenced work in December 2008. Apart from deciding that it was not necessary to fill the vacancy arising from the resignation of one of its members, the House Committee also decided that there was no need to amend the membership size of the Select Committee. It agreed that the name of the Member who resigned and the duration of his service should be shown on the official records of the Select Committee.

### *13. Conduct of business in committees*

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13.68 While Rule 23 of the House Rules only applies to Panels, Bills Committees and subcommittees of the House Committee, the same procedure has been adopted by the Finance Committee for its two subcommittees, namely the Establishment Subcommittee and Public Works Subcommittee.<sup>88</sup> In gist, the chairman of the Subcommittee may agree to accept late membership on grounds of indisposition or absence from Hong Kong while requests on other grounds are considered by the Subcommittee which only accepts applications when sufficient grounds have been provided. An application which is rejected by the Subcommittee may be put to the Finance Committee for a decision.<sup>89</sup>

#### **Chairman and deputy chairman of a committee**

13.69 The Rules of Procedure provide each committee with a chairman and, in most cases, also a deputy chairman. It is only in the cases of Panels and Bills Committees that it is for the respective committees to decide if a deputy chairman should be elected. As the procedures for subcommittees are not provided for in the Rules of Procedure, it is also for the relevant committees to decide if there should be a deputy chairman in accordance with the general provisions in the Rules of Procedure that the practice and procedures of subcommittees shall be determined by the respective committees.

13.70 For those committees whose chairman and deputy chairman are appointed by the President, the tenure of these offices is for the entire term or until the work of the committees is completed. These committees include the Public Accounts Committee, Committee on Members' Interests, Investigation Committee, and Committee on Rules of Procedure. For those chairmen and deputy chairmen who are elected to office, a uniform arrangement has been put in place since July 2002 that they shall hold office until the chairmen and deputy chairmen for the next session are respectively elected in the new session or, if the election is held before the new session commences, they shall hold office until the commencement of that new session.<sup>90</sup>

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<sup>88</sup> The relevant provisions which are now provided in paragraph 4B of the Public Works Subcommittee Procedure and paragraph 3B of the Establishment Subcommittee Procedure were adopted by the Finance Committee on 2 July 1999.

<sup>89</sup> In the 2013-2014 session, a members' application for late membership was negated at the Establishment Subcommittee on 11 June 2014. In the 2014-2015 session, the Establishment Subcommittee and the Public Works Subcommittee rejected respectively applications for late membership from 16 and 9 Members. None of these cases were put to the Finance Committee for a decision.

<sup>90</sup> Progress Report of the Committee on Rules of Procedure (July 2001 to June 2002), para. 4.16 – 4.20.

13.71 For Panels, Rule 77(6) of the Rules of Procedure provides that a Member who is the chairman or deputy chairman of a Government advisory body in respect of matters which a Panel considers to be directly related to the terms of reference of the Panel shall not be the chairman or deputy chairman of the Panel. Prior to the holding of the election of Panel chairmen and deputy chairmen, the Secretariat obtains from the Government a list of its advisory bodies relevant to the Panels and circulate the list to all Members. Members are also reminded at the start of the election at a Panel meeting to make reference to the list to ensure that there are no nominations contrary to Rule 77(6) as set out above. Rule 77(7) of the Rules of Procedure also stipulates that a Member shall not be the chairman or deputy chairman of more than one Panel at the same time. There is no stipulation that a chairman or deputy chairman of a Panel cannot take up the chairmanship or deputy chairmanship of other committees.

#### Election procedure

13.72 The procedure for the election of chairman and deputy chairman of a committee is provided in the House Rules. As the House Rules do not apply to standing committees, the only standing committee which elects its own chairman and deputy chairman, i.e. the Finance Committee, provides its own election procedure in its Procedure<sup>91</sup> as well as the Procedures of its two Subcommittees<sup>92</sup>, which is substantially the same as the election procedure provided at Appendix IV to the House Rules for other committees (**Appendix 13-F**).

13.73 In gist, the chairman and deputy chairman of a committee are elected by and from among its members at an open meeting. The election of the chairman is held before that of the deputy chairman if both offices are to be elected. Where the election takes place at the first meeting in a term, the member present who has the highest precedence shall preside at the election. If the presiding member is being nominated for chairmanship, the member present who has the highest order of precedence among the members not nominated for the office shall preside. For any subsequent elections during the term, the incumbent chairman shall preside. If he is absent or being nominated for the office, the member who was deputy chairman before the election shall preside. If the deputy chairman is absent or also nominated for the office or if there is no deputy chairman in the committee, the member

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<sup>91</sup> Paragraphs 4 – 6A of the Finance Committee Procedure.

<sup>92</sup> Paragraphs 5 – 7A of the Establishment Subcommittee Procedure; Paragraphs 6 – 8A of the Public Works Subcommittee Procedure.

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present who has the highest order of precedence among the members not nominated for the office shall preside.

13.74 For the election of the deputy chairman, the chairman who has been elected shall preside. If the member who has been elected chairman is absent, the member present who has the highest order of precedence shall preside. If that member is nominated for deputy chairmanship, the member present who has the highest order of precedence among the members not nominated for the office shall preside.

13.75 In any election, the making of a nomination is done orally by a member and seconded by at least one other member who should not be the member being nominated. The nomination must be accepted by the member being nominated and in the event that he is absent at the election, the member who nominated him should confirm his acceptance of nomination. Any Member may also nominate himself or herself for a position provided that the nomination is seconded by at least one other member. If there is only one nomination for the office, the presiding member shall declare the nominee as elected. If there are two or more nominations, a secret ballot shall take place and only members of the committee may vote. The presiding member shall vote at the same time as other members and in the event that there is a tie he has a casting vote which is decided by drawing lots. The member who receives the highest number of valid votes is declared elected.

#### Chairman's role in determining the time and place of meetings

13.76 According to the Rules of Procedure, the time and place of meetings of committees are determined by the chairman of the committee.<sup>93</sup> Rule 79B of the Rules of Procedure also provides that in the event that the chairman cannot be contacted within 48 hours of a request made by a member for the holding of a meeting to discuss a specific issue of urgent importance, the deputy chairman may determine the time and place of the meeting and may direct a shorter notice of the meeting be given. This new rule was added to the Rules of Procedure on 8 October 2006 after a study was conducted by the Committee on Rules of Procedure.<sup>94</sup>

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<sup>93</sup> For the first meeting of a committee at which an election of the chairman and deputy chairman is to take place, the meeting is called by the member who has the highest precedence in the Council. In the case of the Investigation Committee, no provision has been made for the chairman to determine the time and place of meeting but in practice, it was determined by the chairman after taking into account the availability of members of the committee.

<sup>94</sup> Progress Report of the Committee on Rules of Procedure (1 July 2005 to 12 July 2006), para. 3.20 – 3.26; also see paper submitted to the House Committee for its meeting on 7 July 2006 at <http://www.legco.gov.hk/yr05-06/english/hc/papers/hc0707crop-45-e.pdf>.



*Extension of meeting time*

13.77 To avoid clashes of meetings, committees observe the scheduling guidelines for the conduct of meetings that are set out in Rule 24(a) of the House Rules. Meetings are normally arranged to be held at scheduled two-hour time slots on any working day starting from 8:30 am to 6:30 pm<sup>95</sup>. Where a meeting is expected to last longer than 2 hours, the chairman may decide to reserve a double slot for the meeting. Advance notice should be given to members. In the event that the need for a meeting to extend beyond 2 hours only arises in the course of the meeting, Rule 24A of the House Rules allows the chairman to extend the meeting or allow the meeting to continue for not more than 15 minutes beyond the appointed ending time, with or without making an announcement of the extension, subject to the availability of the meeting venue. For a meeting to extend beyond 15 minutes after the appointed ending time, the following procedure should be followed:

- (a) There should be a proposal to extend the meeting for a specified period beyond 15 minutes made during the original appointed meeting time or the 15-minute extension allowed by the chairman;
- (b) there should be no dissenting voice to the proposal; and
- (c) the meeting venue would remain available throughout the period of the proposed extension.

13.78 Subject to no dissenting voice, the meeting may be further extended beyond the period of extension provided that the proposal to further extend the meeting is made during the extended period.<sup>96</sup> It is for the chairman to ascertain whether there is any dissenting voice. No debate or discussion on the proposal is allowed.<sup>97</sup>

*Scheduling of meetings*

13.79 For those committees which meet on a regular basis, such as House Committee, Finance Committee and its two Subcommittees and Panels, the schedules of the regular meetings of these committees are decided by the respective chairman and announced by the respective clerk at the start of a new session. The early announcement of the meeting schedules aims to make

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<sup>95</sup> The regular time slots for the scheduling of meetings on a working day are: 8:30 am – 10:30 am; 10:45 am – 12:45 pm; 2:30 pm – 4:30 pm and 4:30 pm – 6:30 pm.

<sup>96</sup> Rule 24A(c) of the House Rules.

<sup>97</sup> Rule 24A(d) of the House Rules.

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it easier for both Members and the Government to plan their work accordingly. Rule 24(b) of the House Rules reminds chairmen and members to make efforts as far as practicable to avoid scheduling two meetings within the same time slot. Clashes of meetings may become inevitable towards the end of a session or a term when efforts are made by committees to complete their work. Where a meeting is to be held at a time slot during which another meeting has already been scheduled, it is common practice to check if there is any overlapping membership of the two committees before a decision is made. In the event of tropical cyclones and rainstorm warnings, the arrangements set out in Rule 28 of the House Rules are followed.

#### *Meeting time of the Finance Committee*

13.80 The duration of the meeting of the Finance Committee is not subject to the duration of the regular time slots. Meetings of the Finance Committee are held on Fridays after the meeting of the House Committee and the duration of each meeting is limited to two hours. Since 24 March 2006, the meeting of the Finance Committee is held at 3:00 pm or at 2:30 pm if there is no meeting of the House Committee on that day. Any items not dealt with at the meeting will be carried forward to the next meeting which, subject to notice being given to members, may be decided by the chairman to be held immediately after the first meeting on the same day. The chairman has the discretion to extend the meeting for up to 15 minutes where necessary. Where the meeting of the Finance Committee is preceded by the meeting of the House Committee, the meeting of the Finance Committee may start at a later time if it is not likely that the meeting of the House Committee can end by 3:00 pm, provided that the starting time is also fixed to minimize waiting time for the public officers attending the meeting. In the case of the two Subcommittees, their meetings are usually held on Wednesdays immediately before the Council meetings. Their meetings may also be extended for a specified period of time subject to the availability of the venue and the extended time not clashing with meetings of the Council, and there being no dissenting voice when deciding on further extension. This arrangement does not apply to meetings of the Finance Committee.<sup>98</sup>

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<sup>98</sup> See Finance Committee Paper FCR(2005-2006)50 endorsed by the Finance Committee at its meeting on 24 March 2006.

*Meeting time of the House Committee*

13.81 The House Committee does not appoint an ending time for its regular meetings. Since the Fourth Legislative Council, it has been a practice for the clerk to the House Committee, in consultation with the chairman of the House Committee, to make an estimation of the duration of each meeting of the House Committee and to notify the clerk to the Finance Committee so that the Finance Committee may fix a time for its meeting in the same afternoon. In the event that the House Committee cannot finish its business earlier than 15 minutes after the appointed starting time of the meeting of the Finance Committee, the chairman will direct the meeting to continue after the first 2-hour meeting of the Finance Committee.

*Written notice of meeting*

13.82 Upon the direction of the chairman, written notice of a meeting is issued by the clerk stating the date, time and place at which the meeting is to be held.<sup>99</sup> For the purpose of Rule 24A of the House Rules (Extension of Meetings), the appointed ending time of the meeting is also stated in the notice. The minimum period of written notice of meeting to be given to committee members is stipulated in the Rules of Procedure. This period which ranges from 3 to 5 clear days is the minimum requirement (see **Appendix 13-A**). In order that members may be well prepared for discussion of agenda items, notice with information on the items to be discussed should be issued as early as practicable. Nevertheless, to deal with urgent issues, the chairman may agree to hold special meetings at shorter notice. In so doing, the chairman very often takes into account the views of members of the committee by consulting members through the clerk or by circulating the possible dates to ascertain if there will be a quorum for those dates. In this respect, in normal circumstances, a committee should not book more than three time slots for a meeting at a time.<sup>100</sup>

13.83 The question whether an agenda item should be included in the notice of meeting was studied by the Committee on Rules of Procedure in 2009-2010 in respect of a special meeting of a Panel with no subject matter provided on the notice of the meeting. The meeting was called in response to the request of the Government which had expressed difficulty in disclosing the details of

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<sup>99</sup> Rule 24(c) of the House Rules.

<sup>100</sup> Rule 24(l) of the House Rules.

### *13. Conduct of business in committees*

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the discussion items due to confidentiality considerations. The Committee noted that although there was no provision in the Rules of Procedure which required the agenda to be issued together with the notice of meeting, it had been the practice for the notice (which provides the date, time and place of the meeting) and the agenda (which provides the discussion items and other relevant details) to be issued to member together. To prevent recurrence of the incident, chairmen and clerks of committees were reminded that the agenda should be issued together with the notice of meeting. If there is a confidentiality consideration the description of the agenda item should nevertheless at least provide the nature and scope of the subject matter, and details of the subject matter should be provided to members as soon as practicable.<sup>101</sup>

#### Chairman's role in deciding the agenda of a meeting

13.84 Although the chairman has the power to determine the time and place of a meeting, it is not explicit if this power also includes the power to determine the agenda. The practices of different committees may vary as a result of the nature of the work undertaken by the committees and also their conventions. For example, in the case of Panels, it is the Panel which decides on the items to be included in the agenda but the chairman may alter the order of the agenda items having regard to the views of members and the Government. In the case of a Bills Committee, the chairman follows the usual stages of the consideration of a bill and the agreed work plan, if any, in deciding the agenda. He may alter the order of the subject areas on the agenda if he is satisfied that there is a good reason for the request and there is reasonable notice to members about the change, with minimum inconveniences caused to other attendees. The arrangements for deciding the agenda items for discussion at meetings of the House Committee, Panels and Bills Committees are provided separately in the mode of operation of these committees in the latter part of this Chapter.<sup>102</sup> With the exception of the Finance Committee, the agenda is usually determined by the chairman in consultation with members of the committees where practicable.

#### *Practice in the Finance Committee*

13.85 The practice in the Finance Committee is slightly different. Under the Public Finance Ordinance (Cap. 2), all financial proposals are submitted by

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<sup>101</sup> Progress Report of the Committee on Rules of Procedure (July 2009 to June 2010), para. 4.5 – 4.9.

<sup>102</sup> Paragraphs 13.163, 13.173, and 13.175 – 178.

the Financial Secretary. It is for the relevant designated public officer<sup>103</sup> to give notice to the Clerk of items to be included in the agenda of the Finance Committee or a subcommittee of the Finance Committee in the form of proposals.<sup>104</sup> The notice of agenda items should reach the Clerk at least 6 clear days before the meeting concerned, but shorter notice may be given if the chairman of the committee so directs. The same arrangement has been put in place in the Procedures of the two Subcommittees. For the Finance Committee, in the case of motions moved by members for deciding on matters under the Public Finance Ordinance (Cap. 2), the notice must not be shorter than 2 clear days before the meeting concerned.

13.86 Generally speaking, for Government items the discretion of the chairmen of the Finance Committee and its Subcommittees in deciding the agenda is exercised following a consideration of whether there will be adequate time to deal with all the items on the agenda within the given time and which public officers should be invited to attend the meeting to answer members' questions. At times, the chairman of the Finance Committee or its Subcommittee may indicate to the Government his or her view that certain items may need to be advanced or deferred in the light of the time available for discussion of all the items on the agenda or the urgency of any particular items. The chairman usually respects the views of the Government and may consult members before making his decision.

13.87 In October 2014, in response to a request from a member of the Public Works Subcommittee to re-arrange the order of agenda items for a meeting, the chairman of the Subcommittee Mr Alan LEONG sought advice from the Legal Adviser on his power to re-arrange the order of the agenda items on the agenda of the Subcommittee. In his advice, the Legal Adviser confirmed that despite the lack of specific provisions in the Rules of Procedure and Procedures of the Finance Committee and Public Works Subcommittee, the chairman's power of agenda-setting could be reasonably read as coming within his power to convene meetings, his power to direct the Clerk to give notice of meetings and his power to chair a meeting under the relevant provisions in the Procedure of the Subcommittee. Nevertheless, in setting the agenda, it is advisable to follow the established practice of respecting the

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<sup>103</sup> These designated public officers are the Financial Secretary, the Secretary for Financial Services and the Treasury, the Permanent Secretary for Financial Services and the Treasury (Treasury) or a Deputy Secretary for Financial Services and the Treasury (Treasury).

<sup>104</sup> Rule 9(2) of the Rules of Procedure.

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Government's view or, where a departure from the established practice is warranted, to seek the Subcommittee members' view before deciding on the matter. How the power should be exercised depends on the particular circumstances of each case subject to the limitation that it should not be inconsistent with the constitutional principle in public finance that it is for the government to make the demand and for the legislature to grant.<sup>105</sup>

13.88 On 18 November 2014, Mr Alan LEONG issued a letter to members of the Public Works Subcommittee to inform them of his intended ruling to accede to the request of the member for rearranging the items on the agenda of the Subcommittee for the upcoming meeting on 19 November 2014, but as the items which the member proposed to advance had been withdrawn by the Government and thus were no longer on the agenda except one which was placed as the second item on the agenda and since discussion on the first item on the agenda had already commenced, there was no need to rearrange the items on the agenda.<sup>106</sup>

#### Chairman's role in maintaining order at meetings

13.89 In Chapter 8<sup>107</sup>, it has been explained that the rules which are used to maintain order at meetings of the Council, committee of the whole Council, standing committees and select committees were extended to other committees in May 2011 following various incidents involving disorderly conduct of Members at committee meetings. These rules, namely Rule 44 (Decision of the Chair Final) and Rule 45(2) (Order in Council and Committee) of the Rules of Procedure, empower the chairman of any committee to order a Member whose conduct is grossly disorderly to withdraw immediately from the committee for the remainder of that meeting. His decision is final.

13.90 During the debate at the Council meeting of 11 May 2011 on the motion to extend the power of chairman under Rule 44 and Rule 45 of the Rules of Procedure to all committees, the proposal also to extend the power under Rule 45(1) to committee chairmen was negatived. This proposal

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<sup>105</sup> The advice of the Legal Adviser was summarized in a note to the Chairman of Public Works Subcommittee (LC Paper No. LS9/14-15) dated 31 October 2014 at <http://www.legco.gov.hk/yr14-15/english/fc/pwsc/papers/pwscls-9-e.pdf>.

<sup>106</sup> Mr Alan LEONG's letter to members of the Public Works Subcommittee is at <http://www.legco.gov.hk/yr14-15/english/fc/pwsc/papers/pwscpsc-33-1-e.pdf>.

<sup>107</sup> Chapter 8, para. 8.73 – 8.75.

originally aimed to provide the chairman with the power to direct a member to discontinue his speech if a member in his opinion persisted in irrelevant or tedious repetition of his own or other Members' arguments in the debate (or discussion). Those Members who did not support the proposal held the view that Members' freedom of speech in the Council should be protected. Following this decision of the Council, it is for the chairman of a committee to decide how to ensure that the time of the committee can be used effectively. The usual practice is the adoption of time allocation for individual items on the agenda. Apart from stating the time allowed for each item on the agenda<sup>108</sup>, it is usual practice to set a speaking time limit for each occasion when a member is called to speak on an item. As there is no restriction on the number of occasions a member is allowed to speak, it remains the responsibility of the chairman to ensure as much opportunity as practicable for members to seek information or express views while preserving the order and smooth conduct of business at meetings of the committee. In this context, it is an accepted practice that no further questions or speeches are allowed after the designated time allocated for the item is reached.

13.91 As regards deputations who make oral representations at committee meetings, the usual practice is that the chairman determines the speaking time limit for each having regard to the number of deputations and the duration of the public hearing. Each deputation may only speak once but it may be invited to respond to questions from members during the discussion session after all deputations have made their presentations. In the event that one person has registered to make an oral representation in different capacities or on behalf of absent deputations, the Committee on Rules of Procedure has concluded that he or she may only speak once at committee meetings held for the purpose of receiving public views on a subject but the chairman should continue to have the discretion to handle special requests flexibly.<sup>109</sup>

13.92 If at a meeting of a committee the chairman notices that a member of the press or of the public is behaving, or appears likely to behave, in a disorderly manner, the chairman may order the removal of such person.<sup>110</sup>

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<sup>108</sup> Rule 24(m) of the House Rules.

<sup>109</sup> Progress report of the Committee on Rules of Procedure (October 2013 to June 2014), para. 3.2 – 3.6. Also see Chapter 16, para. 16.12.

<sup>110</sup> Rule 87 of the Rules of Procedure.

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#### Chairman's power to curtail discussion on agenda items

13.93 The need to curtail the discussion of an agenda item may arise particularly in the case of the Finance Committee where a substantial majority of members are clearly ready to vote on a financial proposal but a few members have found it necessary to continue to prolong the proceedings. The Procedures of the Finance Committee and its Subcommittee stipulate that before putting an item to the vote, the chairman shall ask members if they have further questions.<sup>111</sup> This provision is to enable the chairman to ensure that those members who wish to ask questions but have not yet indicated their intention would be able to do so before the chairman puts the item to vote, after which no member is allowed to speak. Where the asking of questions in relation to a financial proposal is used as a means to prolong the proceedings of the Committee, the chairman has the responsibility to ensure that the business on the agenda is transacted in a proper and efficient manner. It has been a practice for the chairman of the Finance Committee to seek views and agreement from members on a timeframe and procedure for concluding the discussion on the agenda item. Such a procedure includes the reduction of speaking time progressively where multiple rounds of questions and answers have been conducted.<sup>112</sup>

13.94 Another practice to curtail further asking of questions adopted by the chairman of the Finance Committee is to "draw a line" to disallow any further questions from members when the chairman considers that there has already been adequate discussion on the item and the discussion should come to a close. This practice was questioned in January 2010 when the Committee considered the financial proposals related to the Hong Kong section of Guangzhou-Shenzhen-Hong Kong Express Rail Link Project. After seeking advice from the then Secretary General (**Appendix 13-G**), the Chairman, Ms Emily LAU, consulted members and "drew a line" after the 13<sup>th</sup> round of questions and answers at the 11<sup>th</sup> meeting on the proposal.

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<sup>111</sup> Paragraph 46 of the Finance Committee Procedure, Paragraph 39 of the Establishment Subcommittee Procedure and Paragraph 40 of the Public Works Subcommittee Procedure.

<sup>112</sup> An example is the procedure adopted for the financial proposals in relation to the Hong Kong section of Guangzhou-Shenzhen-Hong Kong Express Rail Link Project in January 2010. The Chairman of Finance Committee, Ms Emily LAU, adopted a progressive reduction in speaking time for members to raise questions on the financial proposal, starting from 5 minutes in the first 2 rounds of questions and answers, to 4 minutes in the 3<sup>rd</sup> round, 3 minutes in the 4<sup>th</sup> round and to 2 minutes in the 5<sup>th</sup> and all subsequent rounds. A total of 13 rounds of questions were asked and responded to.



13.95 The power of the chairman to "draw a line" came under question again in June 2014 when the chairman of the Finance Committee, Mr NG Leung-sing, proposed it in the course of the discussion on the financial proposal relating to the advance site formation and engineering infrastructure works at Kwu Tung North new development area and Fanling North. By the time he made this suggestion, it was at the end of the 7<sup>th</sup> meeting after 16 rounds of questions and answers on the financial proposal for which a progressive reduction of speaking time had been ordered.<sup>113</sup> In response to a member who questioned the chairman's power to "draw a line", the Legal Adviser reiterated that "[t]here are no explicit provisions in the Rules of Procedure and the Finance Committee Procedure on such power of the chairman. However, from the legal perspective and in accordance with the general legal principles, a person chairing a meeting as the chairman of a committee would, by necessary implication or for any purposes reasonably incidental to or consequential upon this function, have such powers as are reasonably necessary for the performance of such function."<sup>114</sup> These powers would include the power to control the progress of a meeting by drawing a line to disallow further questions from being raised.

#### Voting rights of chairmen

13.96 Prior to November 2005, provisions relating to the voting rights of committee chairmen in the Rules of Procedure varied from committee to committee. The situation was inevitable as the rules on committees were adopted from various sources and the conventions of individual committees had been preserved as far as possible in the new rules. While some committee chairmen had an original vote and a casting vote, some only had a casting vote but not an original vote and in some cases, it was not specified in the Rules of Procedure whether the chairmen had any vote at all. The Committee on Rules of Procedure decided in 2004-2005 to conduct a full-scale study on the subject, but pending the outcome of the study, the Committee considered that unless otherwise provided expressly in the Rules of Procedure, the chairman of a committee should have the same voting rights as other members of the committee. In other words, all chairmen should

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<sup>113</sup> The speaking time limit was progressively reduced from 4 minutes for the 1<sup>st</sup> time of speaking, 3 minutes for the 2<sup>nd</sup> time, 2 minutes for the 3<sup>rd</sup> and 4<sup>th</sup> times, and 1 minute for the 5<sup>th</sup> and subsequent times. There were a total of 26 members who had spoken 146 times accumulatively, with four of them speaking for over 10 times and one speaking 16 times.

<sup>114</sup> See Legal Adviser's replies to Mr Fernando CHEUNG's questions at <http://www.legco.gov.hk/yr13-14/english/fc/fc/papers/fcfc-96-2-e.pdf> and <http://www.legco.gov.hk/yr13-14/english/fc/fc/papers/fc0613fc-105-2-e.pdf>.

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have an original vote which should be exercised at the same time as other members exercise their votes. Also the committee chairman should not have a casting vote unless otherwise provided in the Rules of Procedure.

13.97 An inquiry was conducted by the Committee on Rules of Procedure in 2005-2006 and in the light of its preliminary finding, a consultation exercise was conducted among all Members of the Council to obtain their views on the subject. The Committee noted that according to the Westminster convention, that in exercising a casting vote, the principal consideration of the chair was that there should be an opportunity for further discussion if there was no clear majority on a question. The Committee also noted that this principle had already been reflected in the procedures of the Finance Committee and its Subcommittees. The chairman of the Finance Committee should not exercise the casting vote in such a way as to produce a majority vote in favour of the question before the committee. The same principle had been adopted in the procedures of the two Subcommittees of the Finance Committee. The Committee on Rules of Procedure recommended that the same arrangement should be provided for all other committees and their subcommittees.

13.98 As to whether the committee chairmen should have an original vote and a casting vote, the Committee on Rules of Procedure noted that the majority of members who responded in the consultation exercise considered that the chairmen of Panels, Bills Committees and subcommittees of the House Committee on subsidiary legislation should have one vote, whether it was an original vote or a casting vote, while chairmen of all other committees and subcommittees should only have a casting vote but not an original vote. The Committee concluded that given the principle that the chairman of a committee should have the same voting rights as other committee members unless expressly provided to the contrary in the Rules of Procedure, the chairmen of these committees should have an original vote which should be cast at the same time as others. This principle should also apply to other subcommittees of the House Committee including those appointed to study draft legislation, other instruments and subsidiary legislation not subject to section 34 or section 35 of the Interpretation and General Clauses Ordinance (Cap. 1).

13.99 The above recommendations of the Committee on Rules of Procedure were endorsed by the House Committee on 7 October 2005 and the proposed amendments to the Rules of Procedure to reflect these changes were endorsed on 11 November 2005 and approved by the Council on 23 November 2005.

13.100 A summary of the voting rights of chairmen of committees and subcommittees is provided at **Appendix 13-A**.

### **Provision of papers**

13.101 Members of committees attach great importance to timeliness in the provision of discussion and information papers to enable them to have adequate time to understand the subject matter and, if needed, consult their respective political parties or affiliations. This is particularly important in the case of the Finance Committee and its two Subcommittees due to the crucial role of the Finance Committee in scrutinizing and approving the financial proposals.<sup>115</sup> The Finance Committee Procedure (and also Procedures of its two Subcommittees) requires the discussion papers to be dispatched to members at least 5 clear days before the meeting unless otherwise directed by its chairman on grounds of urgency.

13.102 The minimum days required for the provision of discussion papers to other committees however was not stipulated until January 2002. With the enhanced role of Panels since 1996 in the consultation process on major legislative and financial proposals, it has become necessary for members of Panels to have a good understanding of the policy aspects and how they would impact the community before they can confirm if the proposals are ready for presentation to the Council or to the Finance Committee, or whether further discussion is needed. In order that the relevant papers should reach members of Panels well in advance, the House Committee endorsed the recommendations of the Committee on Rules of Procedure on 18 January 2002 for the following arrangements:

- (a) The Government is required to provide papers at least 5 clear days before the relevant Panel meeting for items which have been given no less than 3 weeks' notice;
- (b) The Government is required to provide papers at least 2 clear days before the relevant Panel meeting for items involving time critical proposals or where the need to consult Panels does not arise until a very late stage; and

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<sup>115</sup> See Chapter 6, para. 6.34.

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- (c) The Government is required to provide papers as soon as practicable for items with less than 3 weeks' notice, or for policy matters where approval of the Executive Council has just been sought, or for matters involving commercially sensitive information.

13.103 The chairman of a Panel should exercise discretion according to individual circumstances but where in his opinion that there is no compelling reason for the late provision of papers and the item is not time critical, he may decide to defer the relevant item to a future meeting.

13.104 A different arrangement is adopted for the provision of discussion papers to Bills Committees and subcommittees on subsidiary legislation. As the policy aspects of a legislative proposal will already have been discussed by the relevant Panel, there is generally a better understanding of the extent of deliberation required for the scrutiny of the details of the relevant bill or subsidiary legislation. It is common practice that the chairman of the relevant committee/subcommittee will fix the meetings with the relevant bureau and the Government should have assessed its ability to provide discussion papers or draft amendments to the bill or subsidiary legislation at a reasonable time before the meeting.

13.105 The House Committee also endorsed that the Government should, as far as possible, arrange for the papers to reach the relevant clerk by 11:00 am if a deadline fell on a day before a public holiday so that the relevant papers reach Members on the same day. This arrangement took effect on 1 March 2002.

13.106 Where meetings are held in public, the Legislative Council Secretariat will normally provide the press/public observing the meetings with the agendas for the meetings. As all papers are now uploaded onto the Legislative Council website, unless directed by the chairman, members of the press/public are requested to access the documents on the website.

#### **Quorum of committees**

13.107 The quorum of a committee is prescribed in the Rules of Procedure. The House Rules<sup>116</sup> provide that unless a quorum is present within

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<sup>116</sup> Rule 24(g) of the House Rules.

15 minutes of the starting time appointed for the meeting, the meeting will not be held. With the exception of standing committees, select committees and the Investigation Committee where every effort is made to ensure the presence of a quorum throughout the meeting, committees may only count their quorum at the beginning of a meeting or when the attention of the chairman is drawn by a member of the committee during a meeting to the fact that a quorum is not present. The chairman shall direct members to be summoned if his attention is drawn to a lack of quorum.<sup>117</sup> If after 15 minutes have expired and a quorum is still not present, the chairman shall announce that the meeting is closed without any question put.

13.108 The quorums of committees vary due to historical reasons and also the nature of work undertaken by the committees. The purpose of laying down a quorum for a committee is to ensure the presence of an adequate number of members to examine matters before them thoroughly.<sup>118</sup> For the House Committee which comprises all Members except the President, the quorum is 20. This quorum is the same as the quorum of House Committee in the pre-1997 Legislature which was the same as the quorum of the Council and the committee of the whole Council at that time. The membership of the Council had been 60 since 1993<sup>119</sup>, and the quorum was 20, being one-third of Members of the Council. The same ratio, i.e. one-third of membership, was also adopted for the House Committee, Bills Committee and Panels which became formal committees of the Council in 1992 and 1993. When the quorum of the Legislature of the HKSAR was raised to not less than one half of all its members in compliance with the requirement in Article 75 of the Basic Law, it was a conscious decision of the Members-elect of the First Legislative Council to keep the quorum of the House Committee at 20. This requirement has remained the same even after the membership of the Legislative Council was increased to 70 in 2012.

13.109 The quorum of Panels and Bills Committees, as mentioned above, remains at one-third of membership (a fraction of the whole number being disregarded) or three members including the chairman, whichever is the

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<sup>117</sup> Rule 24(h) of the House Rules was amended by the House Committee on 12 July 2013 to make it clear that only committee members may draw the attention of the chairman of a committee to the absence of a quorum during meeting.

<sup>118</sup> See Committee on Rules of Procedure's paper LC Paper No. CB(1) 1264/98-99 presented to the House Committee for its meeting on 7 May 1999.

<sup>119</sup> The composition of the Legislative Council from 1991 to 1995 was 60 which did not include the Governor who was President of the Legislative Council. A Deputy President was appointed from among Members of the Council in October 1991 to preside at Council meetings.

### *13. Conduct of business in committees*

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greater. This quorum also applies to the subcommittees of Panels, Bills Committees and House Committee. There was discussion at the Committee on Rules of Procedure in 1999-2000 on whether the quorum requirement for these committees could be relaxed especially when a large number of Members had signified membership. After reviewing the quorum requirements in the parliaments of other jurisdictions, the Committee did not consider it justified to change the existing arrangements by measures such as capping the number of members for these committees or limiting the number of committees that each Member could join. The Committee held the view that Members should be free to join any committees they wished but in considering whether to join any committee, a Member should take into account the time and commitment likely to be involved.<sup>120</sup>

13.110 The quorums of those committees whose members are appointed by the President are relatively higher than those of all other committees. Examples are two 7-member standing committees, namely the Public Accounts Committee and the Committee on Members' Interests; they both require the chairman and 2 other members to make up a quorum.<sup>121</sup> The Committee on Rules of Procedure and the Committee on Access to the Legislature's Documents and Records require the chairman and 3 other members to form a quorum.<sup>122</sup> The Investigation Committee requires the highest number of members to produce a quorum: 5 out of 7 members including the chairman.<sup>123</sup> While it is difficult to trace the historical reasons for the more stringent quorum requirements for these committees, the investigative nature of these committees may explain why a higher attendance of members is considered necessary. In any event, it would not be fair or practicable to have a quorum of less than 3 members given that the chairmen of these committees do not have an original vote.

13.111 The Finance Committee and its Subcommittees, on the contrary, require the lowest quorum size in terms of the ratio of the quorum to the membership size. The quorum of the Finance Committee, which was chairman and 8 members when the membership of the Finance Committee was 59 in the pre-1997 Legislature, has remained unchanged. This quorum has worked out to be about one-seventh of membership, which was the quorum for the two Subcommittees of the Finance Committee. Today, despite

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<sup>120</sup> Progress Report of the Committee on Rules of Procedure (May 1999 to June 2000), para. 4.6 – 4.12.

<sup>121</sup> Rule 72(3A) and Rule 73(2A) of the Rules of Procedure.

<sup>122</sup> Rule 74(2A) and Rule 74A(4) of the Rules of Procedure.

<sup>123</sup> Rule 73A(3) of the Rules of Procedure.

the increase in the number of members of the Finance Committee to 69, the quorum remains the same. One-seventh of membership continues to be the quorum of its two Subcommittees.

13.112 A summary of the quorums of committees is provided at **Appendix 13-A**.

### **Modes of deliberations**

13.113 The Rules in Part H of the Rules of Procedure (Rules of Speaking) apply to the proceedings of a committee unless directed otherwise by the chairman.<sup>124</sup> These rules include the time and manner of speaking, number of occasions on which a member is allowed to speak on a subject matter, interruptions, adjournment of debates, contents of speeches and behaviour when not speaking. In practice, the rules of speaking at a committee meeting are applied with greater flexibility so as to facilitate interactive discussions.

13.114 Generally speaking, the mode of deliberation adopted by most committees is a spontaneous question-and-answer type of communication between members and a responding party (or parties) which is usually the Government. For the discussion of an item on the agenda of the meeting, whether it is a financial proposal in the Finance Committee or a subject on the agenda of a Panel meeting, members are invited to raise questions or express views usually up to a time limit of 5 minutes on each occasion. This mode of deliberation has proven to be an efficient means to ensure that all members present are given an equal opportunity to raise questions or to speak on the subject matter. However it may give rise to the concern that such a mode may result in a lack of discussion and inadequate exchange of views among members on the subject matter before the deliberation is put to an end. It was against this background that a new Rule 22(p) of the House Rules was put in place in March 2001 to allow member to move motions relevant to the subject matter on the agenda of the meeting.

### Motions

13.115 The Rules in Part G of the Rules of Procedure (Motions) only apply to the Council and committee of the whole Council but not other committees.

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<sup>124</sup> Rule 43 of the Rules of Procedure.

### *13. Conduct of business in committees*

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Prior to the incorporation of the OMELCO committees into the committee structure of the Legislature, there was no need as such to deal with motions at meetings of the standing committees and select committees. Financial proposals considered by the Finance Committee, though known as agenda items, were in fact motions to be voted on at the end of the discussion of each item. In the case of the Public Accounts Committee, Committee on Members' Interests and select committees, their deliberations were recorded in their respective reports to the Council. Motions would only be raised in the Council for adopting the committees' reports. Owing to the deliberative nature of the meetings of most committees, in particular Panels and Bills Committees, there were very few cases prior to the First Legislative Council which called for motions to be moved during meetings. In the absence of a procedure governing the processing of motions in committees, the method of dealing with a request for moving a motion rested entirely within the discretion of the chairman of the committee concerned.

13.116 In 1999-2000 an inquiry into the mode of deliberation at committee meetings was conducted by the Committee on Rules of Procedure upon the request of the House Committee. While the question-and-answer mode of deliberation at Panel meetings helped create a more interactive dialogue between members and public officers or other parties attending the meetings, it was difficult for both the committee and the Government to gauge the majority view of the committee members unless a motion was moved, debated and voted on at the meeting. Accordingly the Committee on Rules of Procedure was asked specifically to come up with procedural arrangements for handling motions at Panel meetings.

#### Moving of motions at Panel meetings

13.117 In its report to the House Committee on 9 June 2000, the Committee on Rules of Procedure considered that the flexibility in the conduct of business of a Panel was necessary in order to facilitate its frequent exchange of views with the Government and interested parties on matters of public concern. However, it also considered that the moving of motions was necessary when there was a need for the Panel to come to a view or decision on a specific issue, including urging the Government to take certain actions. As it was not always possible for members of Panels to give advance notice for the moving of motions and that very often such a view or stance would come about in the course of deliberation of the subject matter concerned, the Committee proposed an arrangement to provide Panels with the opportunity to decide on a collective view or stance where necessary without being inhibited by rigid procedural rules. The Committee did not consider it necessary to adopt the procedures governing motions in the Council for the purposes of Panel meetings. Neither did it find it practicable to require notice to be given



for the moving of motions to adopt such a view or stance. The proposed arrangements were as follows:

- (a) any motion to be proposed during a Panel meeting should be directly related to an agenda item of that meeting;
- (b) it should be for the chairman of the Panel to decide on the direct relevance of a proposed motion to the agenda item;
- (c) whether a proposed motion is to be proceeded with should be determined by a simple majority of the members present at the Panel meeting; and
- (d) any proposed motion or amendment to a motion should be presented in written form to facilitate members' consideration and voting.

*Rule 22(p) of the House Rules*

13.118 The House Committee agreed to the recommendations of the Committee on Rules of Procedure and amended Rule 22 of the House Rules by adding a new subrule (p) which reads:

*Rule 22(p) During a Panel meeting, a motion may be proposed if it is considered by the chairman of the Panel as directly related to an agenda item of that meeting. The motion will be proceeded with if agreed by a majority of the members voting. Any proposed motion or amendment to a motion should be presented to the Panel in written form.*

13.119 In 2003-2004, the Committee on Rules of Procedure studied whether a Member should be allowed to move a motion in accordance with Rule 22(p) of the House Rules under "Any other business" on the agenda of Panel meetings. The Committee noted that the requirement of Rule 22(p) that the motion should be related to an agenda item was to ensure that members were made aware of the possibility that a motion could be moved without notice on the subject matter of the agenda item. Such information was important in view of the guideline under Rule 24(l) (later renumbered as Rule 24(n)) of the House Rules that a motion, if passed, became the Panel's decision and should not be reopened for discussion unless with the Panel's permission. If a motion were to be allowed to be moved under "Any other business", it would mean

### *13. Conduct of business in committees*

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that members would not have knowledge of the matter to be decided at the meeting and those members who were not able to attend the meeting would be deprived of the opportunity to express their views and vote on the motion. The Committee therefore concluded that such a motion should not be admissible under Rule 22(p).<sup>125</sup> The Committee's view was noted by the House Committee at its meeting on 21 May 2004.

#### *Rule 24A(e) and (f) of the House Rules*

13.120 In the event that the meeting time of a meeting is extended, Rule 24A(e) of the House Rules provides that a motion which has been proposed and agreed to be dealt with during the original appointed meeting time but has not been so dealt with, may be dealt with and disposed of during the period of extension or continuation of meeting allowed by the chairman and/or the period of extension or further extension agreed by the committee.<sup>126</sup> Rule 24A(f) provides that no new motion is allowed to be proposed after the appointed ending time of the meeting.<sup>127</sup>

#### Moving of motions at Finance Committee meetings

13.121 A provision similar to Rule 22(p) of the House Rules is also found in the current Finance Committee Procedure (Paragraph 37A) and the Procedures of its two Subcommittees (Paragraph 31A of the Establishment Subcommittee Procedure and Paragraph 32A of the Public Works Subcommittee Procedure). This provision was adopted by the Finance Committee in November 2007. Since the proceedings of the Finance Committee and its two Subcommittees in fact are quite different from those of a Panel, it is relevant to examine why this provision was adopted by the Finance Committee in the first place.

#### *Background*

13.122 Unlike Panels, every item on the agenda of the Finance Committee is a proposal which, once approved by the Committee, shall have substantive effect. This has been explained in Chapter 12.<sup>128</sup> In other words, the agenda

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<sup>125</sup> Progress Report of the Committee on Rules of Procedure (July 2003- June 2004), para. 3.22 – 3.29.

<sup>126</sup> See paragraph 13.77 – 13.79.

<sup>127</sup> Progress Report of the Committee on Rules of Procedure (12 July 2007 – 9 July 2008), para. 3.8 – 3.10.

<sup>128</sup> Chapter 12, para. 12.77 – 12.78.

item is by itself a "motion".<sup>129</sup> The items which may be placed on the agenda of a Finance Committee meeting include financial proposals coming from the Financial Secretary, as well as motions from members such as motions to amend procedures, and motions to impose conditions, exceptions or limitations on the Finance Secretary's power delegated to him under section 8(3) of the Public Finance Ordinance (Cap. 2) or under the Capital Works Reserve Fund Resolution (Cap. 2 sub. leg. A) or the Capital Investment Fund Resolution (Cap. 1 sub. leg. B). By virtue of Paragraph 37 of the Finance Committee Procedure, Rules 29 to 35 of the Rules of Procedure which apply to motions in the Council shall apply, with necessary modifications, to the proceedings of the Finance Committee.

13.123 As a general rule, any motions on the agenda of a committee should be subject to amendment unless provided otherwise explicitly in its rules. In the case of a financial proposal, the Finance Committee must discuss and vote on the proposal as it has been tabled.<sup>130</sup> Section 8 of the Public Finance Ordinance stipulates that proposals to change the approved Estimates must come from the Financial Secretary. Therefore only the Financial Secretary may amend the financial proposals on the agenda of the Finance Committee. In the circumstances, the remit of members during the discussion of the proposal is to raise questions and seek to improve the proposal through undertaking by the Government. In the event that diverse views are expressed by members, it becomes difficult for the Government, as well as the membership to gauge the majority view of the Committee. In terms of possible procedural solutions, the Finance Committee may adjourn its proceedings upon a motion moved without notice and allow the matter to be further discussed by the relevant Panel before Finance Committee proceedings on the proposal are resumed, but this may not be what the majority of members would wish to see especially if the proposal is time-critical. As will be seen in the following paragraphs, more practical procedures were devised based on Rule 22(p) of the House Rules.

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<sup>129</sup> Paragraph 22 of the Finance Committee Procedure states that "A Finance Committee agenda item is a discussion paper seeking approval for changes to the approved Estimates of expenditure, financial implications of new proposals where no immediate change to the approved Estimates of Expenditure is necessary, delegation of posers to the Financial Secretary, or other proposals from the Administration, as well as motion from any member of the Finance Committee."

<sup>130</sup> Paragraph 27 of the Finance Committee Procedure.

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#### *Adoption of Rule 22(p) of the House Rules by the Establishment Subcommittee*

13.124 Towards the end of the 2006-2007 session, a number of financial proposals involving controversial issues were considered and had led to extensive discussions with the Government during meetings. On 13 June 2007 at a meeting of the Establishment Subcommittee, the chairman, Ms LI Fung-ying, was asked by a member if he could move a motion without notice to seek a commitment from the Government in relation to its proposal to apply the findings of the 2006 Starting Salaries Survey to the Civil Service. The motion was to express a view on the implementation of the proposal and, if passed, the view would be included as part of its recommendation to the Finance Committee on the proposal. The chairman, after referring to the procedure as set out in Rule 22(p) of the House Rule, adopted that procedure in dealing with the member's request. The proposed motion, which was considered relevant to the agenda item by the chairman and had the support of the majority of members that it should be proceeded with immediately, was moved, debated and put to a vote at the meeting before the Subcommittee voted on the agenda item. The motion was passed and was incorporated as part of the Subcommittee's recommendation to the Finance Committee on the financial proposal.<sup>131</sup>

13.125 Although the procedure of the subcommittees of the Finance Committee should be determined by the Finance Committee, paragraph 25 of the Establishment Subcommittee Procedure (which was approved by the Finance Committee) provides that subject to the Rules of Procedure of the Legislative Council and the procedure endorsed by the Finance Committee, the Establishment Subcommittee determines its own practice and procedure. As there was no procedure in the Establishment Subcommittee's Procedure to deal with a motion without notice for the purpose of expressing a view, the chairman had the discretion to refer to the practices in other committees and to consult members of the Subcommittee before she made her decision. There was no dissenting voice when Ms LI Fung-ying, chairman of the Subcommittee, indicated her wish to adopt the procedure in Rule 22(p) of the House Rules. Her application of the Rule 22(p) to the proceedings of the Subcommittee had accordingly become a precedent.

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<sup>131</sup> At the Establishment Subcommittee meeting on 13 June 2007, members passed a motion moved by Mr Raymond HO in relation to the application of the findings of the 2006 Starting Salaries Survey to the civil service that "This Subcommittee requests that the Government, when implementing the revised benchmark pay for the nine Qualification Groups ("QGs"), should link the pay of the civil servants in these QGs who were appointed on or after 1 April 2000 to the pay of those in the same QGs but appointed after 1 August 2007 in accordance with their years of service."

#### *Adoption of the new Paragraph 37A by the Finance Committee*

13.126 On 6 July 2007, the chairman of the Finance Committee, Ms Emily LAU, also adopted the same procedure in dealing with two motions moved without notice in relation to two agenda items. On 2 November 2007, the procedure was adopted by the Finance Committee and a new Paragraph 37A was included in the Procedures of the Finance Committee and a similar provision in the Procedures of its two Subcommittees.<sup>132</sup> The purpose of providing for this type of motion to be moved in the course of discussing a proposal is to facilitate the Committee or Subcommittee to express a view on the proposal. The motion, which should be submitted in written form, must be considered to be directly related to the agenda item by the chairman and agreed by a majority of members that it should be proceeded with forthwith. Amendment to the motion is allowed so that the final version of the motion passed by the Committee or Subcommittee reflects what the majority of members wish to achieve. Any amendment to the motion should also be in written form and, if considered relevant by the chairman, may be proposed without notice. Members may speak on the motion and amendment to the motion in a joint debate. The rules of speaking in Paragraph 39 of the Finance Committee Procedure, i.e. each member not to speak more than once and not longer than 3 minutes or any time period as decided by the Committee, may be adopted by the chairman for a debate under Paragraph 37A.

#### *Moving of motions under Paragraph 37A of the Finance Committee Procedure*

13.127 Motions without notice were first proposed in Finance Committee under Paragraph 37A of its Procedure during the Committee's discussion on the financial proposals in relation to the Hong Kong section of Guangzhou-Shenzhen-Hong Kong Express Rail Link Project in January 2010. The discussion on the financial proposals lasted from 18 December 2009 to 16 January 2010 over 13 meetings. At the 2<sup>nd</sup> meeting on 18 December 2009, a member requested to move a motion under Paragraph 37A after the Committee had negated a motion to adjourn the discussion on the proposal. The chairman, Ms Emily LAU, put the request to the Committee for its consideration and the request was negated. After 13 rounds of questions and answers on the financial proposal, 18 members proposed another 28 motions to be moved under Paragraph 37A.

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<sup>132</sup> See Finance Committee Paper FCR(2007-2008)33 endorsed by the Finance Committee at its meeting on 2 November 2007 at <http://www.legco.gov.hk/yr07-08/english/fc/fc/papers/f07-33e.pdf>.

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13.128 Throughout the 13 meetings of the Finance Committee, the chairman took into account the advice given to her by the then Secretary General on the practices of the Finance Committee (**Appendix 13-G**) and the advice from the Legal Adviser on the handling of requests to move motions under Paragraph 37A<sup>133</sup>. She requested all proposed motions to be put in writing and be read aloud by the respective movers individually, for the Committee to decide whether each should be dealt with at the meeting. No debate was allowed at this stage as debates should be held on the motions themselves and not on whether the Committee should deal with the proposed motions. The Chairman allowed a division to be claimed without waiting for a show of hands at each voting, and the division bell was rung for 2 minutes on each occasion. After about 2½ hours' voting on the proposed motions, all requests to move motions under Paragraph 37A were rejected by the Committee. The Chairman allowed all members to give their concluding remarks for not more than one minute, and then put the agenda item to vote. The financial proposals were approved.

#### *Number of motions that may be moved by each member*

13.129 Discussion relating to the moving of motions under Paragraph 37A of the Finance Committee Procedure in January 2010 was centred on the fairness and expediency in the way the proposed motions were disposed of at meetings. For example, the Chairman, after taking advice from the Legal Adviser, decided that the proposing of a motion to the Committee for a decision on whether it should be dealt with at the meeting should not be subject to debate. This decision of the Chairman was accepted by members and has become the practice since then.

13.130 In June 2012 when 13 members proposed a total of 982 motions under Paragraph 37A of the Finance Committee Procedure in relation to the funding proposals arising from a proposed reorganization of the Government Secretariat, it was noted that 939 of these motions came from 3 members (at 218, 236 and 485 respectively). Questions began to emerge on whether "a member may move a motion without notice to express a view on the agenda item" in Paragraph 37A should be interpreted to mean a member may only be allowed to move "one" motion on an agenda item throughout the proceedings on that agenda item.

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<sup>133</sup> See advice of the Legal Adviser at the meeting of the Finance Committee at 1:15 pm on 16 January 2010 at <http://www.legco.gov.hk/yr09-10/english/fc/fc/minutes/fc20100116b.pdf>.

13.131 When Paragraph 37A was included in the Finance Committee Procedure (and similar provisions in the Procedures of its Subcommittee), the intention was to enable the Committee to formulate a view on a financial proposal, if there was a need to do so, through a motion without notice. Such motion is subject to amendment so that members may agree on a motion which would best describe the view they wish to convey to the Government in respect of the proposal. The procedure was not framed in such a way as to set a limit for the number of motions allowed to be moved by a member or on an agenda item, nor was it intended to cater for a large number of motions to be moved in respect of a financial proposal. When questions were raised about the interpretation of Paragraph 37A in June 2012, the chairman, Ms Emily LAU, referred to the way the 29 proposed motions in respect of the Express Rail Link Project were handled in January 2010. The chairman noted that the 29 motions were moved by 18 members, with 7 of them proposing more than one motion. Although the question of whether a member could move more than one motion was not considered at that time, Ms LAU did not find any compelling reason for adopting a new interpretation of Paragraph 37A. She therefore allowed all relevant motions to be moved. However, to ensure smooth conduct of business and to facilitate clearer understanding of the way she would conduct the meetings to deal with the agenda item and the large number of proposed motions to be moved on the item, she instructed the Secretariat to set out the relevant procedures and practice in a circular for issue to all members.<sup>134</sup>

13.132 The Finance Committee started to deal with the proposed motions at the 17<sup>th</sup> meeting on 29 June 2012, and by the 20<sup>th</sup> meeting on 6 July 2012, the Committee had disposed of a total of 237 proposed motions with over 700 motions to be dealt with. In view of the fact that some members continued to submit motions under Paragraph 37A, the Government finally decided in early July to rearrange the order of the financial proposals on the agenda for the last meeting of the Finance Committee in the term on 13 July 2012 so as to advance the consideration of the financial proposals related to people's livelihood before the prorogation of the Council on 18 July 2012. As the agenda items on the reorganization of the Government Secretariat were only reached towards the scheduled ending time of the Finance Committee meeting on 13 July 2012, no further proceedings on the proposal relating to the reorganization of the Government Secretariat were undertaken by the Finance Committee before prorogation.

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<sup>134</sup> See LC Paper No. FC125/11-12 (01) at <http://www.legco.gov.hk/yr11-12/english/fc/fc/papers/fcfc-125-1-e.pdf>.

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13.133 As Paragraph 37A of the Finance Committee Procedure was not intended to cater for a large number of motions, there is no notice requirement in the procedure governing the submission of proposed motions. The continued submission of motions in respect of the financial proposal on the reorganization of the Government Secretariat had prompted some members, such as Mr IP Kwok-him, to suggest to the chairman of the Finance Committee at the meeting on 29 June 2012 to amend the procedure in Paragraph 37A.<sup>135</sup> As it would be out of order to deal with any motion to amend the Finance Committee Procedure in the course of considering a financial proposal, the matter was deferred until October 2012, as explained in paragraph 13.139 below.

#### *Imposition of a cut-off time for receiving motions moved under 37A*

13.134 The receipt of 1 633 proposed motions in respect of a financial proposal considered by the Finance Committee in May/June 2014 with some members announcing that more would continue to be submitted had caused the then chairman of the Finance Committee, Mr NG Leung-sing, to make a decision on 13 June 2014 to stop dealing with motions without notice under Paragraph 37A of the Finance Committee Procedure. The financial proposal was related to the advance site formation and engineering infrastructure works at Kwu Tung new development area and Fanling North new development area. The Committee started the deliberation on the proposal on 2 May 2014 and it went on through a series of meetings on 16 May, 30 May and 6 June 2014. By 13 June 2014, 1 633 motions had been put before the chairman to be dealt with under Paragraph 37A. Noting some members' intention to continue to submit motions, the chairman announced at the meeting on 13 June 2014 that, in order to ensure the proper functioning of the Finance Committee, he would stop dealing with any further motions presented to him by members of the Committee under Paragraph 37A.

13.135 In response to some members' question on whether the chairman of the Finance Committee could properly stop dealing with motions submitted in accordance with Paragraph 37A of the Finance Committee Procedure, the Legal Adviser explained at the meeting on 13 June 2014 that although no upper limit was explicitly specified in the procedure, there should be a presumption that no reasonable institution would formulate any procedural

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<sup>135</sup> An official request was made to the chairman of the Finance Committee in his letter dated 9 July 2012 which was circulated to members vide FC165/11-12(01).



rule that would paralyse its own operation or that would make it not possible to function. As the Committee had a duty under the Public Finance Ordinance (Cap. 2) to consider whether to approve financial proposals from the Financial Secretary, the Committee should scrutinize and decide whether or not to approve such proposals within a reasonable period of time. Noting the views of some members on his decision, the chairman allowed members to express their views at the meeting and also at the meeting on 20 June 2014. At the same meeting, the Finance Committee started to vote on the admissible motions<sup>136</sup> out of the 1 633 proposed motions received before 13 June 2014. In the meantime, some members continued to submit proposed motions. By 27 June 2014, 3 924 other proposed motions had been received, making a total of 5 557 proposed motions in respect of the financial proposal.

13.136 On 27 June 2014, having considered members' views on his decision made on 13 June 2014, the chairman of the Finance Committee issued a written ruling (**Appendix 13-H**) reaffirming that he would not deal with those motions received after 13 June 2014. As all admissible motions from the 1633 motions were disposed of on 20 June 2014, the chairman allowed a last round of questions/speeches on the financial proposal before it was put to vote. The financial proposal was approved after a total of 28 hours of discussion.

13.137 Some members held very strong views against the decision of the chairman of the Finance Committee. They considered that the chairman did not have the power to stop dealing with proposed motions under Paragraph 37A of the Finance Committee Procedure presented to him by individual members. Mr WONG Yuk-man filed an application on 8 July 2014 for leave to apply for judicial review to challenge the chairman's decision to stop dealing with members' motions and the Finance Committee's decision to approve the financial proposal. The leave application was heard at the Court of First Instance on 11 June 2015 and the Court's judgment, refusing the leave application, was handed down on 7 October 2015. In respect of the power of the chairman of the Finance Committee to chair meetings, the Court held that the chairman, who is vested with the power to chair meetings under Paragraph 13 of Finance Committee Procedure, has the power to regulate the process of the meetings under its Procedure, including the power to set limits to and

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<sup>136</sup> In gist, of the 1 633 motions, the chairman of the Finance Committee had ruled 899 motions out of order and had asked a member to consolidate his 645 motions into 20 motions but the member refused. In total, the chairman had ruled 68 motions to be in order and referred all but 20 motions (for the reason of the absence of the member proposing the motions) to the committee for voting to decide whether they should be dealt with, and the committee's decision was that none of them should be proceeded forthwith.

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terminate a debate. A summary of the judgment prepared by the Legal Service Division of the Legislative Council Secretariat is at **Appendix 13-I**.<sup>137</sup>

13.138 In October 2014, the Finance Committee considered four financial proposals jointly in relation to the extension of three landfills and development of an integrated waste management facility. The discussion spanned over the period from 31 October 2014 to 9 January 2015. On 21 November 2014, after the Committee had spent a total of 16 hours raising questions on the four proposals, the chairman, Mr Tommy CHEUNG, directed that he would proceed to deal with motions moved under Paragraph 37A of the Finance Committee Procedure after the current round of questions and answers had been completed. He also asked members who wished to propose any further motions to submit them in writing before a cut-off time (i.e. 5:00 pm on 24 November 2014) so that he could have sufficient time to determine whether the proposed motions were directly related to the agenda items under discussion. Any motions submitted beyond the deadline would not be accepted. However, at the Finance Committee meeting on 28 November 2014, the chairman decided not to pursue his earlier decisions as he had understood from the members who intended to move motions under paragraph 37A that no more than 500 such motions would be proposed. As this would not prevent him from conducting meetings of the Finance Committee in an orderly, efficient and fair manner, he agreed not to enforce the cut-off time. The chairman eventually put 702 proposed motions to the Committee for a decision as to whether they should be proceeded with. The Committee decided against proceeding with any of the proposed motions.

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

13.139 On 10 October 2012, Mr IP Kwok-him gave notice to include an agenda item in a Finance Committee meeting to amend the Finance Committee Procedure and Procedures of the two Subcommittees to the effect that each member could only move one motion without notice to express a view or a number of views on an agenda item. In February 2013, the Chairman agreed that a meeting would be convened on 22 February 2013 to deal with Mr IP's motion as well as a motion from Mr Ronny TONG to amend Paragraph 37A of the Finance Committee Procedure to replace "a motion" by "one or more than one motions" and also the equivalent provisions in the

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<sup>137</sup> <http://www.legco.gov.hk/yr15-16/english/fc/fc/papers/fcfc-5-e.pdf>.

Procedures of its Subcommittees. By the close of the deadline for giving notice of amendments to the two motions, the Clerk had received over 1.9 million amendments which, according to the Clerk, would require 408 man-months to complete the preliminary vetting of the facts and accuracy in both Chinese and English languages. If all the amendments were admitted by the Chairman, the voting time to dispose of the amendments alone would take more than 23 868 two-hour meetings. The Chairman then changed the purpose of the meeting on 22 February 2013 to a discussion among members on how to handle the motions to amend the Procedures. At the end of the discussion, members noted that Mr IP would further discuss with members on the subject and the original motions would not be proceeded with until further notice.

*Speaking on a motion moved under Paragraph 37A*

13.140 On 13 July 2012, in considering a funding proposal relating to the procurement of electric buses for trial by franchised bus companies, the Finance Committee agreed to proceed with one of the two motions proposed respectively by two members under Paragraph 37A of the Finance Committee Procedure to express a view on the funding proposal. Each member of the Committee was allowed to speak once for not more than 3 minutes on the motion moved. The motion was passed by the Finance Committee before the funding proposal was put to vote.

Adjournment of proceedings

13.141 The moving of a motion to adjourn proceedings under Paragraph 39 of the Finance Committee Procedure<sup>138</sup> is not uncommon in the Finance Committee. Such an adjournment is sometimes considered necessary when it is found that the proposal requires more discussion of the policy aspects or over the technical details by the relevant Panel.<sup>139</sup> The relevant provision is an adaptation of Rule 40(4) of the Rules of Procedure. Originally, the provision was to cater for the adjournment of the discussion of an agenda item. Where the motion to adjourn discussion was passed, the committee would

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<sup>138</sup> Also Paragraph 32 of the Establishment Subcommittee Procedure and Paragraph 33 of the Public Works Subcommittee Procedure.

<sup>139</sup> An example is the motion to adjourn the discussion on a financial proposal relating to Old Age Living Allowance at the Finance Committee meeting on 26 October 2012. The motion was carried and the matter was referred to the Welfare Services Panel which conducted a public hearing on 29 October 2012 to hear the views of the public. The financial proposal was brought back to the Finance Committee on 30 October 2012 and after discussion held at 14 meetings, it was approved on 7 December 2012.

### *13. Conduct of business in committees*

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move to the next item. However, following a review of the procedure in 1996, members agreed at the Finance Committee meeting on 29 November 1996 to amend the Procedure to require that if discussion on an agenda item were to be adjourned, the consequence would be the adjournment of the entire proceedings. The rationale was that it would be unfair to members and the Government if an item could not be voted on after it had been fully deliberated.<sup>140</sup> This provision in any case does not disable the chairman from exercising his discretion to apply Rule 40(1) of the Rules of Procedure to the Finance Committee. By virtue of Rule 43 of the Rules of Procedure, Rules 36 to 42 apply to the proceedings in a committee unless the chairman of the committee orders otherwise. The discretion therefore rests with the chairman. In practice, the chairman of Finance Committee has not ordered that Rule 40 of the Rules of Procedure cannot apply.<sup>141</sup> Besides, in Paragraph 39 of the Finance Committee Procedure approved by the Finance Committee of the First Legislative Council, the expression "discussion on an item" is kept in the adjournment procedure.

13.142 Regarding the question on whether a motion to adjourn proceedings may be moved at each meeting held consecutively on the same day to consider the same item, the Legal Adviser advised in June 2014<sup>142</sup> that when Paragraph 39 of the Finance Committee Procedure was promulgated, the current arrangement to limit each meeting of the Finance Committee to two hours had not yet been established. In considering whether a motion to adjourn proceedings may be moved at a meeting immediately after a meeting (both of which follow the same meeting agenda) when the same motion has been negatived, the chairman would have to give regard to whether this would give rise to an absurd situation. Based on this advice, the chairman of the Finance Committee, Mr NG Leung-sing, ruled at the second meeting on 27 June 2014 that for the purpose of Paragraph 39 of the Finance Committee Procedure the three meetings scheduled for that day should be regarded as three sessions of the same meeting and that it would not be in order for members to move a motion to adjourn proceedings again for the remainder of the meetings scheduled for the day.

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<sup>140</sup> See FC Paper FCR (96-97)72, para. 5.

<sup>141</sup> An example is the motion moved by Mr Ronny TONG to adjourn the discussion of financial proposal in relation to the Hong Kong section of Guangzhou-Shenzhen-Hong Kong Express Rail Link Project at the Finance Committee meeting on 18 December 2009.

<sup>142</sup> <http://www.legco.gov.hk/yr13-14/english/fc/fc/minutes/fc20140627a.pdf>.

13.143 The same principle was adopted by Mr Tommy CHEUNG, chairman of the Finance Committee in the 2014-2015 session, when the Committee considered the Government's proposal to establish the Innovation and Technology Bureau. A total of 8 two-hour meetings had been held to consider the proposal, including 2 meetings held consecutively on 6 February 2015 and 4 meetings held consecutively on 14 February 2015. On 6 February, the Chairman allowed the debate on a motion to adjourn further proceedings under Paragraph 39 of the Finance Committee Procedure to continue at the second meeting of the day. On 14 February, the Chairman also allowed a motion to adjourn further proceedings to continue at the second meeting on the same day. This arrangement reaffirmed that where the agenda for the consecutive meetings on the same day is the same, all such consecutive meetings are regarded as one meeting for the purpose of the procedure on adjournment of proceedings under Paragraph 39.

13.144 In this respect, some principles have been established in the case of the committee of the whole Council.<sup>143</sup> On 16 May 2012, when the Legislative Council (Amendment) Bill 2012 was on the fifth day of its committee stage proceedings, two Members proposed to move a motion to adjourn the proceedings of the committee. The same adjournment motion had been negatived by the committee of the whole Council on 9 May 2012, when the Bill was on its second day of its committee stage proceedings. The President, in his capacity as the chairman of the committee of the whole Council took the view that since Rule 40 of the Rules of Procedure was silent as to whether a motion to adjourn proceedings could or could not be moved more than once in the same committee stage proceedings on a bill, if those proceedings were going to be lengthy, different Members should be allowed to move a motion to adjourn proceedings at different times provided that the lapse of time since such a motion was last moved was reasonable. Before deciding whether the two proposed motions to adjourn proceedings should be allowed to be moved, the chairman had invited the two Members to speak and he ruled on both occasions that he did not consider that there was any new development since the last debate on the same kind of motion which would have made the debate on the proposed motion different from the previous one. He therefore did not allow the two motions to be moved.

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<sup>143</sup> Chapter 10, para. 10.15 to 10.19.

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13.145 Paragraph 39 of the Finance Committee Procedure is adapted from Rule 40 of the Rules of Procedure as is evident from the cross-reference to it made in Paragraph 39.(**Appendix 13-J**)<sup>144</sup> Any principles established by the President, as Chairman of the committee of the whole Council, in the application of Rule 40 of the Rules of Procedure should be of relevance to the chairman of the Finance Committee. Thus, notwithstanding the number of meetings held to consider a financial proposal, where the discussion is to span over a number of meetings whether on the same day or on different days, the chairman may allow different members to move such a motion at different times provided that the timing is considered by the chairman to be reasonable. The member who proposes to move the motion for a second time would have to explain why this motion should be moved. The chairman has the discretion to decide not to propose the question on it to the committee if he believes that the proposed motion is an abuse of the rules<sup>145</sup> and the debate on this question would not be substantially different from the one held earlier. So far, for a motion to adjourn discussion of an agenda item, it has been the practice that the chairman of Finance Committee would not allow it to be moved the second time after one has been dealt with on the same item.

#### **Voting**

13.146 Decisions of a committee are made by its members through voting. Rules in Part J (Voting) of the Rules of Procedure are only applicable to the Council and committee of the whole Council. Separate rules are provided for committees. Apart from stipulating the voting rights of the chairmen, there is a general provision which applies to all committees: "All matters before the committee (or its subcommittees) shall be decided by a majority of members voting."<sup>146</sup>

#### Interpretation of "a majority of members voting"

13.147 There has been discussion on what constituted "a majority of members voting" in the case of committees. The meaning of "majority vote" in the

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<sup>144</sup> Also see Finance Committee Paper FCR (2007-08)33 at <http://www.legco.gov.hk/yr07-08/english/fc/fc/papers/f07-33e.pdf>.

<sup>145</sup> According to Erskine May (24<sup>th</sup> Edition) (p. 403), the Speaker has power under Standing Order No. 35, if he believes that any dilatory motion is an abuse of the rules of the House, to decline to propose the question on it to the House or to put the question thereon forthwith.

<sup>146</sup> Rules 71(5B), 72(3C), 73(2C), 73A(2C), 74(2C), 74A(6), 75(12AA), 76(8) and 77(13) of the Rules of Procedure.

context of the voting requirement in Annex II to the Basic Law has been discussed in Chapter 7.<sup>147</sup> In relation to the passage of all motions before the Council or a committee of the Council except those otherwise provided for in the Basic Law, the Council endorsed that a majority vote occurs when the members voting in favour of a question exceed half of the number of Members present at the time of voting. This means that only affirmative votes will be counted. Rule 46(4) was therefore added to the Rules of Procedure to clarify this point. However, in the case of committees, there is no such stipulation in Annex II or in any part of the Basic Law. It was concluded by the Members-elect of the First Legislative Council that the voting method in Annex II referred only to the business at Council meetings while the procedure of committees would be for the Council to decide. The voting requirements for committees in the pre-1997 Legislature were adopted in the Rules of Procedure, i.e. only the members voting would be counted. As "abstention from voting" is not regarded as a vote<sup>148</sup>, when the affirmative votes exceed the negative votes with any "abstentions" disregarded, there is a majority vote. This voting requirement is used by all committees and subcommittees of the Council.

#### Ringling of voting bell at committee meetings

13.148 Prior to April 2005, there was no uniform approach on the way to notify members of committees that voting would take place at committee meetings. This was mainly due to the fact that voting bell was only installed in the Chamber and one of the conference rooms in the then Legislative Council Building on Jackson Road.

13.149 During the 2004-2005 session, the Committee on Rules of Procedure conducted a study on the subject in response to the request of the House Committee. The Committee found it reasonable to notify all members of the committee including those who were not present at the meeting venue that a vote was about to take place so that they could return in time to take part in the voting. A recommendation was made to the House Committee in April 2005 to amend the House Rules to provide a procedure in Rule 24(i) and (j) for the ringing of a voting bell. In gist, the procedure provides that before a matter is voted upon at a meeting of a committee, a voting bell shall be rung if the chairman orders, on his own motion or upon request of a member of the

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<sup>147</sup> Chapter 7, para. 7.121 – 7.124.

<sup>148</sup> Chapter 7, para. 7.122. There is no formal counting or record of abstentions in the UK House of Commons.

### *13. Conduct of business in committees*

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committee, unless the committee meeting is held simultaneously with a Council meeting. The committee will proceed to vote immediately after the bell has been rung for 2 minutes. Where no voting bell is provided for the meeting venue or if the bell does not function or may not be rung because a Council meeting is in progress, the chairman shall order the clerk to arrange for members of the committee within the precincts of the Chamber to be notified and voting will take place after 4 minutes. This procedure which was endorsed by the House Committee on 4 April 2005 and incorporated into the House Rules on 29 April 2005 is still in force. A similar procedure was also adopted by the Finance Committee for its meetings as well as the meetings of its two Subcommittees on 27 May 2005.

13.150 On 7 October 2011, following the relocation of the Legislative Council to the new Complex which is four times the size of the former Legislative Council Building, the House Committee passed a motion to suspend Rule 24(i) and (j) of the House Rules to enable the voting bell to be rung for 5 minutes but if the voting bell does not function or may not be rung, the voting to take place 10 minutes after the chairman orders that members of the committee be notified of the voting. The suspension, which will continue to be in place until it is removed or the relevant House Rules are amended, is applicable to the House Committee, Bills Committees, Panels and their subcommittees.

13.151 In the case of the Finance Committee and its Subcommittees, their Procedures provide that if the Committee or Subcommittee is to proceed to a division, a division bell is to be rung for 2 minutes and any further divisions under the same agenda item may be shortened to one minute upon the passage of a motion moved without notice.<sup>149</sup> On 4 November 2011, in line with the interim arrangement endorsed by the House Committee for other committees, the Finance Committee agreed to suspend part of the relevant procedures and put in place an interim arrangement for the division bell to be rung for 5 minutes and if the bell does not function or may not be rung, the voting to take place 10 minutes after the Clerk has been ordered to notify members of the voting. The duration of the division bell shortened with the passage of a motion moved under Paragraph 47 of the Finance Committee Procedure for further divisions on the same agenda item remains at one minute.

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<sup>149</sup> Paragraphs 46 and 47 of the Finance Committee Procedure; Paragraphs 39 and 39A of the Establishment Subcommittee Procedure and Paragraphs 40 and 40A of the Public Works Subcommittee Procedure.



### **Duty visits**

13.152 Any committees may conduct visits in Hong Kong or places outside Hong Kong. From time to time, committees may find it necessary conduct a visit within Hong Kong to gain first-hand information on the issues being inquired into by the committees or on any organizations of interest to them in connection with Council business.<sup>150</sup> Such visits may be decided by the committees at meetings or in response to the invitation from the organizations concerned. The timing and programme of such visits are decided by the respective chairmen after consulting members of the committees concerned and the host organizations. The duration of a visit is kept to within 3 hours where possible.<sup>151</sup> If it is noticed after the deadline for signing up for a visit that the number of members participating is less than 3 or the number has dropped to below 3 after the withdrawal by some members, the chairman may decide to cancel or postpone the visit after consulting other members and the host organization.<sup>152</sup> Members have been reminded that last-minute withdrawal should be discouraged. The Secretariat is therefore required to keep a record of the Members who withdrew from such visits.<sup>153</sup>

13.153 If a committee considers it necessary to conduct a visit to places outside Hong Kong under the name of the committee and/or the funding for the visit is to be charged to individual Members' Overseas Duty Visit accounts<sup>154</sup>, the following mechanism must be followed:

- (a) The purposes of the visit must be in relation to the obtaining of first-hand information on matters and practices in these other places;<sup>155</sup>
- (b) The committee may decide a maximum number of members in the delegation after consulting the parties to be visited, and prepare a budget;

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<sup>150</sup> Rule 29(a) of the House Rules.

<sup>151</sup> Rule 29(b) of the House Rules.

<sup>152</sup> Rule 29(c) and (d) of the House Rules.

<sup>153</sup> Rule 29(e) of the House Rules.

<sup>154</sup> Each Member is allocated an individual Overseas Duty Visit Account to fund any of his official duty visits during the term. This allocation is kept by the Secretariat. In the event that there is any unspent amount at the end of the term, the Secretariat will apportion the total unspent sum to cover the excess amounts incurred by other Members for such visits.

<sup>155</sup> Rule 29A(a) of the House Rules.

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- (c) Prior permission of the House Committee must be sought and the decision of the House Committee should be referred to The Legislative Council Commission for reference;
- (d) Members of the committee joining the visit should participate in the entire programme;<sup>156</sup> and
- (e) Any Members who are not members of the committee may also join subject to not exceeding the maximum number of members on the delegation. They should also take part in the entire programme.

13.154 Any visit proposed in response to an invitation should first be referred to the relevant committee(s) to determine if the visit is related to the business of the Council. There should be transparency in the deliberation on logistical arrangements, including who among the Members would take part in the visit, the itinerary, matters to be studied and places to be visited. Approval of the House Committee is required for any such proposed visits and also for visits which are to be led by the President or any Member under the name of the Council or a committee(s), the funding of which is to be charged to individual Members' Overseas Duty Visit account. The decision of the House Committee must also be referred to The Legislative Council Commission for reference.<sup>157</sup> Details of the mechanism for handling Members' visits outside Hong Kong in response to invitations is set out in Appendix VI of the House Rules and is reproduced at **Appendix 13-K**. A report of such a visit should be submitted to the House Committee after the visit.<sup>158</sup>

#### **Minutes and reports**

13.155 The Clerk to the Legislative Council is responsible for providing every committee and subcommittee of the Council with a clerk.<sup>159</sup> The clerk to a committee has the responsibility to keep the minutes of the meetings of the committee in a manner determined by the committee. These minutes are usually taken to provide a detailed and official record of the deliberations of meetings.

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<sup>156</sup> Rule 29A(b) of the House Rules.

<sup>157</sup> Rule 29A(c) and (d) of the House Rules.

<sup>158</sup> Rule 29A(f) of the House Rules.

<sup>159</sup> Rule 6(7) of the Rules of Procedure.

Keeping of minutes

13.156 Most committees keep some form of minutes or records of discussion to record the deliberations and decisions of the committees. In deciding the form of minutes or records to be used, the guiding principle is that where no report would normally be published to record the deliberations and views of a committee upon the completion of the inquiry into a specific subject, as in the case of Panels, a detailed form of minutes should be used. Where a report will be published upon the completion of work, as in the case of a Bills Committee, the minutes may be presented in a condensed form recording the decisions of the committee, outstanding matters to be followed up at future meetings, undertakings made by the Government, etc. For committees which only keep minutes in condensed form, the audio-recording of the meetings should be kept in the archives for future retrieval. Where needed, the verbatim transcripts of the relevant part of the proceedings of a committee meeting may be produced.<sup>160</sup>

13.157 Generally speaking, minutes should be drafted by the committee clerk within 2 weeks (in the case of Panels) or 3 clear days (in the case of Bills Committees) for comment by the relevant public officers from the Government bureaux concerned. The timeframe for commenting by the Government is usually one week for detailed minutes and 3 clear days for those in condensed form.<sup>161</sup> This arrangement only applies to regular meetings which last for not more than 2 hours. For longer meetings, some flexibility is allowed to take into account the capacity of the Secretariat, frequency of meetings and the duration of the meetings concerned. Rule 25 of the House Rules provides guidelines on the preparation of minutes and verbatim records of committee meetings.

Submission of reports

*Tabling of reports in the Council*

13.158 The Rules of Procedure require the following committees to submit reports:

- (a) The Public Accounts Committee is required to table its report upon the report of the Director of Audit on the accounts of the

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<sup>160</sup> Progress Report of the Committee on Rules of Procedure (July 2001 - June 2002), para. 3.5 – 3.10.

<sup>161</sup> Progress Report of the Committee on Rules of Procedure (July 2001 - June 2002), para. 3.5 – 3.10.

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Government or value for money audits within 3 months (or such longer period as may be determined by the President<sup>162</sup> or the Council respectively) of the date on which the report is laid on the Table of the Council;<sup>163</sup>

- (b) The Committee on Members' Interests has the responsibility to report to the Council and make recommendations including a recommendation as to a sanction under Rule 85 of the Rules of Procedure;<sup>164</sup>
- (c) An Investigation Committee is required to report to the Council as soon as it has completed investigation of the matter referred to it;<sup>165</sup>
- (d) The Committee on Rules of Procedure is required to report from time to time its deliberations and may make recommendations to the Council;<sup>166</sup>
- (e) The Committee on Access to the Legislature's Documents and Records may make reports to the Council as it considers appropriate;<sup>167</sup>
- (f) The House Committee may report to the Council on the consideration of any policy matter it has referred to a Panel after the report from the Panel has been received;<sup>168</sup>
- (g) A Bills Committee is required to advise the House Committee in writing of its deliberations as soon as it has completed consideration of the bill allocated to it, and report further to the Council;<sup>169</sup>
- (h) A Panel is required to make at least one report to the Council during a session and, if so requested or on its own motion, make a report to the House Committee on a particular matter;<sup>170</sup> and

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<sup>162</sup> In accordance with section 12 of the Audit Ordinance (Cap. 122).

<sup>163</sup> Rule 72(9) and (10) of the Rules of Procedure.

<sup>164</sup> Rule 73(1) of the Rules of Procedure.

<sup>165</sup> Rule 73A(12) of the Rules of Procedure.

<sup>166</sup> Rule 74(4) of the Rules of Procedure.

<sup>167</sup> Rule 74A(10) of the Rules of Procedure.

<sup>168</sup> Rule 75(13) of the Rules of Procedure.

<sup>169</sup> Rule 76(9) of the Rules of Procedure.

<sup>170</sup> Rule 77(14) of the Rules of Procedure.

- (i) A select committee is required to report to the Council as soon as it has completed consideration of the matter or bill referred to it, or if it is of the opinion that it will not be able to complete consideration of the matter or bill before the end of the term.<sup>171</sup>

13.159 A report for tabling in the Council should first be endorsed by the committee. The draft report is prepared by the relevant clerk and endorsed by the chairman of the committee before it is issued to members of the committee for discussion and endorsement at a meeting or, if so agreed by members of the committee, circulated to members for endorsement. Procedure for the tabling of a paper in the Council is provided in Rule 21 of the Rules of Procedure. Permission of the President is required for the report to be presented by a Member and, in this case, usually by the chairman of the committee. A copy of the report should be sent to the Clerk to the Legislative Council who will arrange for its distribution to all Members of the Council. It is common practice to specify the date of the tabling of the report. If the date is not specified, the Clerk will arrange for it to be tabled at the opening of the next meeting of the Council and the laying and publication of the report will be recorded in the minutes of the proceedings of that meeting. The same procedure is followed if any member wishes to submit a minority report.<sup>172</sup>

*Submission of reports to the House Committee*

13.160 It is only in the case of the Bills Committee that provision has been made to require the committee to advise the House Committee in writing of its deliberations before reporting further to the Council.<sup>173</sup> As a bill studied by a Bills Committee is referred to it by the House Committee, the Bills Committee is required to notify the House Committee after it has completed its work to enable the House Committee to be advised of the Bills Committee's view on whether the bill is ready for resumption of second reading debate in the Council. Similarly, it has also been a practice for any committee or subcommittee of the House Committee to report its deliberations to the House Committee on any matter referred to it by the House

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<sup>171</sup> Rule 78(4) of the Rules of Procedure.

<sup>172</sup> On 6 June 2012, when the report of the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products was tabled in the Council, Dr Philip WONG, then Deputy Chairman of the Subcommittee presented a "minority report" to the Council on certain issues related to the distribution of Lehman Brothers-related Minibonds and structured financial products. See *Hansard* pp. 14349 – 14350.

<sup>173</sup> Rule 76(9) of the Rules of Procedure.

### *13. Conduct of business in committees*

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Committee.<sup>174</sup> The same also applies to subcommittees of Panels which are required to report to the relevant Panels upon completion of their work.<sup>175</sup>

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

13.161 As mentioned in Chapter 1<sup>176</sup>, when the former OMELCO committees became committees of the Council in 1992 and 1993, there was an understanding that these committees had been working effectively for many years and their mode of operation should continue. These committees have since then been guided by the House Rules which provide quite substantial details on what they are expected to do in their daily operation. Among the more than 50 committees working at the same time in the Legislative Council, some 85% are committees which have adopted the interactive question-and-answer type of communication in their deliberations. The practices of these committees therefore have great impact on the operation of other committees. On the other hand, there are also instances where there is a need for a more focused and structured discussion and more ordered conduct of business at meetings. The paragraphs below describe the mode of operation of the House Committee, Bills Committee and Panels and some of their practices which have become the common practices of other committees.

#### House Committee

13.162 The House Committee comprises all Members except the President and it normally meets every Friday afternoon at 2:30 pm when the Council is in session. Through meetings of the House Committee, every Member has the opportunity to understand and participate in deciding how matters arising from previous Council meetings would be followed up and to prepare themselves for the business to be dealt with at least at the next two meetings of the Council. The House Committee therefore plays an important role in steering the work of the Council, in particular overseeing the scrutiny of bills and subsidiary legislation<sup>177</sup> and considering how issues of public importance may be handled.<sup>178</sup> As the House Committee may consider any matters relating to the business of the Council<sup>179</sup> and may provide procedural guidelines for Bills Committees, Panels and subcommittees<sup>180</sup>, it provides a

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<sup>174</sup> Rule 20(k) of the House Rules.

<sup>175</sup> Rule 22(u) of the House Rules.

<sup>176</sup> Chapter 1, para. 1.48.

<sup>177</sup> Rule 75(4) of the Rules of Procedure.

<sup>178</sup> Rule 7(d), Rule 10 and Rule 13(a) of the House Rules.

<sup>179</sup> Rule 75(11) of the Rules of Procedure.

<sup>180</sup> Rule 75(8) of the Rules of Procedure.

forum for Members to raise any matters of concern relating to the Council and to decide the way forward. The Rules of Procedure have given the House Committee the responsibility to make recommendations to the President on a wide range of matters including matters to be included on the Agenda of the Council.<sup>181</sup> The rationale behind this is that while the final decision on such matters still rests with the President, the recommendation of the House Committee represents the majority view of Members and should have a bearing on the President's decision-making process.

13.163 In view of the special role of the House Committee, the need for all Members to have adequate time to prepare for any items to be discussed at its meetings has become an important consideration for the chairman when deciding the agenda of the House Committee. In order that all Members should have an equal and fair opportunity to propose items for inclusion onto the agenda, a deadline for proposing agenda items is stipulated in the House Rules. Any proposed items for a meeting on Friday should reach the clerk to the House Committee not later than 5 pm on the Tuesday before the meeting concerned. Urgent items may be accepted only with the permission of the chairman.<sup>182</sup> The chairman may refuse to include in the agenda any item not within the House Committee's scope of work, e.g. matters which should be dealt with by The Legislative Council Commission<sup>183</sup>. The agenda of the meeting is issued on Wednesday afternoon together with the relevant papers which may also be sent on Thursday if they are not yet ready by Wednesday.

13.164 On the basis of the agenda items of each meeting, the clerk to the House Committee, after consulting the chairman, will assess the time required for the meeting and notify the clerk to the Finance Committee of the anticipated ending time of the meeting if a meeting of the Finance Committee is to be held after the House Committee meeting on the same day. If the House Committee cannot finish its business before the scheduled starting time of the Finance Committee, the meeting will be suspended and resumed after the Finance Committee meeting to deal with the unfinished business on the agenda.<sup>184</sup>

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<sup>181</sup> Rules 23(4), 37(2), 37(3), 78(2) of the Rules of Procedure. Rule 13(a), 17(b) and (c), 22(a) and 34 of the House Rules.

<sup>182</sup> Rule 20(f) of the House Rules. Where the Tuesday falls on a public holiday, the deadline for proposing agenda items is normally 5:00 pm on Monday, subject to the chairman of House Committee's concurrence.

<sup>183</sup> The Legislative Council Commission is not a committee of the Council. It is a statutory body established in 1994 to provide, among other things, administrative support and services to the Council through the Legislative Council Secretariat and to supervise the operation of the Secretariat. See Chapter 4, para. 4.3 to 4.38.

<sup>184</sup> Rule 20(e) of the House Rules.

### *13. Conduct of business in committees*

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13.165 Matters to be decided by the House Committee are usually set out in the reports, discussion papers or proposals attached to the agenda. As the nature of the items for discussion relates to the handling of the business of the Council, no discussion is normally allowed on the contents of the business, such as the contents of a bill or a proposed motion unless it is to facilitate the House Committee to decide whether a committee or subcommittee should be formed for detailed examination of the matter or permitted by the chairman under special circumstances. Any Member may ask to speak on the subject by raising his hand or by pressing the "Request to Speak" button. When the Member is called to speak by the chairman, he may speak from his own seat. If he is seeking an answer from the Member who proposes the item for discussion or from any staff member of the Secretariat, the chairman may allow other Members who also wish to speak on the same subject to speak before inviting the Member or staff member concerned to respond. There is no hard and fast rule on how many times a Member is allowed to speak on each item, but the chairman has the duty to ensure that business on the agenda is transacted in an orderly and efficient manner. It is for the chairman to decide how much time is allowed for Members to speak on each item and how many rounds of speaking may be allowed. Where no objection is expressed when a course of action is proposed, it is normally assumed that the proposal has the support of the House Committee. Where diverse views have been expressed, the chairman may ask for the matter to be voted on either by a show of hands or by electronic voting.

13.166 Where a matter is raised in the course of discussion which calls for a decision which is not part of the original proposal, the chairman may decide if the matter should be set out in a separate proposal to be discussed at a future meeting. The principle is that Members should have the opportunity to consider and to consult their own political parties or affiliations on any proposal to be decided at the House Committee.

#### *Special meetings with the Chief Secretary for Administration*

13.167 The House Committee also provides a regular forum for Members to communicate directly with the Chief Secretary for Administration. This forum is held in the form of a special meeting of the House Committee usually two to three times a year on any subject which the Chief Secretary for Administration or Members wish to raise. The question-and-answer mode of deliberation is adopted for these meetings. Members who have pressed the "Request-to-Speak" buttons to indicate their wish to ask questions are registered according to the number of times each of them has asked questions at previous special meetings during the term and in the order when the buttons were pressed. In determining Members' order of asking questions, the chairman will make reference to this order and may make variations to allow



an even spread of Members from different political groupings and affiliations in asking questions.

13.168 On occasions, the House Committee may hold special meetings to invite Government representatives to brief Members on major issues of public concern. On 24 February 2012, a special meeting was held to discuss with the Secretary for Home Affairs and other Government representatives on issues relating to allegations of conflict of interests in the West Kowloon Reclamation Concept Plan Competition.<sup>185</sup> On 8 February 2013, noting that the Chief Secretary for Administration had held the first meeting of the Steering Committee on Population Policy, the House Committee decided to invite her to brief Members at a special meeting.<sup>186</sup>

#### *Subcommittees of the House Committee*

13.169 The House Committee may appoint any number of subcommittees to assist its consideration of subsidiary legislation and proposed motions to endorse the appointment or removal of senior judges under the Basic Law.<sup>187</sup> It may also appoint subcommittees to study an issue of public concern which falls outside the purview of Panels or straddles the policy areas of many Panels or any matter relating to the Council.<sup>188</sup> In the latter case, the House Committee has decided that there should be not more than 8 such subcommittees, including those appointed by Panels, operating at any one time.<sup>189</sup> A waiting list is kept and maintained by the House Committee which will decide which subcommittee on the list may be activated. For details, please see paragraph 13.175 – 13.179 below.

#### *Parliamentary Liaison Subcommittee*

13.170 The Parliamentary Liaison Subcommittee is one of the subcommittees of the House Committee appointed at the start of the legislative term whose tenure lasts for the entire term. It assists the House Committee to promote liaison and develop good relationships with other parliamentary bodies such as parliamentary friendship groups. Its activities include the sending of delegations to visit the parliamentary friendship groups of other parliaments,

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<sup>185</sup> Subsequent to the special meeting, a select committee was set up to inquire into the involvement of Mr LEUNG Chun-ying, then a candidate for the Chief Executive Election, in the West Kowloon Reclamation Concept Plan Competition.

<sup>186</sup> The special meeting on population policy was held on 22 March 2013.

<sup>187</sup> See Chapter 11, para. 11.143.

<sup>188</sup> Rule 75(12) of the Rules of Procedure and Rule 20(j) of the House Rules.

<sup>189</sup> Rule 26(a) of the House Rules.

### *13. Conduct of business in committees*

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and hosting liaison functions for parliamentary delegations visiting Hong Kong. Members of the Subcommittee also take turns to receive visiting Parliamentarians and delegations from overseas.

#### *Subcommittee on Members' Remuneration and Operating Expenses Reimbursement*

13.171 The Subcommittee on Members' Remuneration and Operating Expenses Reimbursement is another subcommittee of the House Committee appointed at the start of the legislative term which meets on a regular basis throughout the term. This Subcommittee, originally named the Subcommittee on Review of Allowances for Members of the Legislative Council, was first appointed on 10 July 1998 by the House Committee of the First Legislative Council to look into the financial arrangement for reimbursement of operating and setting up expenses for Members and other related matters. The Subcommittee has been re-appointed by the House Committee of every subsequent term of the Legislative Council to continue to consult Members and the public and to discuss with the Government matters related to Members' remuneration and operating expenses reimbursement. Details about the work of the Subcommittee are provided in Chapter 4.<sup>190</sup>

#### Bills Committees

13.172 Bills Committees are appointed by the House Committee for the study of bills which the Committee considers to merit further scrutiny. Any Member, including one who is the Member in charge of a bill<sup>191</sup>, may join a Bills Committee. A Bills Committee must have at least 3 members. As explained in Chapter 11, the number of Bills Committees that may be operating at any one time is limited to 16. A Bills Committee, once it has commenced work, is expected to conduct scrutiny of the bill quickly and should report to the House Committee if it cannot complete its work within 3 months.<sup>192</sup>

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<sup>190</sup> Chapter 4, para. 4.61 – 4.62 and Appendix 4-E.

<sup>191</sup> It has been an established practice that the Member in charge of a bill would not seek to serve as chairman or deputy chairman of the relevant Bills Committee as he may be perceived as being unable to act in a fair manner in chairing meetings or in steering the Bills Committee's deliberations on opposing views or proposed Committee Stage amendments which he opposes. See Progress Report of the Committee on Rules of Procedure (October 2012 to July 2013), para. 3.8 – 3.16.

<sup>192</sup> In practice, as most Bills Committees are not able to complete their work within 3 months, the clerk to the Bills Committee, after consultation with the chairman, will put down in the Position Report on Bills Committees and subcommittees the need of any Bills Committee which needs to work beyond 3 months for the attention of the House Committee. No verbal report will be called by the chairman.

13.173 With the support of a clerk and a legal adviser, a Bills Committee considers the general merits and principles of the bill and the detailed provisions including the drafting and legal aspects of such provisions and any proposed amendments relevant to the bill through examining it clause by clause.<sup>193</sup> For a complex bill, it is common practice for the Bills Committee to draw up a work plan which sets out the order of and timeframe for the study of the various aspects of the bill. It is also common practice to invite deputations and relevant professional bodies or trade associations to give views on the bill and, for this purpose, public hearings may be conducted. This is usually done at an early stage of the scrutiny work or when some major changes to the bill are being considered.

13.174 The Bills Committee also considers any proposed amendments to the bill coming from the Government or from Members, and it may also propose amendments to the bill if it has the consent of its members to do so. The decision of the Bills Committee is not binding on any Member. Details of the way a Bills Committee scrutinizes a bill are provided in Chapter 11.

### Panels

13.175 The primary function of a Panel is to monitor and examine policy matters referred to it by a member of the Panel or by the House Committee. In a resolution passed by the First Legislative Council on 8 July 1998 the terms of reference of each of the 18 Panels were set out, with each responsible for a particular policy portfolio corresponding to the portfolios of one or more Directors of Bureaux in the Government. The terms of reference, which have been updated on 4 occasions since 1998<sup>194</sup>, are provided in **Appendix 13-L**.

13.176 Since 1 March 2002, as a standing arrangement agreed between the House Committee and the Government, all major legislative and financial proposals are referred to the Panels concerned for preliminary discussion on the policy aspects of the proposals.<sup>195</sup> Based on the Government's legislative programme which is published at the start of a new session, Panels schedule their meetings in such a manner as to enable discussion of these proposals in good time. Where such items may not be included in the monthly regular

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<sup>193</sup> Rule 76(7) of the Rules of Procedure.

<sup>194</sup> A resolution was passed by the Council at its meeting of 11 July 2007 to re-align the policy areas of the 18 Panels based on the new schedule of responsibilities of the Directors of Bureaux in the Government Secretariat. See <http://www.legco.gov.hk/yr06-07/english/counmtg/papers/cm0711cb3-804-e.pdf>.

<sup>195</sup> The practice of bringing important legislative proposals to Panels for preliminary discussion started in 1996, as explained in para. 6.27.

### *13. Conduct of business in committees*

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meetings of the Panels, special meetings are held. It is also common practice for Panels to conduct public hearings, usually on Saturdays but also on weekdays, to listen to the views of stakeholders and the community at large on any major proposals or new initiatives of the Government before they are formally presented to the Council (or the Finance Committee in the case of a financial proposal) or put in place.

13.177 It is a common practice that at the start of each meeting of a Panel, the chairman will invite members to suggest items for discussion at the next regular meeting(s). This is to ensure that there will be sufficient time for the Government to provide the relevant information or discussion papers and for the clerk to provide the relevant background briefs. Where there is disagreement over the inclusion of any items on the agenda, the Panel will decide. Based on the decision of the Panel, the clerk after consulting the chairman will provide the wording of the item and the time allowed for the discussion on that item. In scheduling the time allocation for each item on the agenda, the chairman takes into account the extent of discussion likely to take place on the item and whether parties other than those from the Government would also be invited to attend the meeting. Generally speaking, the time allocated for each item ranges from 30 minutes to 1.5 hours. For items where deputations are received, the time to be allocated will depend on the number of deputations attending the meeting.

13.178 Special meetings may be scheduled or regular meetings be extended to deal with urgent items or any items which cannot be dealt with within the two-hour time slot of the meeting concerned. In considering whether an urgent item should be added to the agenda of a meeting, the chairman would particularly have regard to whether there is sufficient notice to members, the Government and other parties concerned and whether relevant information about the discussion item would be available to members at a reasonable time before the meeting. If there is a request to alter the order of items on the agenda, the chairman, before making a decision on the request, should consider whether there is good reason for it, whether the change will cause inconvenience to other attendees and whether reasonable notice can be given to members about the change before making a decision on the request.

#### *Joint Panel meetings*

13.179 A Panel may decide to hold a joint meeting with another Panel or other Panels on a subject matter which straddles the portfolio of more than one Panel or any matter of common interest. The Panels concerned shall decide which chairman should preside at the joint meeting. If the chairmen of

two Panels cannot agree on how the issue straddling the work of the Panels should be handled, the chairman of the House Committee or, in his absence, the deputy chairman of the House Committee should be consulted on whether one of the Panels should take up the issue or a joint meeting should be held.<sup>196</sup> Where the joint meeting involves more than two Panels, the chairman of the House Committee may be consulted as to whether the Panel having a prominent interest in the subject matter should convene the meeting, with members of other interested Panels invited to attend. In the event that an informal briefing for all interested Members is to be held, no quorum is required. Members attending the briefing should be reminded that with respect to their attendance at the informal briefing, they are not covered by the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).<sup>197</sup>

13.180 For calculation of the quorum for a joint meeting, a member who is member of both Panels should be counted as one member of the joint meeting. The quorum is one-third of the membership of the joint meeting including the chairman, with a fraction of the whole number being disregarded.<sup>198</sup> In other words, if there are 10 members in each of the two Panels with 2 Members being members of both Panels, the total number of members of the joint meeting is 18. The quorum is therefore 6 members including the chairman.

#### *Subcommittees of Panels*

13.181 A Panel may appoint subcommittees to study specific issues. Two or more Panels may appoint joint subcommittees to study any matters of common interest to the relevant Panels. Membership of a joint subcommittee is confined to the members of the Panels concerned. The quorum is one-third of the membership of the joint subcommittee including the chairman, with a fraction of the whole number disregarded.<sup>199</sup>

13.182 In proposing the appointment of a subcommittee, whether a subcommittee under a Panel or more than one Panel, the terms of reference of the subcommittee should be decided by the Panel(s) concerned and such terms of reference should be issue-specific or project-specific. A work plan should

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<sup>196</sup> Rule 22(k) and (l) of the House Rules.

<sup>197</sup> Rule 22(m) of the House Rules.

<sup>198</sup> Rule 22(n) of the House Rules.

<sup>199</sup> Rule 22(s) and (t) of the House Rules.

### 13. *Conduct of business in committees*

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be drawn up with an estimation of the working timeframe.<sup>200</sup> A subcommittee should complete its work within 12 months of its commencement and report to the Panel(s) at least once in the session. If it is anticipated that the subcommittee needs to work beyond 12 months, it should first obtain the endorsement of the relevant Panel(s) and report to the House Committee with justifications for an extension of the 12-month period.<sup>201</sup>

#### Activation of the work of subcommittees

13.183 Both the House Committee and Panels may form subcommittees to study issues of public concern or policy issues. On 2 March 2007, the House Committee endorsed the recommendations of the Committee on Rules of Procedure on the arrangements for the appointment, operation and servicing of such subcommittees. These arrangements included, among others, provision that the maximum number of subcommittees appointed by the House Committee and by Panels on specific issues that may be in operation at any one time should be kept at 8.<sup>202</sup> Where the number of subcommittees formed has reached this maximum number, a queuing system will be activated with a waiting list formed according to the date on which the subcommittees were formed.<sup>203</sup> Each subcommittee should complete its work within 12 months and should give justifications for an extension of the 12-month period.<sup>204</sup>

13.184 According to Rule 26(b) of the House Rules, the House Committee may activate subcommittees on the waiting list when the number of Bills Committees in operation is less than 16 after having considered the following:

- (a) the number of vacant slots for Bills Committees;
- (b) the number of bills likely to be introduced to the Council in the next 3 months;
- (c) the number of subcommittees already or likely to be formed for the study of subsidiary legislation or consideration of appointment or removal of judges; and

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<sup>200</sup> Rule 22(u) of the House Rules.

<sup>201</sup> Rule 22(v) and Rule 26(c) of the House Rules.

<sup>202</sup> Rule 26(a) of the House Rules.

<sup>203</sup> Rule 26(b) of the House Rules.

<sup>204</sup> Rule 26(c) of the House Rules.

- (d) the availability of resources in the Secretariat.<sup>205</sup>

13.185 Nevertheless, Rule 26(e) of the House Rules provides that House Committee may allow exceptions to the arrangements above, i.e. in Rule 26(a), (b) and (c), where it considers appropriate.

13.186 To ensure the completion of the work of subcommittees on policy issues within a specified time frame so that slots may be vacated within a reasonable timeframe for the activation of other subcommittees, the House Committee agreed at its meeting on 15 November 2013 to adopt the following principles for the activation, operation and extension of period of work of such committees:

- (a) where a subcommittee considers it necessary to extend the period of its work beyond 12 months but there are subcommittees on the waiting list awaiting activation, the House Committee, may, if considered appropriate, give permission for the subcommittee to continue to operate for 3 more months in the first instance after the expiry of its period of work, to allow time for it to wrap up its current stage of work, after which the subcommittee will, if necessary, be placed on the waiting list for re-activation of work. Upon re-activation, the subcommittee shall complete its work within the remainder of the extension period it originally sought, unless decided otherwise by the House Committee. The House Committee may decide the order of activation/re-activation of subcommittees on the waiting lists; and
- (b) the number of subcommittees under each Panel operating at the same time should not exceed 2. For this purpose, a joint subcommittee will be counted as one subcommittee for each of the Panels concerned.

13.187 At the same meeting of the House Committee, Members also noted that following the allocation of additional resources to the Secretariat in the 2013 Resource Allocation Exercise the Secretariat would be able to provide service to two more subcommittees on policy issues on top of the quota of 8 specified in Rule 26(a) of the House Rules. Accordingly, since 1 April 2014,

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<sup>205</sup> Rule 26 of the House Rules.

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a total number of 10 such subcommittees have been allowed to operate at any one time.



## Chapter 14

### Conduct of Inquiries

14.1 Committees play an important role in holding the Government to account. Given the historical background of the nature of the various committees in the Legislative Council, each has its own special role and particular way to call the Government to account for its policies and operation. This Chapter contains a detailed examination of the power of committees to summon witnesses under section 9 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) ("the Powers and Privileges Ordinance"). As will be seen, the power of summons is conferred on them by the Council either by specific provisions in the Rules of Procedure or by its special authorizations, with reference to specific cases and Court rulings where relevant. Cross-references are made to the relevant parts in Chapters 2 and 13 where details of the Powers and Privileges Ordinance and the application of the Ordinance to committees as a whole have been discussed.

14.2 Unlike committees in some parliaments in jurisdictions which have also adopted the Westminster model of parliamentary practice, the exercise of the power to summon witnesses in the Hong Kong legislature happens sparingly. While standing committees are provided with this power under the Powers and Privileges Ordinance<sup>1</sup>, the need for them to summon witnesses is rare especially in the case of the Finance Committee and the Public Accounts Committee, as explained in Chapter 12 (Financial Procedures).<sup>2</sup> It is normally only in circumstances where persons other than serving public officers are required to appear before these standing committees that a summons rather than a normal invitation would be considered, but such circumstances seldom arise. Since the Powers and Privileges Ordinance came into force in 1985, there has been only one occasion where a witness was summoned by the Public Accounts Committee. That witness was a retired public officer who was the controlling officer in relation to a value-for-money audit report which was the subject of an inquiry of the Public Accounts Committee.

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<sup>1</sup> Section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

<sup>2</sup> One such occasion was in 2005 when the Public Accounts Committee ordered Mr. LEUNG Chin-man, a former Director of Buildings, to attend before it at a hearing on 1 December 2005 and on such other days as he might be required to give evidence for the purpose of its consideration of Chapter 3 of the Director of Audit's Report No. 45 concerning "Development of a site at Sai Wan Ho" (more commonly known as the Grand Promenade). Also see Chapter 12, para. 12.101.

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14.3 The situation in other, non-standing, committees is rather different. Committees which have the function to monitor the work of the Government or study issues of public concern, such as Panels, very often encounter situations where information from outside the Government is necessary. Where the matter which requires detailed inquiry falls outside the terms of reference of a Panel or straddles a number of Panels or where the members who wish to take part are not members of the Panel undertaking the inquiry, there may be a need to form a select committee or to set up a subcommittee under the House Committee to conduct the inquiry.<sup>3</sup> If it is considered that witnesses should be summoned to give evidence to the committee, special authorization from the Council will be sought.

14.4 This Chapter focuses on the inquiries conducted with the power to summon witnesses under section 9(1) of the Powers and Privileges Ordinance, while the general procedure for conducting business in a committee, including a select committee, without the power to summon witnesses is provided in Chapter 13<sup>4</sup>. The historical development of committee inquiries, showing how they have become an important tool for Members to examine issues of wide public concern and how the power to summon witnesses is exercised in the course of an inquiry, is considered in this Chapter.

### Purposes of an inquiry

14.5 In the parliamentary setting, the conduct of an inquiry by a committee is the process undertaken by the committee to examine and inquire into a matter referred to it by the House and to report on the matter with opinions and recommendations, dissenting from the report or supplementing it, as may be proposed by committee members.<sup>5</sup> Following the same principle, a committee in the HKSAR Legislature considers or inquires into a matter and exercise such power given to it within the scope of the decision (or resolution of the Council) made in relation to the inquiry. The committee may determine its work plan and decide whom it should invite or order to appear before it so as to collect evidence and establish the facts surrounding the matter subject to its inquiry. Upon completion of its work, the committee is required to submit a report with its findings and recommendations to the Council.

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<sup>3</sup> An example is the decision of the House Committee to set up a subcommittee instead of a select committee to consider the issues arising from Lehman Brothers-related Minibonds and Structured Financial Products on 13 October 2008. See Report of the Subcommittee, para. 1.3 – 1.4.

<sup>4</sup> Chapter 13, para. 13.22 – 13.23, 13.48, 13.53.

<sup>5</sup> See *House of Commons Procedure and Practice* (Canada), 2<sup>nd</sup> Edition, pp. 973 – 974.

## **Historical background of the conduct of inquiries**

### Nature of inquiries

#### *Before July 1997*

14.6 As explained in Chapter 6<sup>6</sup>, in the early years of the pre-1997 Legislature, standing committees were formed to examine bills and financial and public works proposals. Following a major review of the Standing Orders in 1929, amendments were made to provide that "any matter before the Council may be referred by the President, or upon a motion duly passed by the Council to a select committee." Select committees were appointed by the President on an ad hoc basis to deal with a specific matter, including a matter in relation to a petition. They were dissolved upon completion of their work.

14.7 In the 1968 Standing Orders, a set of procedures was provided to guide the way select committees in the conduct of their business. These procedures were similar to those adopted by other legislatures for conducting inquiries on bills and other matters. It was also expressly provided in the same Standing Orders that a "bill" could be a "matter" which the Council might refer to a select committee, with the exception of the Appropriation Bill. The Standing Orders also provided that a petition presented before the Council would be referred to a select committee if at least 10 Members rose in support of such a referral.<sup>7</sup> Apart from examining bills or handling petitions, select committees were also appointed to inquire into matters of public concern. Examples included a select committee appointed in 1971 to inquire into the costs of running English-speaking schools and a select committee appointed in May 1985 to consider and report on the measures to resolve the problems involved in the prosecution and trial of complex commercial crimes.

14.8 In July 1985, the Powers and Privileges Ordinance which declared and defined the powers, privileges and immunities enjoyed by the Legislative Council and its members was enacted. Section 9(1) of the Ordinance provides that, subject to section 13 (objection to answer questions or produce papers) and section 14 (privileges of witnesses), the Council or its standing committee may order any person to attend before it and to give evidence or produce any paper, book, record or document in the possession or under the control of such person. As for other committees, including select committees, section 9(2) provides that the powers conferred by section 9(1) on a standing committee

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<sup>6</sup> Chapter 6, para. 6.4.

<sup>7</sup> See Chapter 13, para 13.22.

## 14. Conduct of Inquiries

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may be exercised by any other committee which is specially authorized by a resolution of the Council in respect of a specific matter or question.

14.9 On 29 January 1992, a select committee was appointed with authority to exercise the powers under section 9(1) of the Powers and Privileges Ordinance, i.e. the power to summon witnesses, to review the arrangements for the 1991 Legislative Council elections. This was the first time section 9(2) of the Powers and Privileges Ordinance was invoked to enable a select committee to exercise such power. The select committee invited interested individuals and organizations to make representations to it on the issues under review, and 45 persons attended before the select committee at 9 public meetings but none of them were ordered by summons.

14.10 After Panels became formal committees of the Council in 1993, they were given a mandate to monitor Government policies and study issues of public concern. It was often in the course of their deliberations on an issue which had caused wide public concern that the proposal to conduct an inquiry arose. Given that a Panel had no power to summon witnesses, the matter was often referred to the House Committee for a decision on whether authorization of the Council for the Panel to summon witnesses should be sought. In 1993, the Panel on Security was authorized by the Council to summon witnesses for the purpose of inquiring into the circumstances surrounding the termination of the service of a former Senior Assistant Director of the Independent Commission Against Corruption.<sup>8</sup> In 1995, the Panel on Manpower was also authorized to inquire into the labour disputes involving imported workers under the Special Labour Importation Scheme for the Airport Core Programme Projects, with the power to summon witnesses.<sup>9</sup>

14.11 On occasions, the House Committee might consider it more appropriate to appoint a select committee to inquire into specific matters. In such cases, a proposed resolution was put to the Council for appointing a select committee and, if so desired, also for authorizing the select committee to exercise the power to summon witnesses. Apart from the case mentioned in paragraph 14.9 above, the pre-1997 Legislature also authorized two other select committees to conduct inquiries with the power to summon witnesses:

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<sup>8</sup> 4 witnesses provided evidence to the Panel, including 2 civil servants and 2 private individuals.

<sup>9</sup> Of the 34 witnesses called for the inquiry, there were 12 representing 8 private companies being contractors of the airport projects. These witnesses provided detailed information on how imported workers were recruited, how they provided accommodation, transportation and catering for the workers and the method of payment for these workers through the agents in paying their wages.

- (a) a select committee to inquire into matters relating to the Kwun Lung Lau Landslip (1994)<sup>10</sup>; and
- (b) a select committee to inquire into the sudden departure of a former Director of Immigration (1996)<sup>11</sup>.

*After the establishment of the HKSAR*

14.12 Under Article 73(10) of the Basic Law, the HKSAR Legislature has the power and function to summon persons concerned to testify or give evidence when exercising any of the functions and powers mentioned in Article 73. Article 48(11), on the other hand, also provides that the Chief Executive of HKSAR has the power and function to decide, in the light of security and vital public interests, whether government officials or other personnel in charge of government affairs should testify or give evidence before the Legislative Council or its committees. The power of committees to exercise the power and function given to the Legislative Council under the Basic Law to summon witnesses has been reflected in the Rules of Procedure of the HKSAR Legislature and in 2009 was held by the High Court to be a power given to committees of the Council under the Basic Law<sup>12</sup>.

14.13 Generally speaking, any matters which may be included on the Agenda of the Council for debate, whether directly related to the operation of the government or concerning the interest of the community as a whole, are matters of public interest which the Legislative Council has the duty to study and, if needed, to inquire into in order to hold the Government to account. Since July 1998, section 9(2) of the Powers and Privileges Ordinance has been invoked on the following occasions:

- (a) a select committee to inquire into the problems surrounding the commencement of operation of the New Hong Kong International Airport (1998)<sup>13</sup>;

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<sup>10</sup> Of the 34 witnesses invited to appear before the select committee, 28 were civil servants and representatives or employees of public bodies (including Government advisory bodies and publicly funded organizations such as the Hong Kong Housing Authority and most of the local universities) and 6 were persons from the private sector (including private companies, professional bodies, constructing and consulting firms and persons in their individual capacities). Among these 34 witnesses, 21 were invited to attend and 13 were summoned to attend.

<sup>11</sup> 10 witnesses were summoned to attend meetings of the select committee.

<sup>12</sup> See Chapter 2, para. 2.27 and Chapter 13, paras. 13.3 – 13.6.

<sup>13</sup> Of the 27 witnesses summoned to appear before the select committee, 20 of whom were civil servants and representatives/employees of public bodies and 7 of whom were persons from the private sector.

## 14. *Conduct of Inquiries*

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- (b) a select committee to inquire into the building problems of public housing units (2001) <sup>14</sup>;
- (c) a select committee to inquire into the handling of the outbreak of the Severe Acute Respiratory Syndrome (2003) <sup>15</sup>;
- (d) a subcommittee of the House Committee to study issues arising from Lehman Brothers-related Minibonds and Structured Financial Products (2008) <sup>16</sup>;
- (e) a select committee to inquire into matters relating to the post-service work of Mr LEUNG Chin-man (2008) <sup>17</sup>; and
- (f) a select committee to study Mr LEUNG Chun-ying's involvement as a Member of the Jury in the West Kowloon Reclamation Concept Plan Competition and Related Issues (2012) <sup>18</sup>.

### **Preparatory work**

14.14 As mentioned in Chapter 13 <sup>19</sup>, where a select committee is to be appointed, it is normal practice for a preparatory subcommittee to be set up under the House Committee to draft a proposed resolution which provides the scope of the inquiry unless this has already been done by the Panel which proposes to conduct the inquiry. The resolution is usually moved by the chairman of the preparatory subcommittee, if such is formed, or the chairman of the House Committee in accordance with a decision of the House Committee. If the inquiry is to be conducted by a Panel, the proposed

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<sup>14</sup> Representatives from 15 private companies were summoned to give evidence to assist the select committee to understand the alleged malpractices in the building industry leading to the excessive uneven foundation settlement in a completed 40-storey public housing block in Tin Shui Wai and in two other blocks in Sha Tin, as well as other major building problems in two other housing projects. In the course of the inquiry, the representatives were ordered to produce evidence relating to piling records, settlement analysis, staff records, etc. which were of use to the select committee's study of the building problems. The select committee heard a total of 85 witnesses, 45 of whom were civil servants and representatives/employees of public bodies and 40 of whom were persons from private entities.

<sup>15</sup> The select committee heard 69 witnesses, 67 of whom were civil servants and representatives/employees of public bodies and 2 of whom were persons from private entities.

<sup>16</sup> Of the 63 witnesses summoned to appear before the Subcommittee, 4 were government officials, 3 were representatives/employees of a public body, 39 were persons from private entities and 16 were investors.

<sup>17</sup> 10 witnesses were summoned to appear before the select committee.

<sup>18</sup> 17 witnesses were summoned to appear before the Select Committee. No corporate witnesses were summoned.

<sup>19</sup> Chapter 13, para. 13.42.

resolution to seek authorization for exercising the power to summon witnesses is normally moved by the chairman of the Panel. The notice period of not less than 12 clear days before the day on which a motion is to be moved also applies to these proposed resolutions unless the President agrees to dispense with such notice.<sup>20</sup>

14.15 The size of a select committee is determined by the President who appoints the chairman, deputy chairman and members of the committee after taking into account the recommendations of the House Committee.<sup>21</sup> It has also been the practice for the preparatory subcommittee to propose the membership size and for the House Committee to conduct an election at its meeting to determine the Members to be proposed to the President for appointment as chairman, deputy chairman and members of the committee. This procedure does not apply to a Panel or a subcommittee of the House Committee which elects its own chairman and deputy chairman, and whose membership is open to those members who have signified membership before a specified deadline.

### **Process in conducting an inquiry**

#### Duration of inquiry

14.16 The date by which a select committee is required to report back to the Council is normally not specified in the resolution seeking its appointment or authorization to exercise the power to summon witnesses. The time required to complete an inquiry is determined by the committee itself having regard to the complexity of the matter concerned. Nevertheless, as a select committee must be dissolved at the end of a term<sup>22</sup>; the objective is to ensure that the inquiry is completed well before that in order that the Council has a reasonable opportunity to take note of the report through debate on a motion worded to that effect. If the select committee is of the opinion that it will not be able to complete its work in time, it shall so report to the Council.<sup>23</sup>

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<sup>20</sup> Rule 29(1) of the Rules of Procedure.

<sup>21</sup> Rule 78(2) of the Rules of Procedure.

<sup>22</sup> Rule 78(5) of the Rules of Procedure.

<sup>23</sup> Rule 78(4) of the Rules of Procedure.

## *14. Conduct of Inquiries*

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### Chairmanship

14.17 All meetings are chaired by the chairman or, in his/her absence, by the deputy chairman. In the event of the temporary absence of the chairman and deputy chairman, the arrangement set out in Rule 79(3) of the Rules of Procedure will be followed, i.e. the committee may elect a chairman to act during such absence.

### Practice and Procedure

14.18 It is common practice for a committee undertaking an inquiry to adopt a pre-determined set of practices and procedures in order to maintain predictability and consistency in the committee's mode of operation, including procedural decisions which it has to make in the course of its work. This practice safeguards the integrity and credibility of the findings and views expressed in the committee's report and enhances its accountability to the Legislative Council and the public at large.

14.19 The first committee which invoked the power to summon witnesses was the Panel on Security (1993) which adopted a specific set of practice and procedure for the inquiry concerned, based on the procedure set out in Rule 79 (Procedure of Select Committees) of the Rules of Procedure (**Appendix 14-A**). In the course of its work, the Panel developed a set of procedures in accordance with section 15 of the Powers and Privileges Ordinance to deal with possible claims of public interest immunity by persons appearing before the Panel under section 14(1) of the Powers and Privileges Ordinance. This set of procedures was formalized into a resolution of the Legislative Council, which was passed on 25 May 1994. The procedure was further amended in November 1996 and April 1997 by a select committee which inquired into the circumstances surrounding the departure of a former Director of Immigration. The resolution passed by the Council on 16 April 1997 which has been referred to up to this date is at **Appendix 14-B**.

14.20 The practices and procedures adopted in subsequent inquiries were developed through practical experience following publication of the First Report of the Select Committee on Building Problems of Public Housing Units in 2003.<sup>24</sup> New arrangements may be incorporated into the practice and procedure of a committee in the course of its inquiry if considered appropriate by the committee. Examples include the current arrangements for dealing

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<sup>24</sup> See First Report of the Select Committee on Building Problems of Public Housing Units, Volume I, para. 1.10 at [http://www.legco.gov.hk/yr02-03/english/sc/sc\\_bldg/reports/rpt\\_1.htm](http://www.legco.gov.hk/yr02-03/english/sc/sc_bldg/reports/rpt_1.htm).



with claims for public interest immunity and the arrangements adopted in the light of the *sub judice* rule, as explained in the latter part of this Chapter<sup>25</sup>.

14.21 In determining its own practice and procedure, a committee conducting an inquiry may draw reference from the practice and procedure of previous similar committees, taking account of the following principles<sup>26</sup>:

- (a) the practice and procedure should be fair and seen to be fair, especially to parties whose interests or reputation may be affected by the proceedings of the committee;
- (b) there should be maximum transparency in its proceedings as far as practicable;
- (c) the practice and procedure should facilitate the ascertaining of the facts relevant to, and within the scope of, its inquiry, as set out in the committee's terms of reference, which do not include the adjudication of the legal liabilities of any parties or individuals;
- (d) its proceedings should be conducted with efficiency; and
- (e) the cost of the proceedings should be kept within reasonable bounds.

14.22 The practice and procedure adopted by a committee conducting an inquiry is available on the official website of the Legislative Council and is issued to every witness summoned to appear before the committee. As noted in para. 14.20, there may be a need to amend the Practice and Procedure in the course of the committee's work. Any such amendments are duly recorded and explained in the report of the committee published upon completion of its work. For illustration, the practice and procedure adopted by the Select Committee to inquire into matters relating to the post-service work of Mr LEUNG Chin-man in 2009 is provided at **Appendix 14-C**.

#### Work plan

14.23 It has been the practice of committees conducting inquiries to

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<sup>25</sup> See para. 14.69 – 14.70.

<sup>26</sup> See First Report of the Select Committee on Building Problems of Public Housing Units, Volume I, para. 1.11.

## *14. Conduct of Inquiries*

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determine the areas of their study and to draw up a work plan at the start of the inquiry having regard to the resolution passed by the Council. This practice was first adopted by the Select Committee on Building Problems of Public Housing Units appointed in February 2001. In the resolution which appointed this Select Committee and authorized it to exercise the power to summon witnesses, the Committee's remit was "to identify positive recommendations for a complete overhaul of the overall policies and system of public housing, which should include examining whether the Housing Authority should be reorganized, split or abolished, so as to raise the quality of public housing". On the basis of this resolution, the Select Committee decided on three areas of investigation: (a) the building problems in the production of specified public housing units; (b) the working mechanisms within the responsible authorities and relevant parties and; (c) their policies, procedures, practices and institutional structure which might have a bearing on the quality of public housing.<sup>27</sup> For each area of inquiry, the Select Committee identified the witnesses who were likely to provide the information required for its task and drew up a work plan which contained the working schedule and details of the work involved at each phase of the inquiry. The work plan of the Select Committee on Building Problems of Public Housing Units is provided at **Appendix 14-D** for illustration.

### Invitation for information and views from the public

14.24 In view of the interest of the public in the matters examined in an inquiry, it has been a practice for committees to invite the public to provide information which may assist in understanding the circumstances surrounding the matters concerned. The first committee which invited the public to provide information was the Select Committee on Kwun Lung Lau Landslip and Related Issues appointed in October 1994. In this particular case, apart from inviting the relevant Government departments, public bodies and parties concerned to provide submissions/evidence, the Select Committee also invited members of the public to give information and views on the matters under inquiry. As a result, 25 submissions were received from interested organizations and members of the public.<sup>28</sup>

14.25 In most cases, the views submitted to the committee conducting an inquiry are written representations. It is for the committee to decide whether any of the persons who submitted views should be invited or summoned to appear before the committee to give evidence as witnesses. The

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<sup>27</sup> First Report of the Select Committee on Building Problems of Public Housing Units, Volume I, para. 1.7.

<sup>28</sup> See Report of the Select Committee on Kwun Lung Lau Landslip and Related Issues, paras. 2.4 – 2.5.

Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products published a notice on the website of the Legislative Council to invite investors who met the requisite criteria to indicate their interest in assisting the Subcommittee by responding to the invitation in writing for consideration by the Subcommittee. An advertisement was also placed in 3 local newspapers to draw readers' attention to the said invitation. The Subcommittee subsequently took evidence from 16 investors.

### Scheduling of meetings

14.26 A schedule of meetings is usually drawn up at the start of the committee's work after consulting members of the committee, but the chairman has the discretion to change the date and time of meetings.<sup>29</sup> In order to ensure a quorum throughout the whole of each meeting, the clerk assists the chairman in consulting members on their availability and informs members of the schedule of meetings as soon as practicable. Separate notices of meetings with the agenda are then issued nearer the time of each meeting.

14.27 Meetings are usually held in the Legislative Council Complex but, where considered appropriate, the committee may meet at a venue outside the Complex as an alternative. In 1996, the Panel on Manpower held some of its meetings away from the then Legislative Council Building during its inquiry into the circumstances surrounding the labour disputes involving imported workers under the Special Labour Importation Scheme. The Panel agreed to conduct closed meetings to obtain evidence from a number of witnesses who requested to remain anonymous.<sup>30</sup>

### Quorum

14.28 For a select committee, Rule 78(3) of the Rules of Procedure provides that its quorum shall be one-third of the members excluding the chairman (a fraction of a whole number being disregarded). The quorum of a Panel is governed by Rule 77(8) which requires a quorum of 3 members including the chairman or one-third of the members including the chairman (a fraction of the whole number being disregarded), whichever is the greater. The quorum of a subcommittee of the House Committee is determined by the House

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<sup>29</sup> Rule 79(2) of the Rules of Procedure.

<sup>30</sup> Report of the Legislative Council Panel on Manpower on the Enquiry into the Circumstances Surrounding the Labour Disputes involving Imported Workers under the Special Labour Importation Scheme for the Airport Core Programme Projects and Related Issues (July 1996) para. 1.9.

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Committee and a quorum requirement similar to Rule 77(8) is usually adopted. The clerk to the committee is required to draw to the attention of the chairman the absence of a quorum as and when it occurs. It is common practice to require the presence of a quorum at all times during any meeting of an inquiry.

### Voting

14.29 Decisions of a committee are made by a majority of the members present and voting, which is evidenced by a show of hands or, if so claimed, by a division which is recorded. Abstentions are not counted for the purpose of determining the result of the vote. Where a division is claimed, the arrangements in Rules 79(5) and 79(6) of the Rules of Procedure, which are procedures for select committees, are followed. The clerk to the committee will ask each member separately how the member wishes to vote and record the votes accordingly. Neither the chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided in which case the chairman shall have a casting vote. As explained in Chapter 13<sup>31</sup>, under Rule 79A(1) of the Rules of Procedure, a casting vote shall not be exercised in such a way as to produce a majority vote in favour of the question put.

### Participation of other Members

14.30 While meetings held in public will be attended by members of the committee, Members who are not members of the committee may also be in attendance at its open meetings, but they may not speak at the meetings. If any such Members wishes to direct any questions to a witness, he/she should put the questions in writing and pass them to the chairman without interrupting the proceedings, and the chairman will decide whether or not to ask the questions. No Member who is not a member of the committee may be present at any internal deliberations or closed hearings of the committee.<sup>32</sup>

### Disclosure of interests

14.31 Rules 83A and 84 of the Rules of Procedure relating to Members' pecuniary interest shall apply to the proceedings of a committee conducting an inquiry. In gist, a member must disclose the nature of any direct or indirect pecuniary interest he/she may have in a matter before moving any motion or

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<sup>31</sup> Chapter 13, para. 13.97.

<sup>32</sup> See First Report of the Select Committee on Building Problems of Public Housing Units, Volume 1, Appendix I(4), para. 18 – 19.

amendment relating to the matter, or speaking on any such matter. This requirement applies to each meeting the member attends in the course of the inquiry. Where the interest concerned is a direct pecuniary interest, the member may not vote on the matter, except where his interest is in common with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of Government policy.<sup>33</sup> Under Rule 84(4), a motion to disallow a Member's vote on the ground of his direct pecuniary interest may be moved without notice.<sup>34</sup>

### Conduct of meetings

14.32 All meetings of a committee conducting an inquiry must be held in public unless the chairman otherwise orders in accordance with any decision of the committee.<sup>35</sup> As a general principle, all meetings to obtain evidence from witnesses are held in public.

### *Public and closed hearings*

14.33 The committee may require the attendance of witnesses at its meetings for ascertaining or verifying any facts relating to the subject of inquiry by oral examination. Such examination is usually conducted in open hearings. Members should only ask questions for the purpose of ascertaining or verifying facts, and should not make comments or statements during these hearings.

14.34 Witnesses are generally required to be examined on oath. In accordance with section 11(2) of the Powers and Privileges Ordinance, the taking of an oath may be administered by the chairman of the committee or by the member presiding in the absence of the chairman. A witness who is lawfully ordered<sup>36</sup> to attend to give evidence is entitled, in respect of such evidence, to the same right and privilege as before a court of law. Such protection, however, is not available in respect of the same information that is given outside of the proceedings of the committee. Accordingly those witnesses as well as members of the public and media who observe the proceedings of the committee are reminded at the beginning of each open

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<sup>33</sup> For example, if the matter under consideration by the Council relates to Government fees and charges where the interest of any individual Members in the matter is the same as that of the rest of the population, Members are not required to disclose the nature of the interest concerned under Rule 83A of the Rules of Procedure.

<sup>34</sup> The procedure for the disallowance of vote on grounds of direct pecuniary interest is provided in Rule 3 of the House Rules.

<sup>35</sup> Rule 79(2) of the Rules of Procedure.

<sup>36</sup> See para 14.65 – 14.66.

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hearing that dissemination or disclosure of the evidence given at the hearing outside the proceedings is not protected under the Powers and Privileges Ordinance, and the media should obtain legal advice as to their legal responsibilities over their reporting of the inquiry.

14.35 A witness may request to give evidence at a closed hearing for various reasons. Any such requests are considered on a case-by-case basis and on their own merits. It is only in exceptional circumstances, for example where the evidence to be obtained is *sub judice*, that such requests are acceded to. As a matter of principle, any information obtained by way of oral evidence or in the form of documents provided at closed hearings must not be disclosed. However, there may be situations where certain information obtained at a closed hearing is required to be verified at another hearing and with another witness. In fairness to the witness who has provided the information, the source of the information is not disclosed unless it is necessary to make the question comprehensible to the other witness(es) provided that the identity of the witness who provided the information will not be revealed.<sup>37</sup>

### *The issue of a summons*

14.36 To facilitate the smooth conduct of business, it is common practice for a witness to be informed about the scope of the evidence to be ascertained after he/she is served with a summons. The witness is notified by a summons issued under the hand of the Clerk to the Legislative Council by direction of the President.<sup>38</sup> In every summons issued to a witness, there must be stated the name of the witness, when and where he is required to attend and the particular documents (if any) he is required to produce.<sup>39</sup> A sample of a summons is provided at **Appendix 14-E**.

14.37 The covering letter to a summons which orders a witness to attend the committee's hearing includes the following for the information of the witness:

- (a) the resolution passed by the Legislative Council in which the terms of reference of the committee are set out;

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<sup>37</sup> An example is the handling of investigation reports, tender papers, contract documents and minutes of internal meetings produced to the Select Committee on Building Problems in Public Housing Unit. The Select Committee adopted the practice that if information contained in such documents was to be used at a hearing, the source of information would only be disclosed if it was necessary to do justice to the witness or to enable him to fairly understand a question. However, where possible, the identity of the witness who provided the information should not be disclosed. See Select Committee's First Report, Volume I, para. 1.16 – 1.17.

<sup>38</sup> Section 10(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

<sup>39</sup> Section 10(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

- (b) a list of the papers, books, records and documents which the witness is ordered to produce in relation to the areas of evidence to be obtained at the hearing; in addition, the witness is provided with a list of issues and questions on which he is requested to provide a written statement to facilitate the taking of evidence from the witness at the hearing;
- (c) a copy of the Powers and Privileges Ordinance in which the duties and privileges of a witness are stipulated; and
- (d) the practice and procedure adopted by the committee for its proceedings.

### *Examination of witnesses*

14.38 As noted in paragraph 14.37 (b), in order to enhance the transparency of the committee's proceedings, the witness is generally requested to provide a written statement, which is made available to persons observing the proceedings from the public galleries, including the media, after the witness has formally produced the statement to the committee. The purpose of having such a written statement available is to facilitate accurate reporting of the witness' oral statement at the start of the hearing which is not a response to any question but is whatever the witness wishes to tell the committee. The provision of a written statement is not compulsory.

14.39 Questions may be put to the witness at a hearing with the chairman asking the first question, followed by other members who have indicated their intention to ask questions by a show of hands. On occasions, for more thorough and effective questioning, each member of the committee may be assigned a specific area for raising questions. This division of responsibilities helps facilitate a more systematic examination of the facts during the hearing and more in-depth discussion on the evidence collected during the internal deliberations of the committee especially during discussions on the draft report.

14.40 The chairman is required to ensure that equal opportunity is given to each member to raise questions on the evidence produced by a witness, and to ensure that the hearing is conducted in a structured manner. A member who is called to ask questions may ask questions and follow-up questions within an agreed timeframe. However, the chairman has the discretion to decide whether the question is relevant to or within the scope of the inquiry as set out in the terms of reference of the committee, and therefore whether the question can be asked. Part I (Rules of Order) of the Rules of Procedure applies to a committee conducting an inquiry, with the exception of Rule 45(1) which only

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applies to a select committee. Rule 45(1) provides that the Chairman of a committee of the whole Council or the chairman of any standing or select committee, after having called the attention of the committee to the conduct of a member who persists in irrelevance or tedious repetition of his own or other members' arguments in the discussion, may direct him to discontinue his speech. As this subrule does not apply to other committees, the chairmen of these other committees cannot direct a Member to discontinue his speech on grounds of irrelevance or tedious repetition of arguments.<sup>40</sup> However, where a member's conduct is considered by the chairman to be grossly disorderly, the chairman may order the member to withdraw immediately from the committee for the remainder of that meeting by application of Rule 45(2).<sup>41</sup> The decision of the chairman on a point of order is final.<sup>42</sup>

14.41 Unless excused by the President under section 13(2) of the Powers and Privileges Ordinance or justifiably permitted after claiming his right or privilege under section 15, a witness summoned under section 9 of the Ordinance must answer all lawful and relevant questions from or produce documents required by the committee. If the witness refuses to do so, he/she commits an offence under section 17 of the Ordinance and is liable to prosecutions (but only with the consent of the Secretary for Justice under section 26. Under section 13(2), the President may, upon report by the chairman of the committee conducting the inquiry of the witness' refusal to answer any question put to him or to produce any document on the ground that it is of a private nature and does not affect the subject of inquiry, excuse the answering of such question or the production of such document, if such is considered not relevant by the President. If the witness claims privilege from disclosure of evidence on grounds of public interest immunity pursuant to section 15, the procedure as set out in the Council's resolution concerning the usage and practice in regard to the determination of claims of public interest privilege in **Appendix 14-B** will be followed. The privilege which may be claimed by the witness does not include privilege against self-incrimination, i.e. that answering such question or production of such document may tend to expose the witness or his/her spouse to proceedings for an offence or for the recovery of a penalty, as provided in section 16 of the Ordinance but there is protection under section 16(2) for the witness against use of such incriminating evidence against him in criminal proceedings.

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<sup>40</sup> See Chapter 13, para. 13.89 – 13.92.

<sup>41</sup> Rule 45(2) of the Rules of Procedure.

<sup>42</sup> Rule 44 of the Rules of Procedure.



14.42 A witness may be accompanied by other persons, who may include legal adviser(s), to assist the witnesses concerned at a hearing. While the witness may seek advice from the accompanying persons, the latter may not address the committee.

14.43 A witness who is ordered by summons to appear before a committee to give evidence or to produce any document may be eligible to claim an allowance at specified rates to recompense loss of income or expenses incurred for attending the hearings. The details are in **Appendix 14-F**.

### *Internal deliberations*

14.44 Subject to Rule 79(2) of the Rules of Procedure, the committee may hold closed meetings to deliberate on procedural matters (except the adoption of the Practice and Procedure which is done at an open meeting), to review the progress of its work, to determine the logistical arrangements for hearings, to deliberate the evidence obtained, to discuss and agree on the draft report of the committee and other matters which are of a confidential nature. Members including the chairman and the deputy chairman should not disclose any information about the internal deliberations held or documents considered at these meetings. However, if so authorized by the committee, the chairman and the deputy chairman may respond to media enquiries, having regard to the arrangements set out in Rule 27 of the House Rules.

### Handling of documents

14.45 All documents submitted to the committee are numbered by document and by page. Each member of the committee is given a copy of the documents produced to the committee, unless advised otherwise with the consent of the committee.

14.46 During the hearing, information folders are made available to witnesses for their reference. These contain documents which are relevant to the areas of evidence in respect of which evidence is to be obtained from the witness at the hearing and to which members of the committee are likely to refer in the course of evidence-taking. In addition to documents provided by the witness, the folders include documents provided by other witnesses and other reference material.

14.47 Requests made by witnesses for classifying certain information or documents as confidential should be fully justified. In considering such requests, the committee should examine carefully the circumstances of each case and ensure that the principles of fairness, maximum transparency and consistency are upheld.

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### Minutes of proceedings

14.48 Minutes of evidence, usually in the form of a verbatim transcript in their original language, are kept for each meeting at which witnesses are examined. Relevant parts of the draft transcript are given to a witness whose evidence is recorded in it for his or her sight and correction, if any, before the transcript is incorporated into the minutes of evidence. Such a witness is required to sign an undertaking that he or she would not make any copy of the draft and would return it to the committee before a specified date. The corrections which a witness may propose are limited to editorial inaccuracies or matters of fact which do not materially alter the general sense of an answer, and the committee reserves the right to make the final determination on the accuracy of any verbatim transcript. All transcripts should be confirmed at meetings of the committee before they can be made available to the public. Any member of the public may obtain a copy of the confirmed transcripts for meetings held in public upon the payment of an administrative fee determined by The Legislative Council Commission.

14.49 A witness or a prospective witness may ask for copies of the transcripts of evidence taken in public. These include the unpublished and/or uncorrected version of transcripts. If the committee considers appropriate, the verbatim transcripts will be provided to the witness or prospective witness, with the unpublished and/or uncorrected status of the transcripts clearly stated. A sample of the procedure adopted by the Select Committee on Building Problems of Public Housing Units for the provision of transcripts of evidence to witnesses and prospective witnesses is at **Appendix 14-G**.<sup>43</sup>

14.50 For hearings held in closed meetings, no transcripts will be provided for any person including the witnesses concerned. All witnesses however are provided with the relevant parts of the draft transcripts of evidence for sight and correction. They are required to sign an undertaking which includes a requirement that no part of the draft transcript in question may be divulged.

14.51 For meetings not attended by any outside party, the minutes of meetings are normally presented in a condensed form, recording the committee's decisions, follow-up actions required, procedural matters and declarations of interest made by members. Verbatim record of such meetings may be prepared on the direction of the committee.

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<sup>43</sup> Annex II to Appendix I(4) to First Report of Select Committee, Volume I.

14.52 All proceedings of hearings and meetings are sound-recorded. Members of the public may obtain copies of the sound recordings of hearings and meetings held in public upon the payment of an administrative fee.

Report on the inquiry

14.53 After completion of the collection of evidence, the committee proceeds to the deliberative stage. Under the direction of the chairman, a preliminary summary of findings and observations is produced by the clerk for discussion by the committee. On the basis of the findings in the summary, the committee considers the issues identified and examines whether all necessary facts have been ascertained before it makes its conclusions and draws up its recommendations. Where it is considered necessary, the committee may invite or summon a witness to attend a further hearing to enable members to verify certain facts collected in the first round of hearings.

14.54 Thereafter a draft report will be prepared for discussion and agreement by the committee before seeking comments from any witnesses whose reputation may be adversely affected by the report. To ensure that the procedure is fair and seen to be fair to these witnesses, it is an established practice that any party, person or organization against whom adverse comments are intended to be made in the committee's report will be given an opportunity to comment on relevant parts of the draft findings and observations of its report. Such witnesses must undertake to keep the draft report confidential, but this does not prevent them from consulting their own legal advisers. The comments received will be taken into account by the committee before its report is finalized.<sup>44</sup>

14.55 Where the committee intends in its report to refer to information obtained in closed hearings, an extract of the relevant part of the report in draft form should be provided to the witness concerned for comment. The comments received will be taken into account by the committee before its report is finalized.

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<sup>44</sup> An example is the Select Committee to Inquire into the Matters Relating to the Post-service Work of Mr LEUNG Chin-man. The Select Committee provided relevant parts of the draft findings and observation of its report to the named parties, where it considered it appropriate to do so, to give them the opportunity to comment. After the comments were received from the parties concerned, the Select committee held 4 meetings comprising a total of 15 hours to consider the comments carefully before finalizing its report. See Select Committee's Report, para. 1.22 – 1.23.

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14.56 Based on the deliberations of the committee on the comments made by the witnesses, a final draft report together with the committee's recommendations is produced for endorsement by the committee in one or more closed meetings. The content of the draft report is considered and approved paragraph by paragraph. Where amendments are proposed to any particular paragraph, they are immediately debated and voted on. The minutes of proceedings which record all proceedings including the amendments proposed and results of voting are produced and attached as an appendix to the report.

14.57 The report of the committee, with the minutes of proceedings and the minutes of evidence, if evidence was taken, must then be laid on the Table of the Council by the chairman of the committee.<sup>45</sup> To facilitate parties concerned to respond to the report in public upon its being presented, an advance copy of the report is made available to them, including the witnesses, approximately 30 – 90 minutes before the start of the Council meeting at which the report is presented, so that they can prepare their responses if needed. The parties are, however, requested to undertake not to divulge the contents of the report before the start of the Council meeting.

14.58 At the same meeting when the report of the committee is tabled in the Council, the chairman of the committee also addresses the Council on the report. Where a minority report is made by any member of the committee, that report is usually tabled at the same meeting and the member who presents it also addresses the Council.<sup>46</sup> It is common practice that a motion will be moved by the chairman of the committee for the Council to take note of the report at a meeting shortly after the tabling of the report in the Council.

14.59 A full version of the committee's report and evidence obtained from the inquiry (except evidence which is classified as confidential) is kept in the Legislative Council Library for public access. The full text of the committee's report in both official languages is also available on the Legislative Council's website.

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<sup>45</sup> Rule 79(10) of the Rules of Procedure.

<sup>46</sup> The "minority report" presented by Dr Philip WONG, then Deputy Chairman of the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products was tabled at the same meeting when the Subcommittee's Report was tabled, on 6 June 2012.

Premature publication of evidence

14.60 In accordance with Rule 81 of the Rules of Procedure, the evidence taken before the committee and documents presented to it shall not, except in the case of its meetings held in public, be published by a member of the committee or by any other person before the committee has presented its report to the Council.<sup>47</sup> Any member of the committee who fails to comply with this Rule may be admonished or reprimanded by the Council on a motion to that effect.<sup>48</sup>

**Safeguarding the rights of witnesses**

Rights and privileges of a witness under the Powers and Privileges Ordinance

14.61 A committee authorized under section 9(2) of the Powers and Privileges Ordinance to exercise the power to summon witnesses may order any person to attend before it and to give evidence or to produce any paper, book, record or document in the possession or under the control of such person. It may also invite any person or body to give evidence orally or in writing or to produce specified documents to the committee. The privileges and immunities provided in the Ordinance are available in proceedings before the committee which include hearings and deliberative meetings. However, the right and privilege to which a witness is entitled as if before a court of law<sup>49</sup> are not available to a person who is simply invited to give evidence and who is not lawfully ordered by summons to give evidence.

14.62 Whilst the main object of the Powers and Privileges Ordinance was to codify the powers and privileges of Legislative Council Members already provided in the then existing laws (most of which were derived from common law, UK Parliamentary practice and section 4 of the Oaths and Declarations Ordinance (Cap. 11)), the Powers and Privileges Ordinance also contains provisions to safeguard the rights of summoned witnesses. These provisions include section 13 which provides that the President may excuse a witness from answering a question or producing any such paper, book, record or document on the ground that it is of a private nature and does not affect the subject of inquiry. Section 14(1) provides that every person lawfully ordered to attend to give evidence before the Council or a committee shall be entitled

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<sup>47</sup> Rule 81(1) of the Rules of Procedure.

<sup>48</sup> Rule 81(2) of the Rules of Procedure.

<sup>49</sup> Section 14 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

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to the same right and privilege of a witness before a court of law. A witness who is summoned to appear before the Council or a committee is considered as a "person lawfully ordered to attend" within the meaning of section 14(1). He would accordingly be entitled to protection against being sued for defamatory remarks made at such a meeting, in the same way that a witness in a court of law is so protected.

### Actions taken to protect the rights of witnesses in the course of an inquiry

14.63 The committees authorized to exercise the powers conferred by the Powers and Privileges Ordinance have invariably adhered to the principles of natural justice and ensured that their practice and procedure are fair and seen to be fair, especially to parties whose interests or reputation may be affected by the proceedings of the committee. These committees have attached great importance to the need to state clearly in advance to the witnesses the areas of evidence to be obtained at the hearings to which they are summoned, to afford the witnesses a reasonable chance to state their cases and to make known to the witnesses any criticisms and observations being made against them and the basis on which these are made. To this end, a set of general practice and procedure has been developed by such committees over the years.

14.64 As mentioned in paragraph 14.37 above, in the covering letter to a summons ordering a witness to attend a committee's hearing, the witness is provided with information on the terms of reference of the committee, a list of documents which the witness is ordered to produce in relation to the areas of evidence to be obtained at the hearing, together with a list of issues and questions to be put to him at the hearing, for which a written statement is invited from him to facilitate the taking of evidence at the hearing. The witness is also provided with a copy of the Powers and Privileges Ordinance in which the duties and privileges of a witness are stipulated, and a copy of the practice and procedure adopted by the committee for its proceedings. The witness is also advised that, subject to the consent of the committee, he may request to be accompanied by other persons at the hearing.

### Practice of ordering attendance by summons

14.65 It has been the practice that all witnesses and public officers are issued with a summons for attending meetings of the Legislative Council or its committees to give evidence or to produce documents. Section 8A of the Powers and Privileges Ordinance, which was enacted in 1994, extended the privileges and immunities enjoyed by Members of the Legislative Council to the Governor (who ceased to be the President of the Legislative Council) and public officers designated by the Governor to attend sittings of Council or a committee. However, there has never been a specific provision in the

Ordinance which gives persons other than public officers so designated the same protection. Therefore, in order that persons who are not designated public officers are given protection similar to that enjoyed by designated public officers it has been the usual practice to issue them with a witness summons so that their attendance or production of documents under an order notified through the summons will entitle them to the same right or privilege as before a court of law by virtue of section 14(1) of the Ordinance.

14.66 This practice of issuing summonses in this manner was adopted for the first time by the Select Committee to inquire into the circumstances surrounding the departure of Mr. Leung Ming-yin from the Government, and related issues between 1996 and 1997. It was also considered at that time that in order to ensure equality of treatment, and to minimise the perceived stigma that may be associated with the receipt of a summons, designated public officers would also be issued with summonses. The Select Committee in that inquiry decided that all 10 witnesses should be ordered to attend its hearings by summons.

14.67 There are provisions in the Powers and Privileges Ordinance relating to enforcement of the powers and privileges of the Legislative Council. Under the Ordinance, whether there has been a breach of the powers and privileges amounting to an offence is a matter for the courts. Sections 17 and 18 of the Ordinance provide that a person commits an offence if he/she disobeys a lawful order made by the Legislative Council or a committee or if he presents to the Council or a committee any false, untrue, fabricated or falsified document with intent to deceive LegCo or such committee. Section 26 further provides that no prosecution for an offence under the Ordinance shall be instituted except with the consent of the Secretary for Justice.

#### **Measures taken to avoid possible prejudice to a person's interests in pending legal proceedings**

14.68 At common law, words spoken or otherwise published, or acts done, outside court which are intended or likely to interfere with or obstruct the fair administration of justice are punishable as criminal contempt of court. It is not necessary that a fair trial or the conduct of the proceedings is actually prejudiced. The test is whether there is a real risk of prejudice. The common law offence of contempt of court is also applicable to a Commission of Inquiry<sup>50</sup>.

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<sup>50</sup> Section 11(2) of the Commissions of Inquiry Ordinance (Cap. 86).

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14.69 The Powers and Privileges Ordinance, on the other hand, provides Members with freedom of speech and debate in the proceedings of the Legislative Council or its committees (including a select committee)<sup>51</sup>; and the immunity from civil or criminal proceedings for words spoken before, or written in a report to, a committee<sup>52</sup>. The immunities provided under these provisions are to enable Members to discharge their duties as legislators without fear of legal liabilities. Because of the breadth of these immunities, a convention, normally called the *sub judice* rule, has developed as a self-imposed restraint in the Legislature. In brief, by applying the *sub judice* rule, when a matter is under the consideration of a court of law awaiting a decision or verdict, it should not be discussed in the proceedings of the Council or its committees. Nevertheless, the rule only applies if the discussion or reference to the case is viewed by the President or chairman as being likely to prejudice it.<sup>53</sup> This *sub judice* rule is reflected in Rule 25(1)(g)<sup>54</sup> and Rule 41(2)<sup>55</sup> of the Rules of Procedure.

14.70 To avoid possible prejudice to pending court cases, arrangements to deal with specific cases involving legal proceedings had been made by committees in the course of their inquiries. The Panel on Security which inquired into the Alex Tsui's case in 1993 and the Panel on Manpower which inquired into the Imported Labour case in 1995 had built up useful precedents of practices which were adopted by the Select Committee on Building Problems of Public Housing Units. In the course of its deliberation on *sub judice*, the Select Committee had considered the following principles summarized by the Legal Adviser of the Legislative Council Secretariat based on past application of the *sub judice* rule in Hong Kong and from practices and procedures in other jurisdictions<sup>56</sup>:

- (a) References to matters awaiting adjudication in a court of law should be excluded if there is a risk that they might prejudice its adjudication;

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<sup>51</sup> Section 3 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

<sup>52</sup> Section 4 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

<sup>53</sup> Information paper for the House Committee meeting on 24 July 1998 (LC Paper No. LS 20/98-99).

<sup>54</sup> Rule 25(1)(g) of the Rules of Procedure provides that a question shall 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.

<sup>55</sup> Rule 41(2) of the Rules of Procedure provides that reference shall not be made to a case pending in a court of law in such a way as, in the opinion of the President or Chairman, might prejudice that case. According to Rule 43 of the Rules of Procedure, this rule shall apply to the proceedings in a committee unless the chairman of the committee orders otherwise.

<sup>56</sup> Note for the Select Committee on Building Problems of Public Housing Units (LC Paper No. LS69/00-01) dated 23 February 2001 at [http://www.legco.gov.hk/yr00-01/english/sc/sc\\_bldg/papers/ls69.pdf](http://www.legco.gov.hk/yr00-01/english/sc/sc_bldg/papers/ls69.pdf).



- (b) Matters awaiting adjudication should include matters in respect of which a charge has been made or proceedings have been initiated by the filing of the appropriate documents with the court;
- (c) References should include comment on, inquiry into and the making of findings on such matters; and
- (d) Prejudice might arise from an element of explicit or implicit prejudgment in the proceedings of the legislature in two possible ways: -
  - (i) the reference might hinder the court in reaching the right conclusion or lead it to reach other than the right conclusion; and
  - (ii) whether the court is affected in its conclusion or not, the references might amount to an effective usurpation of the court's judicial functions.

14.71 Having regard to the above principles, the Select Committee adopted certain measures to avoid possible prejudice to a person's interests in pending legal proceedings, which were documented in the First Report of the Select Committee and have been followed by other committees in conducting inquiries. These measures are:

- (a) the Department of Justice will be asked to keep the committee informed of the development of the criminal proceedings concerned, if any;
- (b) the chairman would explain to each witness that the function of the committee is not to adjudicate on the legal liability of any party or individual and advise him/her of the chairman's power to disallow the making of any reference to a case pending in a court of law if such reference might, in the chairman's opinion, prejudice the proceedings;
- (c) where it is considered necessary and justified, either on an application by a witness or on the committee's own motion, the committee may determine to hold closed meetings to obtain evidence from a witness;

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- (d) where the committee considers necessary, it will provide the Department of Justice with a copy of the draft findings and observations of the committee and request it to comment whether the contents of the draft might prejudice pending criminal proceedings, if any; and
- (e) the report of the committee should not contain any material which might prejudice a pending criminal jury trial.

## **Part III**

### **Partnership with people**

## Chapter 15

### Redress system

#### Partnership with people

15.1 Part III of the Companion is on "Partnership with people". As an elected body, a legislature must be able to represent the views of people and ensure that people have access to its proceedings and its documents and records. Where there are views or grievances from people over any legislative or financial proposals, or any matters related to Government policies or operation, the legislature should provide adequate channels for such views or grievances to be heard, discussed and brought to the attention of relevant authorities for their actions. It is through this partnership with people that the legislature can perform its legitimate role as a people's legislature.

15.2 Part I and Part II of the Companion have focused on the way the proceedings of the Council and its committees are conducted. The background of the changes which took place in the history of the Hong Kong Legislature has been provided to facilitate understanding of the Rules of Procedure and other practices currently in force in the HKSAR Legislature. Part III is on the Legislature's interaction with people. There are two themes in Part III and they are each described in two separate Chapters. This Chapter is on how people's grievances are redressed and channeled to the relevant authorities for actions; while Chapter 16 is on how people are engaged in the process of legislation and in calling the Government to account.

15.3 In this Chapter, there is an overview of the historical development of the Redress System operated by the Legislative Council Secretariat and how this System interfaces with the committee system of the Council. Although the HKSAR Legislature has the power and function under the Basic Law to receive and handle complaints from Hong Kong residents,<sup>1</sup> the Redress System is not part of the formal structure of the Council but has remained as a service to the public with a high degree of independence and flexibility. The scope of complaints handled under the Redress System, the role played by Members individually or as a group in dealing with a complaint or representation from the public, as well as the steps taken to deal with a complaint or representation are explained in this Chapter.

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<sup>1</sup> Article 73(8) of the Basic Law.

### **Legislative Council's power and function to handle complaints from members of the public**

15.4 Under Article 73(8) of the Basic Law, the Legislative Council has the power and function to receive and handle complaints from members of the public. This power and function was written into the Basic Law<sup>2</sup> during the decade from 1985 to 1994 when a highly structured Redress System was being operated by the then OMELCO Office to deal with complaints or representations against Government maladministration and on issues of public concern. This Redress System, despite the changes since its establishment in 1963, has remained as an important link between the people and the legislature on the governance of Hong Kong.

### **Redress System**

#### Historical background

##### *Before 1963*

15.5 In parliamentary practices, the presentation of petitions is a long-established tradition to enable citizens to seek redress of grievances, derived from the Westminster system. In the pre-1997 Hong Kong Legislature, prior to 1963, petitioning the Governor (or the Council from 1917 onwards) through Unofficial Members at sittings of the Council was the only means to seek redress of grievances, and this was required to be done in accordance with the relevant Standing Orders. Originally, as explained in Chapter 7<sup>3</sup>, petitions presented to the Council should be related to the individual rights or interests of property peculiarly affected by any proposed bills, in particular private bills, considered by the Legislative Council, and on motion made, seconded and carried, such petitions would be heard before the Council or any committee of the Council.<sup>4</sup> When a petition was referred to a committee for consideration, the committee concerned was required to report back to the Council.

##### *1963 – 1985*

15.6 In August 1963, to promote closer relationships between members of

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<sup>2</sup> The power and function prescribed in Article 73(8) was included in the consultative document endorsed by the Drafting Committee of the Basic Law of the HKSAR in April 1988.

<sup>3</sup> See Chapter 7, para.7.48 – 7.53.

<sup>4</sup> Standing Order No. 47 to 49 of the 1884 Standing Orders of the pre-1997 Legislature.

the public and the Unofficial Members of the Executive Council and the Legislative Council, the UMELCO Office was established to enable members of the public to call at the Office to put forward their views on any matter of public interest or to lodge individual complaints against Government departments.<sup>5</sup> A Redress System was then developed and evolved into a roster system in 1965 to enable an Unofficial Member each from the Executive Council and the Legislative Council to be on duty together for one week as Duty Roster Members to deal with public complaints against Government departments.

15.7 With the increase in the number of cases handled by the UMELCO Office, it was decided in 1969 to strengthen the Office so as to enable public complaints to be dealt with more effectively. A senior Government officer was seconded to head the UMELCO Office in August 1970 to introduce a more effective system to deal with public complaints. The funding for the UMELCO Office was also for the first time included in the Estimates of Expenditure under the Appropriation Bill, with the aim of strengthening the support for Unofficial Members to give maximum possible help to any person who felt aggrieved by Government actions or policies and who wished to put forward views and suggestions on any matter of public concern.

15.8 In carrying out this function, UMELCO Office's scope of duties was defined by administrative direction but was nonetheless almost unlimited except in cases which involved private disputes, civil service employment matters, Court actions and some decisions of statutory bodies. Government departments were required to co-operate with the Unofficial Members who had direct access to senior officials in the Government and could challenge established policies and procedures. Although there were also other channels to deal with public complaints at that time, the UMELCO system provided the extra dimensions of investigation and rapid escalation to the highest level of the Government especially on urgent matters.<sup>6</sup> By mid 1980s, the UMELCO Redress System, although not defined nor confined by the law or any Standing Orders, had become an important and effective channel for members of the public to lodge complaints alleging maladministration of Government departments and to raise objections to Government decisions or proposed legislation and policies.<sup>7</sup>

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<sup>5</sup> UMELCO Annual Report 1970-71, p. 1; also Report of the Subcommittee on Review of the Operation of the LegCo Redress System presented to the House Committee meeting on 27 November 1998.

<sup>6</sup> UMELCO Annual Report 1972-73, p. 1.

<sup>7</sup> UMELCO Annual Report 1985, p. 34.

## 15. Redress System

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1986 – 1997

15.9 The Redress System operated by the UMELCO Office (renamed as OMELCO in 1986) in 1985 continued to remain an essential service to address public grievances in the decade that followed, despite the separation of the two Councils<sup>8</sup>, changes in the composition of the Legislative Council<sup>9</sup> and the setting up of the independent Legislative Council Secretariat in 1994<sup>10</sup>. Under the then Redress System, members of the public put forward their problems by letter (and later by telephone and by fax) or through a personal visit to the Complaints Division staffed by directly-engaged complaints officers who reported to Legislative Council Members under a duty roster system. After an interview with the complainant, enquiries were made with the Government department concerned where necessary. At times, upon instruction of the Member(s) on the roster, visits could be arranged to enable Members to understand the problems fully. Case conferences were then held with the department concerned to explore ways to address the problem. Where the response from the department was inadequate or unsatisfactory, Members could raise the matter with the Head of the Department, or raise a question in the Council, or refer the related policy matter to a relevant Panel if considered appropriate.

15.10 One significant change that took place during the decade after 1985 was in relation to the establishment of the Office of the Commissioner for Administrative Complaints ("COMAC") in February 1989. From then onwards, complaints alleging maladministration by Government departments were referred by Members to the Commissioner for investigation if so requested by the complainant and considered suitable by the referring Members, and the Commissioner was required to report the findings of his investigation to Members.<sup>11</sup> Also during the same period, significant changes and developments took place in other complaints systems in Hong Kong with the aim of ensuring higher standard of public service and greater accountability in the public sector. At the same time, the enhancement of the operating expenses reimbursement for Members in early 1990s had made it possible for individual Members to set up their own ward offices which, apart from undertaking other activities, also handle public complaints and requests for assistance. From 24 June 1994 onwards, it was no longer required for a complaint to be lodged with COMAC to be referred by a Member. In the light

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<sup>8</sup> Chapter 4, para. 4.5.

<sup>9</sup> Chapter 3, para. 3.3 – 3.11.

<sup>10</sup> Chapter 4, para. 4.9 – 4.10.

<sup>11</sup> OMELCO Annual Report 1989, p. 30.

of these developments, it was decided that the primary target of the Redress System should be representations that raised wide policy issues and matters of public concern although the scope of services to the public remained unchanged.<sup>12</sup>

15.11 Another major development was the handling of complaints against the Police or against the Independent Commission Against Corruption ("ICAC"). Since early 70's and up until 1986, although cases of this nature were referred to the Complaints Against Police Office or the ICAC respectively, such cases were monitored respectively by the UMELCO Police Group and the ICAC Complaints Committee under the OMELCO structure. The UMELCO Police Group was subsequently reconstituted to become the Police Complaints Committee in 1986 and later renamed as Independent Police Complaints Council in December 1994.

*1997 – present*

15.12 Following the coming into force of the Basic Law upon the establishment of the HKSAR on 1 July 1997, questions were raised on the implementation of Article 73(8) regarding the power and function of the Legislative Council "to receive and handle complaints from Hong Kong residents". In July 1998, a subcommittee was set up under the House Committee to examine what structural changes needed to be made in the Redress System of the Legislative Council in the light of this provision in the Basic Law. Divergent views were expressed on whether the immunity and privileges under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) should be extended to cover the handling of complaints under the Redress System. After extensive discussions at the Subcommittee and at the House Committee, it was decided by the House Committee on 19 March 1999 that the Redress System should remain status quo, being operated in an informal manner without the coverage of Cap. 382. The then procedure used for handling and following up complaints should continue. Nevertheless, the House Committee endorsed the recommendations of the Subcommittee on the matters which should be regarded as outside the scope of the Redress System, which is explained below.

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<sup>12</sup> LegCo Annual Report 1993-1994, p. 55; also LegCo Annual Report 1994-1995, p. 53. Also see paragraphs 15.14 to 15.16.



## 15. Redress System

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### Nature of cases handled under the Redress System

15.13 Originally, the scope of the cases handled by the Unofficial Members when the UMELCO Redress System was first established in 1963 covered any public complaints against Government actions and policies as well as representations on matters of public concern. However, after two decades, several categories of cases were by practice regarded as outside the scope of the Redress System. These included private and labour disputes, court decisions and matters which were *sub judice*, matters relating to non-government bodies, complaints against Members, complaints against Police or ICAC officers<sup>13</sup>, and matters outside the jurisdiction of Hong Kong. The Redress System also did not provide legal advice or legal services to complainants.

15.14 Despite the emergence of more and more complaints-handling bodies in the public sector in the 70's and 80's, the UMELCO Redress System remained an effective channel for expressing grievances. In 1985, in the light of the constitutional changes in Hong Kong, an UMELCO Ad Hoc Group was formed to review the redress systems in Hong Kong. This review had led to the enactment of the Commissioner for Administrative Complaints ("COMAC") Ordinance (Cap. 397) in July 1988 and the establishment of the Office of COMAC in February 1989. The original intention was that COMAC was to provide for the public a means whereby an independent person outside the public service could investigate and report on grievances arising from administrative decisions, acts, recommendations or omissions. It was designed to supplement and strengthen the OMELCO Redress System but not to replace it. Therefore the scope of cases handled under the Redress System remained unchanged. Where an Unofficial Member of OMELCO considered that an independent investigation of a maladministration case ought to be conducted, the case would be referred to the COMAC Office.<sup>14</sup>

15.15 In 1993 and 1994, the Redress System was reviewed in conjunction with the reorganization and review of services of the Legislative Council Secretariat. As a result of the reviews, it was considered that the Complaints Division should continue to handle public complaints but publicity to promote the service should cease. On the side of COMAC, changes began to take place in expanding its jurisdiction. The COMAC Ordinance was amended in

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<sup>13</sup> Complaints against the Police and ICAC officers were not dealt with because of the existence of the Independent Police Complaints Council and the ICAC Complaints Committee which respectively oversaw investigation of complaints against these two departments.

<sup>14</sup> See paragraph 15.10.

June 1994 to enable the public to have direct access to COMAC without the referral by a Member and to empower COMAC to initiate direct investigations. In April 1996, a number of major statutory bodies<sup>15</sup> were included under COMAC's jurisdiction. In December 1996, the English title of "COMAC" was changed to "The Ombudsman" and, with the extension of the Code of Access to Information to all government departments. The Ombudsman was also empowered to investigate complaints on non-compliance with the Code against those departments previously not covered by the Ordinance, namely the Hong Kong Police Force, the Hong Kong Auxiliary Police Force, the ICAC and the Secretariats of the Independent Police Complaints Council and the Public Service Commission.

15.16 In a review conducted by a Subcommittee of the House Committee on the Redress System in 1998-1999, the possible duplication of work done by the Legislative Council's Redress System and The Ombudsman was examined. The Subcommittee recommended and the House Committee agreed that cases examined or being examined by The Ombudsman and prima facie maladministration cases should not be totally excluded from the Redress System. Cases which appeared to be more appropriately handled by other redress systems should be referred to those systems with the consent of the complainants. Where it was known that a case was received by both The Ombudsman and the Complaints Division and the outcome of the investigation by The Ombudsman was awaited, the Complaints Division would suggest to the complainant that the case be held in abeyance, but if the complainant wished that it be handled in parallel, his wish would normally be respected.<sup>16</sup>

15.17 As regards the scope of the Redress System, the House Committee endorsed that the scope should not be strictly confined to decisions and actions of government bureaux and departments. In principle, the Redress System operated by the Legislative Council Secretariat should not go beyond the scope of work of the Council as stipulated in Article 73 of the Basic Law. The scope of Panels might be adopted as the scope of the Redress System, as there was no reason why matters which might ultimately be referred to the Panels for review of the relevant policies should be excluded from the Redress

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<sup>15</sup> In June 1994, 6 statutory bodies came within COMAC's jurisdiction. They were the Mass Transit Railway Corporation, the Kowloon-Canton Railway Corporation, the Securities and Futures Commission, the Urban Council, the Regional Council and the Housing Authority. In April 1996, 4 other statutory organizations came under COMAC's jurisdiction. They were the Airport Authority, the Hong Kong Housing Society, the Land Development Corporation and the Vocational Training Council.

<sup>16</sup> See Second Report of the Subcommittee on Review of the Operation of the LegCo Redress System and minutes of House Committee meeting on 19 March 1999.

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System. Nevertheless, the House Committee agreed that the following matters should normally be outside the scope of the Redress System but may be handled flexibly:

- (a) Court decisions, matters which are *sub judice* or could involve criminal charges, and matters relating to judicial and quasi-judicial proceedings;
- (b) Matters outside the jurisdiction of the Hong Kong Special Administrative Region;
- (c) Requests for legal advice or legal services;
- (d) Private disputes;
- (e) Labour disputes between individual employees and employers, except those of wide public concern or relating to discrimination of trade union leaders;
- (f) Complaints against individual members of the three-tier system of representative government (i.e. Legislative Council, Municipal Councils and District Boards); and
- (g) Complaints which are handled by independent or statutory channels (e.g. ICAC Complaints Committee, Independent Police Complaints Council, Administrative Appeals Board).

15.18 The House Committee's decision to exclude the above matters from the scope of the Redress System was made on the basis of the principle of recognizing:

- (a) the independence of the judicial system;
- (b) the existence of a statutory or independent channel for dealing with or overseeing the handling of a certain kind of complaints or appeals, e.g. ICAC Complaints Committee, Independent Police Complaints Council, Labour Tribunal, etc;
- (c) the existence of a professional or statutory body to regulate and oversee the practice of a trade and/or the conduct and performance of its individual members in the trade, e.g. Medical Council, Law Society, etc; and
- (d) the jurisdiction of the Legislative Council.

15.19 As it was agreed that the Redress System should remain as an informal part of the operation of the Legislative Council, the decision on each case could not be regarded as a decision of the Council. However, a complaint could be escalated to the Council level by way of a petition, or a question or a motion in the Council, or be referred to a relevant Panel for discussion. The above decisions of the House Committee have been kept in force up to the present.

#### Secretariat's support

15.20 Notwithstanding the changes in the organization of the Secretariat providing services to Unofficial Members during the UMELCO/OMELCO period or after the establishment of the independent Legislative Council Secretariat, the Complaints Division (retitled as the Public Complaints Office in August 2013) has remained as the first contact point for members of the public to seek redress of grievances. The Complaints Officers report to Duty Roster Members in respect of the handling of complaints or representations. Administratively, they report to the Senior Complaints Officers who oversee the management of the cases within their own teams. The Chief Complaints Officer of the Public Complaints Office is responsible for overseeing the operation of the Office and is accountable to the Secretary General who serves as the link between the Redress System and The Legislative Council Commission (in relation to quality of service) and the House Committee (in relation to performance of function). A chart which illustrates generally how a complaint is handled first by a Complaints Officer and then reported to a Member(s) for advice and follow-up action or referred to a committee of the Council for consideration is provided at **Appendix 15-A**.

#### **The Duty Roster Member System**

15.21 The Redress System is operated according to a Duty Roster Member system whereby Members, in groups of seven, are put on a roster drawn up by the Public Complaints Office for serving as duty Members for one week. This system to receive complaints and representations from the public has been in use for a long time. The rationale is to share the workload among Members. In drawing up the roster, the Public Complaints Office would try to make it as representative as possible with preferably at least one member from each main political party or affiliation or the group of Members without affiliation. Views received from the public during the past week are normally circulated to Duty Roster Members on the following Tuesday for information and advice on follow-up action if required. Complaints cases are reported to Duty Roster Members as and when appropriate after initial enquiries have been made by

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the Public Complaints Office. The list of Duty Roster Members for the next 3 weeks is provided in the official website of the Legislative Council.<sup>17</sup>

### The Ward System

15.22 Each individual Duty Roster Member takes turn once during his/her duty week to be on "ward duty" for two hours to receive individual complainants and to give advice to the staff of the Public Complaints Office in the processing of cases. Previously, "Ward Members" used to stand by in the Complaints Division during the duty hours. With the drop in number of walk-in individual complainants and in order not to waste Members' time, requests for interviews with Members are now arranged by appointments. Walk-in complainants are received by staff of the Public Complaints Office.

### Meeting with deputations

15.23 From time to time, deputations will notify the Public Complaints Office of their intention to lodge complaints or submit views on matters of public concern. Arrangement is then made to schedule a meeting with the Duty Roster Members to enable the deputation to explain their views to the Members in person and the Members to have the opportunity to enquire more about the subject matter. The same group of Members will be responsible for all the follow-up actions on the case. If needed, the same group of Members will meet the deputation again in case it is not satisfied with the outcome of the case or for further discussion on the case in the light of new evidence.

15.24 If a similar complaint has been made by another deputation, the deputation may wish to invite Members of the same group to meet them. These invited Members would join the Duty Roster Members of the duty week in meeting the deputation. This new group of Duty Roster Members would also be briefed on the decision of the previous group of Members on how to follow up the case. If it is decided that a case conference should be held, and where time allows, the two (or more) groups of Members will be arranged to attend the same conference in order to avoid duplication of efforts. If it is decided that the case should be referred to the Government in writing, the case officer will make a consolidated report to all Members concerned.

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<sup>17</sup> Under "Redress System" in the Legislative Council website at [http://www.legco.gov.hk/general/english/sec/corg\\_ser/redress.htm](http://www.legco.gov.hk/general/english/sec/corg_ser/redress.htm).

## **Procedure for handling complaints and representations**

### Handling complaints against Government decisions or actions

15.25 Any member of the public may lodge a complaint with the Public Complaints Office by telephone, letter, fax, email or in person. A complaint form (**Appendix 15-B**) is provided to facilitate the complainant to put down the essential information about the complaint. If the lodging of the complaint is done by telephone or made in person, the Complaints Officer will take down the salient points of the complaint for the complainant's confirmation where necessary. All personal data is kept confidential within the Public Complaints Office and will not be revealed to any person unless with the consent of the complainant. Information about the complaint is only accessible to the Member(s) and staff of the Public Complaints Office responsible for handling the case, and will only be disclosed to the Government and other relevant organizations with the consent of the complainant.

15.26 After receipt of a complaint, the Complaints Officer examines the information obtained from the complainant. If the allegation concerns matters which are outside the scope of the Redress System, the Complaints Officer will advise the complainant accordingly and, where appropriate, with which body he or she may lodge the complaint directly. For example, if the complaint is an allegation concerning an action of a police officer, the complainant will be advised to lodge the complaint with the Complaints Against Police Office; or if the complainant has already done that but is not satisfied with the outcome, he or she will be advised to approach the Independent Police Complaints Council whose function is to observe, monitor and review the handling and investigation of all reportable complaints against the police.

15.27 In examining the details of a complaint, the Complaints Officer may find it necessary to obtain more information from the Government department(s) concerned. Subject to the complainant's consent and on the instruction of the Ward Member, the Complaints Officer writes to the department(s) concerned to ascertain more facts about the case and what has already been done to address the complainant's concern.

15.28 Upon receipt of additional information from the department(s) concerned, the Complaints Officer examines the complaint in the light of Government policies and procedures and if there are justifiable grounds to pursue the complaint, the Complaints Officer will take it up with the department to ascertain whether any remedial action can be taken. The

## *15. Redress System*

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handling of the case is reported to the Ward Member for advice and, if the follow-up action concerns a matter of policy or legislation, for referral to a relevant Panel. The same Ward Member will continue to be briefed on the progress and the outcome of the case.

15.29 In the 1998-99 review of the Redress System, there were questions on whether a case which had been handled by one Member could be taken up by another Member. According to the view of the Subcommittee responsible for this review, if an individual complainant or a deputation is not satisfied with the outcome of the case handled by a Member or a group of Members and requests that the case be referred to another Member, that request would not normally be entertained unless there is something new that justifies acceding to the request. This is to prevent duplication of efforts and deter abuse of the Redress System. However, exceptionally, the specific Member(s) specified in the request for referral may be consulted on whether he or she sees any new grounds for pursuing the case. In the circumstances, the Member should be provided with a brief on the case together with the advice from the previous Member who has handled the case so that he or she can decide whether to take up the case.

### Handling of representation of views on Government policies and issues of public concern

15.30 Where the complaint is a representation of views either from an individual member of the public or from a deputation, the present practice is that the Public Complaints Office will first ascertain if the views are related to a matter being currently or scheduled to be considered by a committee of the Council. If that is the case, the submission will be forwarded to the committee clerk concerned. Under normal circumstances, the person or deputation which submitted the views would be notified if a public hearing has been scheduled to listen to the views of the public on such matters. Even if the public hearing has already taken place, the views received will also be circulated to members of the committee for their attention. This is further explained in Chapter 16.

15.31 Where the views expressed by a deputation involve a proposed change in policy or legislation and the matter is not on the agenda of any committee, the Public Complaints Office will report the matter to the Duty Roster Members and arrange for the Members to meet with the deputation. Subject to the agreement of the Duty Roster Members and the deputation concerned at the beginning of the meetings, meetings with deputations may be held in camera or in public. If the meeting is held in public, media representatives are allowed to cover the meeting. However, as these meetings do not enjoy the privileges and immunities provided under the Legislative Council (Powers

and Privileges) Ordinance (Cap. 382), members of the deputation and the media are reminded about that at the start of the meeting. After the meeting, the Duty Roster Members may instruct that the case be referred to a relevant Panel for follow-up discussion. It is normal practice that if the Panel decides to discuss a Government policy related to the case at any of its meetings, the deputation will be notified and invited to present their views direct to the Panel.

15.32 There are occasions where the Duty Roster Members decide to hold case conferences to deal with the specific matter instead of referring it to a Panel if the Panel is unlikely to be able to discuss the matter shortly. This is often initiated by a Member on the roster who finds it necessary for the Duty Roster Members to sit together to consider the way to deal with the matter. Representatives from the relevant Government departments may be invited to brief Members on the position of the Government and any plans to address the concerns. Case conferences are closed meetings. Members are not expected to divulge the content of deliberations. Sometimes, the Duty Roster Members may decide not to follow up the case or, if the matter has caused wide public concern and there is no appropriate committee to follow up the matter, they may submit a report to the House Committee for it to decide how the matter should be dealt with.<sup>18</sup>

15.33 Under the Duty Roster Members system, there may be a situation where different groups of Members may meet different deputations on the same subject or related subjects. To avoid duplication of efforts, co-ordination is provided by the Public Complaints Office by arranging the same group of Members to handle complaints about substantially the same issues as those lodged by the same or other deputations. In addition, all Members are notified of meetings with deputations so that interested Members may participate in any of these meetings. Written notice of the place, date and time of every meeting should be given to Members at least 2 clear days before the date of the meeting, but shorter notice may be given where urgency of the case so dictates. Where needed, depending on the complexity of the matter raised by deputations, Members with the expertise in that matter may participate in the handling of those cases.

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<sup>18</sup> An example is the report made by the Duty Roster Members to the House Committee on 9 October 2009 in relation to the views expressed by members of the public against a Member. The Duty Roster Members put forward a number of recommended actions for discussion by the House Committee. See Report of the Legislative Council Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the Motion to censure Honourable KAM Nai-wai, para 1.11 – 1.19.



## *15. Redress System*

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15.34 On occasions, for various reasons, some deputations may request to exclude a particular Member from the meeting. The practice, which was endorsed by the Subcommittee on the Review of the Operation of the LegCo Redress System in its review in 1998-99, is that such request will not be entertained, but the Member concerned will be duly informed. It is the Member's own decision as to whether he or she should attend the meeting with the complainant or deputation.

### Handling of complaints relating to constituency and individuals' issues

15.35 With more Members of the Council setting up their own constituency offices to maintain direct contact with their constituents, public complaints about local and personal issues are generally handled by Members in their own offices. Members may also approach the relevant Government department or authorities direct. The scope of the complaints they may deal with is not restricted by the scope of the Redress System.

### Handling of complaints against Members of the Legislative Council

15.36 Towards the second half of the Third Legislative Council, the number of complaints and views from members of the public on the conduct and behaviour of Members began to increase significantly. Notwithstanding the fact that complaints against Members were outside the scope of the Redress System, the Complaints Division had assumed a co-ordinating role in referring these complaints to the relevant committees, such as the Committee on Members' Interests if the complaint was related to a breach of Rule 83A and/or Rule 83AA of the Rules of Procedure<sup>19</sup>.

15.37 As most of the complaints received by the Complaints Division in the 2007-2008 and 2008-2009 were outside the ambit of the Committee on Members' Interests, there was no mechanism to follow up the complaints within the Council except under the procedure set out in Rule 49B(1A) of the Rules of Procedure which could lead to the disqualification of Member from office for misbehaviour or breach of oath. In April 2009, a review was undertaken by the Committee on Members' Interests on the nature of the complaints against Members received by the Complaints Division. It was noted that the complaints were mainly related to Members' performance and

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<sup>19</sup> Cases falling within the scope of Rule 83A and Rule 83AA are those relating to failure to disclose personal pecuniary interest during the proceedings of the Council or committees, and inaccurate or incomplete information provided for claiming reimbursement of operating expenses or applying for advance of operating funds.

conduct (e.g. disorderly behaviour, low attendance rate at meetings) and their handling of complaint cases (e.g. refusal to offer assistance in cases outside the scope of the Redress System). According to the then practice of the Complaints Division, the complaints were circulated to the Duty Roster Members including the Members under complaint. It would be for the Members to decide how to proceed with the complaints.

15.38 The Committee noted that in respect of a complaint or allegation relating to a Member's claim for reimbursement of operating expenses or application for advance of operating funds, the Secretary General as Controlling Officer would seek clarification from the Member concerned and report to The Legislative Council Commission. If the complaint was also received by the Committee, the Secretary General's findings from the clarification would be submitted to the Committee on Members' Interests when the Committee proceeded to consider the complaint in accordance with the procedure set out in **Appendix 13-B**. If the allegation was an anonymous complaint or from media reports, such allegation could be followed up by the Secretary General as the Controlling Officer only if there was sufficient information to do so. The Committee however maintained that it would not follow up anonymous complaints or media reports.

15.39 The division of responsibilities between the Redress System and the Committee on Members' Interests over complaints against Members as well as the mechanism in following up complaints received by the Complaints Division have since then been formalized and have remained unchanged up to this date.

### **Role of the House Committee**

15.40 There are no provisions in the Rules of Procedure or in the House Rules governing the handling of public complaints although the Redress System currently operated by the Legislative Council has existed since 1963. Prior to 1991, deliberations on the mechanism in the handling of complaints and on specific cases took place at the OMELCO In-house meetings which were closed meetings. With the opening-up of the meetings of the LegCo In-house which took over the functions of the former OMELCO In-house in November 1991 and the setting up of the House Committee to replace LegCo In-house in 1992, matters relating to specific complaint cases could no longer be considered at the House Committee. However, the House Committee continues to provide a forum for the consideration of matters relating to the operation of the Redress System to ensure that Legislative Council's power

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and function to receive and handle complaints from Hong Kong residents under the Basic Law is performed fairly and effectively.

## Chapter 16

### Public Engagement

16.1 Reaching out to the public and engaging them in the process of legislation has always been an important and substantial challenge for accountable legislatures around the world. Outreach, in its modern form using available technology, is regarded as a vital parliamentary function. As a people's legislature, it is the fundamental role of Members elected to it to represent people's voices and be responsive to their needs when performing their constitutional functions. Given the divergent interests among different sectors of the community in Hong Kong and the expectation of the public for greater representation and accountability, public engagement is becoming a direct way to gauge the views and wishes of the public and to establish a dialogue between the legislature and people.

16.2 Reforms in the operation of the Hong Kong Legislature, especially after the adoption of the 1968 Standing Orders and the setting up of the UMELCO Office in 1970, were extensive in order to strengthen the role of the then legislators in representing the views of the public and to provide channels for bringing public grievances and views to the attention of the highest authorities in the Government. This momentum of change has continued, even after the establishment of the HKSAR in 1997, in making the Hong Kong Legislature accountable and accessible to people. These reforms and changes can be summarized in three areas:

- (a) the methods of soliciting and representing views from the public and stakeholders so as to address their needs in the process of law-making and discharging other functions of the Legislature;
- (b) the means to make the work of the Legislature transparent and accessible to the general public so as to inspire their trust and confidence in the Legislature; and
- (c) the establishment of facilities to build up the institutional memory of the Legislature and to strengthen the process to involve the younger generations to support the sustainable development and growth of the Legislature.

16.3 This Chapter provides an overview of the actions taken by the Legislature and the administrative arrangements, facilities and services put in place by The Legislative Council Commission ("the Commission") in

## ***16. Public Engagement***

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achieving the objectives in the three areas of work above. The emphasis of the overview is more on the historical background and philosophies behind these actions, administrative arrangements, facilities or services. Details of their day-to-day operation are available on the Legislative Council website and are therefore not included here.

### **Soliciting and representing public views**

#### Historical background

16.4 To represent public views better, there were conscious efforts in the early 1990's to strengthen the role of Panels as a forum for the exchange of views between Members and the corresponding Policy Secretaries and Government departments concerned over issues of public concern. Apart from following up the representations referred to Panels by Duty Roster Members under the Redress System as explained in Chapter 15, Panels also took the initiative to invite views from stakeholders, interest groups and the public at large so that different aspects of public views on any subject would be heard. For this purpose, it was common during those days that advertisements were placed in newspapers, one English and one Chinese, providing a period of 2 to 3 weeks for the submission of views to the Panel. With the setting up of an official website of the Legislative Council in 1996, it was then more common to post a notice on the website and issue a press release to announce the invitation of views on a subject. Today, although newspaper advertisements are still one of the options for notifying the public of the invitation of views, they are rarely used due to cost considerations and the limited readership of newspapers compared with the increasing use of the internet.

16.5 It was the usual practice in the 1990's was that after the receipt of submissions of views from the public a summary was prepared to facilitate discussion by members of the Panel concerned at a scheduled meeting. It was also common practice that related professional bodies and interest groups were invited to present their views and respond to questions from members. Deputations which had submitted views through the Redress System or direct to the Panel on the subject matter concerned might also be invited to the meeting if considered appropriate. Government officers were also invited and they might be requested to respond to questions in respect of the issues raised by deputations but only at the request of the chairman if he considered it appropriate. Panels were often reminded that they had no power to summon witnesses unless specially authorized by a resolution of the Council under section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382). Any person (other than a Member or a public officer) invited to speak at an open meeting of a Panel would not be protected under Cap. 382.

16.6 The call for greater public participation has also resulted in more people willing to come forward with their views and to appear before the Panels especially on matters relating to new policies, proposed legislation and major works projects. It has also become a common practice for Panels to hold public hearings in respect of Government's consultation papers. Where such public hearings are held, they are usually scheduled before the end of the Government's consultation period so that the views obtained by the respective Panels can be consolidated and put to the Government for its consideration and response.

16.7 Soliciting views from the public has been built into the normal work process of not only Panels, but also other committees, such as Bills Committees in their examination of bills, subcommittees of the House Committee on subsidiary legislation and on other matters. Despite the fact that the persons appearing before the committees/subcommittees are not protected and do not enjoy immunity under Cap. 382, deputations are still open with their views and keen to have them recorded and followed up in the course of a committee's/subcommittee's deliberations of the subject matters. Since 2006, to help safeguard deputations, all committees which intend to conduct public hearings have adopted the practice of including a statement in their invitation letters to deputations to remind them that they do not have such statutory protection and immunity and that their submissions and oral representations are also not protected. The chairman also reminds the deputations along the same lines at the start of the public hearing.

### Conduct of public hearings

16.8 The holding of a public hearing is part of the process in soliciting views from the public. It enables deputations to give oral representations and provides an opportunity for members of the committee to clarify with the deputations any points in their submissions. Where a committee considers it appropriate to invite public views on a specific subject, it should first decide on the scope of the matters for inviting public views, the period allowed for the written submissions and the cut-off time for requests for oral representations. The normal practice is that a period of not less than 2 to 3 weeks is allowed for the submission of written views. Deadline for requests for making oral representations is normally 1 to 2 weeks before the date of the public hearing to facilitate planning and consultation with the chairman and members on whether extra public hearing sessions are required.

16.9 The committee should also decide if any organizations should be invited to give views, such as the 18 District Councils, related professional and trade bodies, etc. The committee may decide on the approach to be adopted for inviting public views, such as the issue of a press release and/or

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posting a notice on the Legislative Council website.<sup>1</sup> In determining the date and time of the public hearing, consideration is given to the convenience of the public. In recent years, public hearings are often held on Saturdays. Representatives of the Policy Bureau concerned are invited to be present to listen to the views but they are not normally required to respond to questions in relation to the views expressed during the hearing. Public officers in attendance may be requested to give a preliminary response at the end of the hearing. A separate meeting is usually held subsequent to the hearing to allow the public officers time to examine the views collected from the public and to respond to committee's questions.

16.10 In scheduling a public hearing, the clerk needs to collate the number of deputations (which may include individual members of the public) who wish to make oral representations, and propose to the chairman the number of sessions required to listen to public views. Deputations which have submitted views on the same subject through the Redress System are also notified of the holding of the public hearing. Deputations are encouraged to provide written submissions to the committee and it will be for the deputations themselves to decide whether to appear before the committee to make oral representations. Each deputation should have equal time to make its representation, whether or not a written submission has already been made by the deputation. Under normal circumstances, a speaking time of not less than 3 minutes is allowed for each deputation. No questions may be put to the deputation unless for clarification by the chairman. Members of the committee may also seek views or clarifications from the deputation at the plenary discussion scheduled at the end of the hearing. In the event that two or more sessions are held for the same public hearing, a plenary discussion is scheduled at the end of each session.

16.11 Where needed, the clerk prepares a summary of the issues and concerns raised in the submissions. Translation is usually not provided but summary translation into the Chinese language is provided for lengthy submissions made in English if the chairman so advises. All submissions are circulated to members and the Government and are made available to the public unless the deputations concerned raise objection to doing so.

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<sup>1</sup> It has been a practice since 2002 that the 18 District Councils would be notified when an invitation of views is put on the Legislative Council website.

*Procedure governing the making of oral representations by members of the public*

16.12 The procedure adopted by committees in conducting public hearings is not laid down in the Rules of Procedure or the House Rules. Some guidelines in respect of the invitation of public views, speaking order and speaking time limit for deputations are nevertheless provided in the various handbooks for committee chairmen available on the Legislative Council website. Generally speaking, each registered member of the public is only allowed to speak once either as a representative of a group/organization or in his/her personal capacity at a public hearing and should not be allowed to speak again on behalf of an absent deputation. The committee chairman nevertheless has the discretion to handle special requests flexibly.<sup>2</sup>

16.13 As regards organizations/groups bearing names with offensive or insulting connotations, the Committee on Rules of Procedure notes that the chairman of each committee has a power to restrict the circulation of a submission containing defamatory remarks/expressions made against, or which may be embarrassing to, any person or body by ordering the circulation of any such submission to members only, or the obliteration of the remarks/expressions before circulation. Further, the chairman has the power to rule out names of groups with connotations that might compromise the dignity and solemnity of the proceedings of the Council.<sup>3</sup>

*Disorderly conduct of members of the public attending meetings*

16.14 Rule 87 of the Rules of Procedure provides that the chairman of a committee may order the removal from a meeting of any member of the public who behaves, or who appears likely to behave, in a disorderly manner.

Corporate liaison with local community

16.15 There is a long-standing convention for Members of the Legislative Council to discuss and exchange views with members of the 18 District

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<sup>2</sup> The decision was made by the Committee on Rules of Procedure in 2014 after conducting an inquiry into the practices for the making of oral representations by members of the public at committee meetings. The matter was discussed again by the Committee in 2014-2015 and as a result of its deliberations, the Handbooks for Chairmen of Panels/Bills Committees/Subcommittees on Subsidiary Legislation were amended. See Progress Report of the Committee on Rules of Procedure for the period (October 2013 to June 2014) para. 3.2 – 3.7 and Progress Report of the Committee on Rules of Procedure for the period (October 2014 to June 2015) para. 3.13 – 3.17.

<sup>3</sup> Progress Report of the Committee on Rules of Procedure for the period (October 2014 to June 2015) para. 3.13 – 3.17.



## ***16. Public Engagement***

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Councils on a regular basis in accordance with the arrangements set out in Rule 32 of the House Rules. During the meetings issues which are of concern to the individual District Councils are brought up for discussion. Whilst individual cases are taken up by the Public Complaints Office, matters of policy are usually referred to a relevant Panel for more in-depth study. These meetings are scheduled in such a way that 3 meetings with each District Council will normally be arranged within a legislative term. All Members attend these meetings on a roster basis with those Members coming from the same geographical constituency being included as standing members. The convenor of the meeting is one of the Members also determined according to a roster. The convenor is responsible for coordinating the pre-meeting background research on the issues to be discussed and providing a progress report to the District Council 3 months after the meeting. In addition, a luncheon with the chairmen and vice-chairmen of the 18 District Councils is organized each year.

16.16 Other similar liaison meetings with the local community include the regular meetings with councillors of Heung Yee Kuk<sup>4</sup> and the annual tea reception with major charitable organizations<sup>5</sup> in Hong Kong. By maintaining face-to-face dialogue with community leaders, Members of the Legislative Council are better able to better understand the views of different sectors of the community about issues which may affect the well-being of people and the long-term development of Hong Kong.

### **Enhancing the transparency of the Legislature**

16.17 It is well recognized by Members that to encourage the general public to come forward with their views, there is nothing more important than to inspire their trust and confidence that views put forward to the legislature are seriously considered and followed up with the relevant authorities. Transparency in the operation of the legislature and public accessibility to information are the foundation stones to build up this trust between the legislature and people. The Hong Kong Legislature has gone a long way in enhancing its transparency from observance of proceedings in the Chamber to the broadcasting of Council sittings on radio in 1975 and on TV in 1986; from the setting up of an official website in 1996 to the broadcasting of all open

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<sup>4</sup> Heung Yee Kuk is the statutory advisory and consultative body for the New Territories.

<sup>5</sup> The major charitable organizations invited to the annual tea reception include Tung Wah Group of Hospitals, Po Leung Kuk, Lok Sin Tong Benevolent Society, Kowloon, Pok Oi Hospital, Yan Chai Hospital and Yan Oi Tong.

meetings of committees on its own webcast since 2006, and on various forms of social media platform on the Internet since 2014.

### Observance of the proceedings of the Council and committees

16.18 The admission of members of the press and the public as observers of meetings of the Council has long been recognized, originating in the Standing Orders of the pre-1997 Legislature<sup>6</sup> and reaffirmed in the present Rules of Procedure of the HKSAR Legislature<sup>7</sup>. The admission of such persons however is subject to such rules as may from time to time be made by the President and enforced by the Clerk. For this purpose, the President has issued the Administrative Instructions for Regulating Admittance and Conduct of Persons (Cap. 382A) (**Appendix 16-A**). This has been explained in Chapter 4<sup>8</sup> when referring to public access to the proceedings of the Council.

16.19 The general principle is that members of the public are welcome to observe the open proceedings of the Council and committees as long as seats are available in the public galleries to accommodate them and provided that they behave in an orderly manner.<sup>9</sup> They are also not allowed to display any sign, message or banner in the public galleries or on their clothing when they are in the public galleries.<sup>10</sup> The same rule applies to members of the press. Any persons observing proceedings of the Council or committees must comply with any direction given by an officer of the Council for the purpose of keeping order.<sup>11</sup>

### Facilitating the reporting on the work of the Council by the media

16.20 The facilitation of reporting on the business of the Council by the media has been a policy upheld by the pre-1997 Legislature and the Legislative Council today. Since the moving of the Legislative Council to the former Legislative Council Building in 1985, representatives designated by individual media organizations, either print or radio or television, had been permitted to standby at designated press areas for attending press briefings,

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<sup>6</sup> The first time admission of the public (then known as "Strangers") and the press was mentioned in the Standing Orders was in the 1929 Standing Orders of the pre-1997 Legislature.

<sup>7</sup> Rule 86 of the Rules of Procedure.

<sup>8</sup> Chapter 4, para. 4.50 – 4.51.

<sup>9</sup> Section 11 of the Administrative Instructions for Regulating Admittance and Conduct of Persons (Cap. 382A). This principle is also mentioned in Canada's *House of Commons Procedure and Practice* (2009) 2<sup>nd</sup> Edition, p.286.

<sup>10</sup> Section 12 of the Administrative Instructions for Regulating Admittance and Conduct of Persons (Cap. 382A).

<sup>11</sup> Section 11 of the Administrative Instructions for Regulating Admittance and Conduct of Persons (Cap. 382A).

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press conferences and for interviewing Members. These designated media representatives, usually one to two reporters from each media organization, are known as "LegCo Beat Reporters" and are issued with admission passes valid for the entire session<sup>12</sup>. Following the opening of the meetings of most of the committees of the Council to the public, the need for LegCo Beat Reporters to be stationed inside the precincts of the Chamber has increased. During the planning of the new Legislative Council Complex, more facilities for use by the media were incorporated into the design of the Complex, including the provision of a press gallery and photo rooms in each conference room, designated workstations in the press room for reporters and TV/Radio Rooms for electronic media organizations, designated press positions for interviews and enhanced press conference/briefing facilities.

16.21 Members of the press are required to observe the rules laid down in the Administrative Instructions for Regulating Admittance and Conduct of Persons (Cap. 382A) issued by the President governing the conduct of the media inside the precincts of the Chamber. Guidelines are issued from time to time by the Legislative Council Secretariat to set out the administrative arrangements dealing with various matters such as the issue of admission passes and use of media facilities in the Legislative Council Complex. **(Appendix 16-B)**

### Broadcasting of proceedings

16.22 Proceedings of the Council and its committees are currently broadcast live on webcast on the Legislative Council's official website. An archive is also available to facilitate retrieval of the proceedings of open meetings. The video and audio feeds of the recording of the proceedings, which are produced by an in-house TV production team of the Legislative Council Secretariat, are made available to all media organizations for use in their broadcasting. This arrangement became possible after moving into the new Legislative Council Complex in October 2011. Before then, the proceedings of the Council were recorded by Radio Television Hong Kong as part of the support to the Legislative Council provided by the Government. Proceedings of committees were recorded by individual media organizations from the press galleries. From October 2011 onwards, with the provision of the relevant broadcast facilities in the Chamber and conference rooms, recording of all proceedings of the Council and open meetings of its committees is undertaken centrally by the in-house TV production team, but

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<sup>12</sup> Reporters who are required to cover the news on an ad hoc basis are issued with temporary admission passes.

individual media organizations are also allowed to make their own recordings from the press galleries and individual TV/Radio Rooms.<sup>13</sup> These are important facilities for enhancing the legislature's outreach to the public.

### Dissemination of information

16.23 Effective and efficient dissemination of information about the work of the Council is accorded great importance in order to enhance the transparency of the Council and help the public's understanding of the matters considered by the Council and its committees. Apart from the issue of press releases and conduct of press briefings, there is also the need to disseminate information through electronic means, in particular mobile devices which have become a popular way of communication among the public.

#### *On the website*

16.24 From July 1996 onwards, members of the public have been able to access information about the Legislative Council through the official website of the Council: [www.legco.gov.hk](http://www.legco.gov.hk). Originally, the website only provided general information about the Council: schedule of meetings, meeting documents for the current term, Members' directory, record of bills introduced into the Council, etc. With the advancement of technology and growing demand for greater transparency, more features and inter-linkage of webpages, webcast, database and documents have been built into the website to facilitate easy and timely retrieval of information.

#### *On webcast*

16.25 In October 2006, a new audio webcast system was introduced to enable members of the public to listen to all open meetings of the Council and its committees in three choices: floor version, Cantonese and English. The system, which originally allowed only 500 concurrent users, has been substantially enhanced in terms of capacity in the past decade to accommodate up to 4 000 concurrent users as of 2015-2016.

#### *Through social media*

16.26 With the wider use of mobile applications and social media websites by the general public in recent years and especially among younger voters, the Commission has also looked for ways to reach out to people through these new media. In November 2013, the Commission approved in principle the

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<sup>13</sup> See Chapter 4, para. 4.47.

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launching of Apps<sup>14</sup> and the setting up of YouTube and Flickr accounts to disseminate information of the Legislative Council. The objective was to enhance the Council's on-line presence as well as to facilitate Members' own on-line activities through these popular video and picture sharing sites. As this move would entail the entering into agreements with the Apps and social media companies, the Commission examined the legal issues involved including copyright, personal data privacy and potential liability.

16.27 Regarding the copyright issues, by virtue of section 184(1) of the Copyright Ordinance (Cap. 528), the Commission noted that the Legislative Council is the first owner of the copyright in any works made by or under the direction or control of the Council, which include the webcasting of Council meetings. As regards other materials, such as photos of Members' activities to be uploaded onto the Flickr account and information other than Webcast to be included in the Legislative Council Apps ("LegCo Apps"), by virtue of section 14(1) of Cap. 528, the Commission as employer of the Secretary General who is authorized by the President to control such materials, is the first owner of any copyright in such materials subject to any agreement to the contrary.

16.28 As regards potential liabilities, the Commission noted that by virtue of section 10 of the Defamation Ordinance (Cap. 21), any person who publishes a report of the Legislative Council by order or under the authority of the Council is protected against civil or criminal proceedings under Cap. 21. Under section 14 of Cap. 21, the publication of reports of the Legislative Council is privileged unless the publication is proved to be made with malice. Under section 22, for the purposes of the law of libel and slander, broadcasting is treated as publication in permanent form. However, upon reviewing the specific meaning of "broadcast" and "broadcasting" under section 2 of Cap. 21, the Commission noted that it is unlikely that the showing of Council meetings through Apps and YouTube would be covered by section 10 or 14 of Cap. 21. This would leave the service providers open to legal action for defamation. Regarding the potential legal liability of the service providers, the disclaimer clause or indemnity provision had limited their liability and the burden to defend and indemnify and hold the service providers to account still rests with the copyright owner of the information.

16.29 In addition, the protection of personal data issues arose from the intention to upload Members' personal data onto the LegCo Apps. According

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<sup>14</sup> Apps are mobile software applications designed to run on smartphones, tablet computers and other mobile devices.

to Principle 3 of the data protection principles in Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486), personal data shall not, without the prescribed consent of the data subject, be used for a new purpose.<sup>15</sup> Since the inclusion of a directory in the LegCo Apps might constitute a new purpose, the Commission agreed that Members' written consent should be sought.

16.30 After deliberations, the Commission concluded that whilst there were certain legal issues involved in the use of social media websites to disseminate information of the Legislative Council, the benefits of so doing might outweigh those risks. As the Commission would have little control over the dissemination of the Legislative Council's proceedings through third-party websites, it would be prudent to seek the endorsement of the Council of this proposal through a debate on a proposed resolution to direct the Commission to do so under section 17(2) of The Legislative Council Commission Ordinance (Cap. 443). A report summarizing the deliberations of the Commission on the proposal to launch LegCo Apps and to use social media to disseminate information of the Legislative Council and the related legal issues was tabled at the Council meeting of 8 January 2014 at which the resolution was dealt with. The resolution passed by the Council is at **Appendix 16-C**.

### **Building institutional memory to facilitate understanding and growth**

16.31 With changes in the membership of the Legislature following a general election once every four years and also with the turnover of staff, it is necessary for the Legislature, as an institution, to ensure that its good practices are maintained and its working mechanism continues to develop to meet new challenges and aspirations. The setting up of the Legislative Council Library in 1995 and the Archives in 2011, as well as the adoption of a policy to facilitate access to the Legislature's documents and records by the Council in 2014 represent important steps taken to strengthen the institutional memory of the Legislature.

#### Legislative Council Library

##### *Historical background*

16.32 The Legislative Council Library was established in 1995. The proposal to set up the Library for the Legislative Council originated from a

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<sup>15</sup> Under section 3(4) of Schedule 1 to Cap. 486, a new purpose means any purpose other than the purpose for which the data was to be used at the time of the collection of the data or a purpose directly related to such purpose.

## *16. Public Engagement*

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consultancy study conducted by Mr Philip LAUNDY, then Clerk Assistant of the House of Commons in the Parliament of Canada, who was invited by the then President Sir John SWAINE in January 1994 to advise on the research and library support to the Council. The establishment of a new Research and Library Division was endorsed by the Working Group on the Proposed Reorganization of the Legislative Council Secretariat which recognized the importance of research and library facilities to the functioning of a modern Legislature. Funding support was provided by the Government to enable the Library to commence operation in March 1995. Library services, including loan services, were available to Members and staff, but the main focus of work was on the strengthening of support for committees. Members of the public were allowed access to the open documents and records of the Council and committees through the assistance of professional Library staff.

16.33 The first task of the Library after it was set up in 1995 was to take over all records from the former Office of UMELCO and OMELCO which existed before the establishment of The Legislative Council Commission in 1994 as well as the papers and reports of open meetings of the Council and its committees after 1994. With the expansion in the provision of library and research staff and the space of the Legislative Council Library since 1995, the scope of services provided by the Library had also changed substantially. Instead of acting as an information repository and providing space where Members and staff could inspect Council records, the Library had taken on a more active role of an information provider in support of the Legislature. Since 2000, members of the public visiting the Library in person have access to the entire collection of the Library in addition to open records of the Council and its committees. In the same year, the Library uploaded its catalogue onto the Legislative Council website. Electronic copies of open records of the Council and its committees were also uploaded onto an internal Document Management System which allowed advanced searching and retrieval of documents on the Library premises as well as in those offices connected to the Secretariat network. In 2005, the Document Management System was moved to be housed in the LegCo website. Since then, Internet users may easily search and retrieve records of the Council and its committees

### *Transformation into a Constitutional Library*

16.34 In anticipation of the relocation of the Library to the new Legislative Council Complex in 2011, The Legislative Council Commission decided in January 2009 to transform the Library into a Constitutional Library, while maintaining its role as the custodian of the documentary records of the business of the Legislative Council, to facilitate the public's understanding and appreciation of the Basic Law. The Commission considered that the Library should focus on collecting materials relating to the constitutional

systems of the People's Republic of China and common law jurisdictions. Information packs should be produced with respect to the Legislative Council's deliberations of major issues in relation to individual chapters of the Basic Law as well as the comparison of various constitutional systems on related questions. In addition, the collection on constitutional-related subjects held by the Library should be gradually built up to at least 50% of the entire collection.

16.35 Members of the Commission also considered the future clientele of the Library after its reprovisioning in the new Complex. Members decided that it should remain as a reference library and its collections could be on loan only to Members, their designated personal assistants and Secretariat staff. Students, academics and researchers would be the main target users of the Library apart from Members and staff. The Constitutional Library would function as a link between the Council and the people of Hong Kong, contributing to increasing transparency and better knowledge of the business and activities of the Council and its Members. It would facilitate understanding and appreciation of the Basic Law, the constitutional document that underpins the "One Country, Two Systems" national policy of the People's Republic of China.

### *Current library services*

16.36 Today, the Legislative Council Library serves as a reference library for Members, Members' assistants, Secretariat staff as well as members of the public. The Library occupies two floors at the Legislative Council Complex. G/F comprises a reading area for members of the public, two audio-visual rooms and a stack area housing the various Library collections. GM/F consists of a stack area, a reading area for Members' assistants and Secretariat staff, as well as a dedicated reading area for Members. The opening hours of the Library are from 9 am to 6 pm, Mondays to Fridays, and from 10 am to 6 pm on Saturdays.

16.37 The core collection of the Library comprises documents and records of the Council and its committees. Other collections include:

- (a) "Constitutional Collection" comprising books, journals, documents and electronic resources relating to the constitutional affairs and parliamentary practices of various jurisdictions, including the National People's Congress of the People's Republic of China;
- (b) "Basic Law Collection" comprising documents of the Basic Law Drafting Committee and the Basic Law Consultative Committee as well as books and articles on the Basic Law;



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- (c) "General Collection" comprising government publications, and books on subjects of laws, political science, and social sciences;
- (d) "Reference Collection" comprising mainly statistical data, almanacs, encyclopaedias and other reference tool books; and
- (e) "Periodicals" on subjects of parliamentary affairs, laws and political science.

Only Members and staff may borrow from the Library. To supplement the Library's own collections, inter-library loan services with local university libraries, the Judiciary library and the library of the Department of Justice can also be arranged for Members and staff.

16.38 In order to maintain an active relationship between the Legislative Council and those with an interest in keeping a link with the Council, arrangements have been made for LegCo Beat Reporters, university teaching staff and research students, former Members and former directorate staff of the Secretariat to have access to the stack areas of the Library on both floors, and to use the reading area on GM/F to view library holdings and access the digital collections of the Library.

### *Future development*

16.39 In the long-run, in order for the Legislative Council Library to develop itself into a Constitutional Library, apart from maintaining open records of the Council and its committees, its aim is also to collect documents related to the foundational laws of Hong Kong, documents recording the workings of the constitution of PRC, overseas jurisdictions, and the Basic Law, including their drafting, application and amendments, etc.

16.40 In addition, the Library also collects materials relating to the development of the Macao Special Administrative Region, in particular, the drafting and implementation of the Macao Basic Law. The long-term goal is to build up a collection relating to constitutional and parliamentary affairs accounting for about half of the Library's entire collection. Owing to budgetary constraint, the collection will continue to concentrate on subjects of laws, political science and social sciences. Other subjects will be supplemented through the inter-library loan service and co-operation with other libraries in Hong Kong.

*Information and reference service*

16.41 Since 2011, the Legislative Council Library has launched the following new services:

- (a) maintaining a dedicated reference desk for constitutional and parliamentary enquiries;
- (b) developing electronic resources to facilitate research relating to business of the Council as well as constitutional and parliamentary affairs;
- (c) producing publications to keep Members and staff informed of the latest policies, important legislative and financial proposals, major inquiry and audit reports of selected overseas jurisdictions as well as the latest development in the rules and practices of overseas parliaments; and
- (d) providing content management for the Legislative Council website to facilitate public access to the over 230 000 digitised records of the Council.

**The Legislative Council Archives**

Historical background

16.42 Pursuant to a comprehensive study conducted with the assistance of an expert advisory group, The Legislative Council Commission decided in May 2009 to set up the Legislative Council Archives for maintaining records of all documents generated by the Legislature in the course of carrying out its functions, such as records of proceedings of the Council and committees, Rules of Procedure, discussion papers and reports, as well as other records which would provide historical evidence of the growth and development of the Legislature.

16.43 With the approval of funding by the Finance Committee in December 2009, the Legislative Council Archives was established in January 2012 occupying a total area of 260 m<sup>2</sup> on GM Floor of the Legislative Council Complex. The layout plan and the fitting-out requirements are designed according to international archival standards. Facilities for long-term development of the Archives have also been identified for future consideration.

16.44 Prior to the commencement of operation in January 2012, the Archives had started to collect records of enduring value from the Legislative Council Library, different Divisions of the Legislative Council Secretariat,

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private records and material from incumbent and former Members, as well as from other sources such as the Public Records Office. Due to inadequate space and facilities of the Legislative Council Library, the Public Records Office had been asked to keep some of the more important historical records of the Legislature since 2000. These include the original records of the Authenticated Ordinances of the 19<sup>th</sup> century, Minutes of Meetings of the Legislature between 1948 to the 1970s, and various records on bills and administrative work of the 1970s and 1980s from UMELCO and OMELCO. Some of these records, which amounted to about 6,000 archival records, were returned to the Legislative Archives in 2011. As regards the earlier historical records of the Legislature which the Government considers to be its property, the Archives would arrange to make copies of such historical records from other local and overseas archival institutions and libraries.

16.45 With the exception of some of the earlier historical records held by other institutions, the Archives followed the prevailing best practices of most archival institutions in accepting for preservation only original records (i.e. records which were created or received for an official business activity, designated as the official records for that business activity and captured into a record-keeping system). Duplicates were produced for access if the original records collected were the only extant copy available to the Legislature and were in fragile condition. For the records kept by the Secretariat, the Archives explained to staff of all Divisions about its role to appraise records for preservation or destruction, manage the records of archival value in accordance with international standards, and provide access to archival records of the Legislature. The Archives staff started to draw up records retention and disposal schedules for all records to ensure that the legal and institutional requirements, guidelines and procedures applicable to the records kept by the Secretariat were put in place after relocation to the Legislative Council Complex in October 2011. This also aimed to ensure that the disposal of records could be done in an open, consistent and accountable manner.

### Missions of the Legislative Council Archives

16.46 The missions of the Legislative Council Archives are to select, acquire and preserve records of enduring value for access and use. These records document the history, core functions and activities of the Legislature as corporate memory of the Council, which also form part of the collective memory of Hong Kong. To ensure that these records are managed efficiently and effectively and that archival records are identified for preservation and access according to agreed standards, the Legislative Council Archives is responsible for the development, implementation, review and improvement of an integrated archives and records management programme.

Archives and Records Management Policy of the Legislative Council

16.47 To enable all staff members of the Legislative Council Secretariat to understand the missions of the Archives and work together to achieve these common goals, The Legislative Council Commission endorsed the "Archives and Records Management Policy of the Legislative Council" on 28 September 2011. The Policy, which is provided in **Appendix 16-D**, is to apply to all permanent and temporary staff of the Secretariat. The purpose is to ensure that adequate, accurate, reliable and usable business records of the Legislative Council are created, captured, managed, stored, accessed to and disposed of properly with those of enduring value being preserved as archival records for continuous access to meet operational needs, requirements of the Council and The Legislative Council Commission, accountability and public interest.

16.48 In this Policy, it is stated that it is the policy of the Commission to recognize that records are vital information assets which give evidence of decisions and actions, facilitate on-going business operation, provide for organizational transparency and accountability, and support archival functions and services. The Policy also provides for the functions, duties and power of the Legislative Council Archives in the management of the records of the Legislative Council; selection and processing of archival records for preservation and continuous access; and promotion of public awareness, understanding and use of the archival records under its care. Responsibilities of Heads of Divisions and staff of the Secretariat, and their working relationship with the Legislative Council Archives are specified to facilitate implementation of this Policy.

Archives' services

16.49 The Archives has developed policy, standards and procedures for managing archival records. An electronic system was developed in-house and implemented in June 2015 to facilitate processing, review and preservation of archival records. It also allowed a user, including a member of the public, to search the electronic archives catalogue to ascertain whether the required records are available, and reserve and place an inspection order for accessing the records. The archives catalogue is available on-site and via the Legislative Council website.

16.50 All archival materials are inspected in the Reading Rooms of the Legislative Council Archives in the Legislative Council Complex. No such materials may be taken out of the Archives. Users are required to observe the "Rules on the Use of Services of the Legislative Council Archives" (**Appendix 16-E**) which was endorsed by the Commission on 31 August 2011. These Rules are based on international standards and best practices reminding users of the need for proper handling of archival records and ensuring

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reasonable behaviour of users so as to maintain a quiet environment conducive to research and study.

### **Access to information policy**

16.51 It has been the policy of the Legislative Council to facilitate public access to information held by the Council in order to meet public expectation of accountability and transparency. After the Government introduced the Code on Access to Information to the whole Government in 1996, the Legislative Council Secretariat received and dealt with requests for access to information held by the Secretariat but without adopting any code or guide. The question faced by the Secretariat at that time was that it could only authorize access to its administrative documents but not records and documents of the Council or its committees which, by parliamentary convention, should be under the control of the Council and not its administrative wing.

16.52 Documents and records of the Council (including those of its committees) may be open or closed. As the Council and the vast majority of the committees of the Council hold their meeting in public, most of the documents and records are open documents which are accessible and available on the official website of the Legislative Council. As regards the closed documents, prior to April 2014, requests for access to such documents were handled by the Secretary General, as Clerk to the Legislative Council and custodian of all its records, on a case-by-case basis. Where the document concerned was classified confidential by a committee, e.g. a submission to a select committee conducting an inquiry with power to summon witnesses, the request for access to such a document was usually not acceded to since the select committee was no longer in existence and there was no procedure in place to decide whether such access could be granted. In 2011, the Secretariat undertook to draw up an access to information policy after the Legislative Council moved into the Legislative Council Complex.

### **Review conducted by The Legislative Council Commission**

16.53 On 19 March 2013, following a review conducted by the Secretariat, the Commission agreed that a formal access to information policy should be introduced. Consultations with Members of the Council and with the general public, the media and academia were conducted. In November 2013, the Commission noted that the Council, as the Legislature, enjoys certain exclusive privileges including whether and how its records and documents are to be provided for public information. Authorization of the Council for accessing documents and records of the Council and its committees would therefore be required. Besides, implementing maximum closure periods and

conducting declassification reviews would have implications for the operation of the Council and the committee system. The Commission considered that a resolution of the Council should be made with a view to putting a mechanism in place by April 2014 and invited the Committee on Rules of Procedure to study how that could be done. In the meantime, regarding requests which did not require the Council's authorization, i.e. documents and records within the jurisdiction of the Commission and the Legislative Council Secretariat, the Commission decided that implementation of the related proposals<sup>16</sup> should take effect on 1 January 2014.

*Recommendations of the Committee on Rules of Procedure*

16.54 Upon the invitation of the Commission, the Committee on Rules of Procedure examined the scope of the proposed resolution and the procedure for handling requests for access to information. The Committee noted that for closed documents and records (including those in relation to closed meetings or the Redress System not intended to be available for public access), not all of them required continued protection from public access. As the sensitivity of such documents and records diminished over time, they should not be kept closed forever unless disclosure was prohibited by law. After deliberation, the Committee recommended to the Commission that:

- (a) the maximum closure period for unclassified documents and records should be 20 years subject to a review to ensure that the disclosure is not prohibited by law;
- (b) the maximum closure period for classified documents and records should be 50 years unless the disclosure is prohibited by law. These documents and records should be subject to review for declassification within 25 years against a list of exempted categories proposed by the Committee (**Appendix 16-F**). For those documents and records which remain classified after a review, they should be reviewed again at least once every 4 years until they can be open to the public or upon expiry of their closure periods, whichever is earlier;

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<sup>16</sup> The related proposals referred to the administrative arrangements for processing requests for access to documents and records available for public access and those which may be provided on request. The administrative arrangements included the forms to be used, response time, fees and charges, and review and complaints mechanism.

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- (c) a committee, called the "Committee on Access to the Legislature's Documents and Records" with its membership and size modeled on those of the Commission, should be appointed by the Council to make decisions on access and related policy matters; and
- (d) the Clerk to the Legislative Council should be assigned to undertake declassification reviews and to deal with access requests and other related duties.

### Resolution of the Council on access to information

16.55 At its meeting on 28 February 2014, the House Committee supported the recommendations of the Committee on Rules of Procedure and agreed that a resolution should be proposed to the Council for amending the Rules of Procedure to establish the Committee on Access to the Legislature's Documents and Records<sup>17</sup>, putting in place a Policy on Access to the Legislature's Documents and Records and empowering the Clerk to act in accordance with the Policy and any guidelines laid down by the new Committee. The proposed resolution was approved by the Council at its meeting of 19 March 2014.

### *Committee on Access to the Legislature's Documents and Records*

16.56 Under the new Rule 74A of the Rules of Procedure made under the above-mentioned Resolution, the functions of the Committee on Access to the Legislature's Documents and Records are to determine whether a document or record of the Legislature (or its committee) should be made available for access earlier than the expiry of the closure period specified in the Policy; to consider any objection against the denial of access to such a document or record by the Clerk to the Legislative Council; and to consider any other matter relating to or arising from the Policy.<sup>18</sup> The size and composition<sup>19</sup> of the Committee are identical to those of The Legislative Council Commission.<sup>20</sup> Its term of office is one year or until the next House Committee meeting held for the election of members of the Committee,

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<sup>17</sup> Rule 74A of the Rules of Procedure.

<sup>18</sup> Rule 74A(1) of the Rules of Procedure.

<sup>19</sup> With the exception of the 3 ex-officio members, the membership of the Committee on Access to the Legislature's Documents and Records may be different from that of the Commission although the method of election is the same.

<sup>20</sup> Rule 74A(2) of the Rules of Procedure.

whichever is the earlier.<sup>21</sup> Its quorum is the chairman and 3 other members.<sup>22</sup> The chairman or any member presiding does not have an original vote but has a casting vote when the votes of other members are equally divided.<sup>23</sup> Meetings need not be held in public unless the chairman otherwise orders in accordance with the decision of the Committee.<sup>24</sup> At its meeting on 28 March 2014, the House Committee adopted the procedure for nominating and electing members of the Commission as the procedure for nominating and electing members of the Committee. An election was held on 11 April 2014 at a meeting of the House Committee.

16.57 The Committee on Access to the Legislature's Documents and Records held its first meeting on 20 May 2014 and adopted the list of exempted categories of the documents and records of the Legislature by which an access request to closed documents and records kept by the Secretariat might be refused. This list is substantially the same as the list recommended by the Committee on Rules of Procedure at **Appendix 16-G**. It also adopted its Practice and Procedure, as attached at **Appendix 16-H**.

*Policy on Access to the Legislature's Documents and Records*

16.58 The Policy on Access to the Legislature's Documents and Records provides a maximum records closure period for documents and records of the Legislature and its committees. In gist, the maximum records closure period for unclassified documents and records of the Legislature and its committees is 20 years and for classified documents and records it is 50 years unless closure is prohibited by law. All documents and records may be made available before the expiry of their closure period consequent upon a review. Details of the Policy are provided in Schedule 2 to the Rules of Procedure attached at **Appendix 16-I**.

16.59 The Policy applies to the information or records in existence and kept by the Secretariat. It does not oblige the Secretariat to acquire information not in its custody or create a document or a record not in existence. The Policy also does not affect any legal rights of access to information nor does it affect any legal restrictions on access to information whether they are prohibitions or obligations arising from statute law or under common law.<sup>25</sup>

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<sup>21</sup> Rule 74A(3) of the Rules of Procedure.

<sup>22</sup> Rule 74A(4) of the Rules of Procedure.

<sup>23</sup> Rule 74A(6) of the Rules of Procedure.

<sup>24</sup> Rule 74A(8) of the Rules of Procedure.

<sup>25</sup> See Appendix I to LC Paper No. CROP 44/13-14 presented to the House Committee for its meeting on 28 February 2014. <http://www.legco.gov.hk/yr13-14/english/hc/papers/hc0228crop-44-e.pdf>.



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### *Clerk to the Legislative Council's responsibilities*

16.60 The Resolution also provided a new Rule 6(5A) in the Rules of Procedure to require the Clerk to the Legislative Council to conduct reviews specified in the Policy and authorize him to deny access to documents and records in accordance with the guidelines drawn up by the Committee on Access to the Legislature's Documents and Records. To enhance transparency, the Committee on Access to the Legislature's Documents and Records publishes on the Legislative Council website lists of approved and denied access requests to documents and records of the Legislature. For denied cases, a brief description of the reason(s) for the denial is also provided for each case.<sup>26</sup>

### **Sustainable development of the Legislature**

16.61 The purpose of preservation of documents and records is to build up the Legislature's institutional memory to facilitate development and growth. By making such documents and records accessible to all who are interested, future generations will be in a better position to understand reasons for past practices and look for alternative ways to deal with the changing needs of the institution. In addition to the services provided by the Legislative Council Library and the Archives, the Commission has also published procedural guides, manuals and other publications to make it easier for those who play a part in the work of the Legislature, such as Members, staff, public officers, LegCo Beat Reporters, and even deputations and the general public, to understand how to fulfill their respective roles properly and effectively. For the sustainable development of the Legislature, there is a need to involve the public, in particular the next generations, to ensure that they understand the meaning of parliamentary representation and help the Legislature perform its constitutional role through active participation and partnership.

### Guided educational tours and education facilities

16.62 In 2010, the Commission endorsed the development of both educational facilities and activities to enhance the public's understanding of the work, functions and history of the Legislature. The commissioning of the Legislative Council Complex in October 2011 has made it possible for the Commission to launch a wider range of guided educational tours for students, members of charitable organizations and the general public, and to provide

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<sup>26</sup> See <http://www.legco.gov.hk/open-legco/english/legislature-list-of-denied-case.html>.

related facilities. These facilities, as mentioned in Chapter 4<sup>27</sup>, include a Children's Corner for story telling and interactive games relating to good citizenship and the legislative process, an Education Activity Room for holding role-plays at mock Council meetings<sup>28</sup>, and exhibition galleries for providing information on the historical development and work of the Legislature.

16.63 Guided educational tours provide an opportunity for members of the public to visit the education facilities in the Legislative Council Complex. To accommodate the needs of visitors, these tours are available on all days except six public holidays<sup>29</sup> and are conducted in Cantonese, Putonghua and English. In addition, the needs of people with disabilities are taken care of during their visits to the Complex. Booking of guided educational tours may be made through an online booking system on the Legislative Council website or via a centralized booking hotline which is also used for reserving seats in the public galleries for observing open meetings of the Council and its committees.

### Facilities for persons with disabilities

16.64 Inclusion is a principle upheld by Members and staff of the Legislature in establishing partnership with people. Ongoing efforts have been made to make the facilities and services accessible to people of all ages including persons with disabilities. During the planning of the Legislative Council Complex, the design and planning standards adopted included the requirements set out in the new "Design Manual: Barrier Free Access 2008" despite that by law the project was only subject to the former applicable standards that were laid down in 1997.

16.65 The special features installed in the Legislative Council Complex to provide barrier free access include:

- (a) For the visually impaired: tactile paths in all common areas and access corridors; audible guides from outside the Complex to all public entrances, lobbies, lifts and escalators, Braille keyboards and related software in meeting rooms;

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<sup>27</sup> Chapter 4, para. 4.48.

<sup>28</sup> Mock Council meetings were first launched in 2004 for students in secondary and tertiary education to hold a debate on the passage of a bill or a motion debate on a specific topic. It has become a regular education activity to provide training opportunities for young people to enhance their understanding of the work of the Council and promote their political awareness.

<sup>29</sup> The Legislative Council Complex is closed on New Year Day, first and second day of Chinese New Year, Hong Kong Special Administrative Region Establishment Day, National Day and Christmas Day.

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- (b) For the wheel-chair bound: barrier free access from outside the Complex to the Chamber, conference rooms, all facilities for Members, staff, media and the general public; accessible toilets, remote-control doors;
- (c) For the hearing impaired: visual fire alarms, simultaneous sign language interpretation service for the entire proceedings of Council meetings and, if needed, for committee meetings; and
- (d) Design of common facilities such as drinking fountains, washing basins, call bells in toilets, microphone in meeting rooms, etc. to cater for the needs of persons with different forms of disabilities, with international symbols of accessibility where possible.

16.66 Simultaneous sign language interpretation service was introduced in January 2010 first as a trial scheme. This service was provided on a regular basis during Question Time at each Council meeting, and on special occasions, such as the Chief Executive's delivery of his Policy Address, the Question and Answer sessions of the Chief Executive, the Budget Speech or, upon requests made in advance, any important debates. With the move into the Legislative Council Complex, a dedicated interpreters' room for sign language interpretation has been provided to facilitate the sending of the video feeds to the public galleries and as part of the video recordings of the proceedings for the public. Since January 2013, simultaneous sign language interpretation service has been extended to cover proceedings on all items on the Agenda of Council meetings.

16.67 Throughout the planning and early commissioning stages of the Legislative Council Complex, meetings and site visits were held with representative groups of different forms of disabilities to obtain first-hand information from prospective users. The engagement of these representative groups has paved the way for further and continuous efforts to improve people's accessibility not only to the facilities of the Complex, but also to the proceedings of the Council, hence making it possible for all citizens to have an equal opportunity to work as partners to the Legislature.

**Summary of key features of the committees of the Legislative Council**

<b>Committee</b>	<b>Functions/ Terms of Reference</b>	<b>Membership (quorum)</b>	<b>Regular meetings (minimum notice of meeting *)</b>	<b>Voting rights of chairman</b>
<b>Standing committees</b>				
Finance Committee ("FC")	RoP 71(4)	All Members except President (chairman + 8 members)	Bi-weekly, Friday, 3:00 pm or after HC meeting, held in public  (5 clear days)	No original vote; Has casting vote
Establishment Subcommittee of FC	ESC Procedure, Paragraph 2	Any FC members signify membership at the start of session (chairman + 1/7 of members)	Monthly, Wednesday, 8:30 am – 10:45 am, held in public  (5 clear days)	No original vote; Has casting vote
Public Works Subcommittee of FC	PWSC Procedure Paragraph 3	Any FC members signify membership at the start of session (chairman + 1/7 of members)	Bi-weekly, Wednesday, 8:30 am – 10:45 am held in public  (5 clear days)	No original vote; Has casting vote
Public Accounts Committee	RoP 72(1)	Chairman, deputy chairman and 5 members (chairman + 2 other members)	As and when directed by the chairman  hearings open to public  (5 clear days)	No original vote; Has casting vote
Committee on Members' Interests	RoP 73(1)	Chairman, deputy chairman and 5 members (chairman + 2 other members)	As and when directed by the chairman  held in public except for handling complaints  (5 clear days)	No original vote; Has casting vote

<b>Committee</b>	<b>Functions/ Terms of Reference</b>	<b>Membership (quorum)</b>	<b>Regular meetings (minimum notice of meeting *)</b>	<b>Voting rights of chairman</b>
<b>Select committees</b>	RoP 78	Decided by the President taking into account the recommendations of House Committee (RoP 78(2)) (chairman + 1/3 other members of the select committee)	As and when directed by the chairman  held in public unless the chairman orders otherwise in accordance with decision of the committee	No original vote; Has casting vote

<b>Committee</b>	<b>Functions/ Terms of Reference</b>	<b>Membership (quorum)</b>	<b>Regular meetings (minimum notice of meeting *)</b>	<b>Voting rights of chairman</b>
<b>Other committees</b>				
House Committee ("HC")		All Members except President (20 members including the chairman)	Weekly, Friday, 2:30 pm  Held in public  (3 days)	Has no original vote but casting vote in normal business; Has both original vote and casting vote in the election of chairman and deputy chairman
Subcommittees of HC on subsidiary legislation	RoP 75(10)	Minimum of 3 HC members who signify membership (3 members including chairman or 1/3 of members)	As and when directed by chairman  held in public  (3 clear days)	Has original vote but no casting vote in normal business; Has both original vote and casting vote in the election of chairman and deputy chairman
Parliamentary Liaison Subcommittee of HC		No limit on the membership size for the Fifth LegCo (follow the quorum requirements for other subcommittees of HC) (LC Paper No. CB(4)13/12-13)	Follow the requirements for other subcommittees of HC	Has no original vote but no casting vote in normal business; Has both original vote and casting vote in the election of chairman and deputy chairman
Subcommittee of HC on Members' Remuneration and Operation Expenses Reimbursements		Minimum of 3 HC member who signify membership (3 members including chairman or 1/3 of members)	As and when directed by chairman  held in public  (3 clear days)	Has no original vote but no casting vote in normal business; Has both original vote and casting vote in the election of chairman and deputy chairman

<b>Committee</b>	<b>Functions/ Terms of Reference</b>	<b>Membership (quorum)</b>	<b>Regular meetings (minimum notice of meeting *)</b>	<b>Voting rights of chairman</b>
Subcommittees of HC on policy issues	RoP 75(11) and (12)	Minimum of 3 HC members who signify membership (3 members including chairman or 1/3 of members)	As and when directed by chairman  held in public  (3 clear days)	Has no original vote but casting vote in normal business; Has both original vote and casting vote in the election of chairman and deputy chairman
Panels	RoP 77(2) and (3)  Resolutions passed by the Council	Minimum of 6 Member (except President) who signify membership (3 members including chairman or 1/3 of members)	Monthly and as and when directed by chairman  held in public  (3 clear days)	Has original vote but no casting vote in normal business; Has both original vote and casting vote in the election of chairman and deputy chairman
Subcommittees of Panels	RoP 77(9)	Minimum of 3 Panel members who signify membership (3 members including chairman or 1/3 of members)	As and when directed by chairman  held in public  (3 days)	Has original vote but no casting vote in normal business; Has both original vote and casting vote in the election of chairman and deputy chairman
Bills Committees	RoP 76(7)	Minimum of 3 Members (except President) who signify membership (3 members including chairman or 1/3 of members)	As and when directed by chairman  held in public  (3 days)	Has original vote but no casting vote in normal business; Has both original vote and casting vote in the election of chairman and deputy chairman

<b>Committee</b>	<b>Functions/ Terms of Reference</b>	<b>Membership (quorum)</b>	<b>Regular meetings (minimum notice of meeting *)</b>	<b>Voting rights of chairman</b>
Committee on Rules of Procedure	RoP 74(1)	Chairman, deputy chairman and 10 members (chairman + 3 other members)	As and when directed by chairman  Need not be held in public  (5 clear days)	No original vote; Has casting vote
Investigation Committee	RoP 73A(2)	Chairman, deputy chairman and 5 members (5 members including the chairman)	As and when directed by chairman  Held in private (subject to RoP 73A (5))	No original vote; Has casting vote
Committee on Access to the Legislature's Documents and Records	RoP 74A(1)	Chairman (President), deputy chairman (Chairman of House Committee), Deputy Chairman of House Committee and no more than 10 Members (chairman + 3 other members)	As and when directed by chairman  Need not be held in public unless the chairman orders otherwise in accordance with decision of the committee  (3 days)	No original vote; Has casting vote

\* shorter notice may be given if so directed by the chairman.



**Procedure of the  
Committee on Members' Interests  
for Handling Complaints**

**9 December 2014**

## **Procedure of the Committee on Members' Interests for Handling Complaints**

### **Part I: Initial handling of a complaint**

1. All complaints lodged with the Committee on Members' Interests ("the Committee"), whether by a Member or a member of the public ("the complainant"), must be in writing. The complainant's identity will be disclosed to the Member under complaint and in any report on the complaint made by the Committee to the Council.
2. Where a complaint:
  - (a) is made by an anonymous person, or by a person (i) who cannot be contacted, (ii) whose identity cannot be verified, or (iii) who has refused to allow his or her identity to be disclosed; or
  - (b) is made against a former Member; or
  - (c) is about a Member's act(s) or omission(s) which allegedly took place seven years or more prior to the date of receipt of the complaint; or
  - (d) is outside the purview of the Committee, as set out in Rule 73(1)(c) and (ca) of the Rules of Procedure ("the RoP"),

the Clerk should send a written reply to the complainant, if the complainant can be contacted, that the Committee will not consider the complaint, and circulate the complaint and the written reply to members of the Committee ("members"). Where the Member under complaint has given the advance instruction that the Member should be informed of any complaint against the Member which the Committee does not consider, the Clerk should forward the complaint and the written reply to the Member. If item (a)(iii) of this paragraph is applicable, the Clerk should block out the information in relation to the identity of the complainant before forwarding the complaint to the Member under complaint.

3. Unless the complaint has been disposed of under paragraph 2, the Clerk should invite the Chairman to decide whether the Committee should hold a meeting to consider the complaint. The Chairman should inform the Clerk of such a decision within three working days from the date of being notified of the complaint.

4. The Chairman may decide not to hold a meeting to consider the complaint for the following reasons:
  - (a) the complaint is based merely on speculations, inferences or unfounded judgements; or
  - (b) the complaint involves substantially repeated allegations which have already been dealt with by the Committee and no fresh information has been produced; or
  - (c) other reasons the Chairman deems appropriate.
5. If the Chairman decides not to hold a meeting to consider the complaint, the Chairman should inform the Clerk of the reason(s) for the decision. The Clerk should then forward the Chairman's decision and the reason(s) therefor to members by a circular. Any member disagreeing with the Chairman's decision should reply to the Clerk within three working days from the date of the circular.
  - (a) If the Clerk has received replies from a majority of members indicating disagreement with the Chairman's decision upon the expiry of the aforesaid three working days, the Chairman should forthwith direct the Clerk to arrange a meeting to be held within 10 working days to consider the complaint.
  - (b) If the Clerk has received replies from less than a majority of members indicating disagreement with the Chairman's decision upon the expiry of the aforesaid three working days, the Chairman's decision and reason(s) therefor will be deemed to be those of the Committee and the Committee will not take further action on the complaint. The Clerk should forward the Committee's decision and the reason(s) therefor to the complainant in writing. Where the Member under complaint has given the advance instruction that the Member should be informed of any complaint against the Member which the Committee does not consider, the Clerk should forward the complaint and the written reply to the Member.
6. If the Chairman decides to hold a meeting to consider the complaint, the Clerk should arrange for the meeting to be held within 10 working days from receipt of notification of such a decision.

## **Part II: Consideration of a complaint**

7. The Committee may hold one or more closed meetings for consideration of a complaint. The purpose of such meeting(s) is to decide whether the Committee will conduct an investigation into the complaint after taking into account the following:
  - (a) the information contained in the complaint;
  - (b) the relevant rules(s) that the Member under complaint is alleged to have breached; and
  - (c) any other relevant information readily available, such as records of interests registered by the Member under complaint, A Guide for Reimbursement of Operating Expenses for Members of the Legislative Council ("Reimbursement Guide"), media reports, etc.
8. If the Committee decides not to conduct an investigation into the complaint, it will not take further action on the complaint. The Clerk should forward the decision and the reason(s) therefor to the complainant in writing. Where the Member under complaint has given the advance instruction that the Member should be informed of any complaint against the Member which the Committee does not investigate, the Clerk should forward the complaint and the written reply to the Member.
9. If the Committee decides to conduct an investigation into the complaint, the Clerk should inform the Member under complaint of the complaint and the Committee's decision.

## **Part III: Investigation of a complaint**

10. The Committee may hold one or more meetings for investigation of a complaint. During the investigation of a complaint, the Committee may:
  - (a) invite the Member under complaint to provide information in writing and/or to attend the Committee's meeting(s) to give explanations and provide information;
  - (b) invite the complainant or any other persons to provide information in writing and/or to attend the Committee's meeting(s) to provide information; and
  - (c) gather or cause to be gathered information relevant to the complaint from any other sources as the Committee deems appropriate.

11. If the complaint relates to a Member's claims for reimbursement of operating expenses or applications for advance of operating funds, the Committee should have regard to the provisions of the Reimbursement Guide, as provided in Rule 73(1A) of the RoP.
12. The Committee may invoke the powers under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order by summons any person to attend before the Committee and to give evidence or to produce any paper, book, record or document in the possession or under the control of that person.
13. The Committee may cause any person summoned to attend before it to be examined upon oath, and ask the person to verify upon oath any information and statements that the person has provided previously or at any previous meetings.
14. Meetings of the Committee for investigating the complaint should be closed meetings unless the Committee has acceded to the request of the Member under complaint, or of any person invited or ordered to attend the relevant meeting(s), that they be held in public.
15. In attending meeting(s) before the Committee, the Member under complaint may be accompanied by a maximum of three persons for the purpose of giving the Member assistance or advice ("accompanying persons"). The accompanying persons may be different persons for different sessions of meetings of the Committee and may include legal adviser(s). The accompanying persons are not allowed to address the Committee. The Member under complaint must answer questions, give explanations or provide information personally.

#### **Part IV: Report to the Council**

16. Upon completion of investigation of the complaint, the Committee should submit a report on the complaint to the Council under Rule 73(1)(e). The relevant parts of the draft of the report should be forwarded to the Member under complaint, subject to the Member signing of a confidentiality undertaking referred to in paragraph 23. The Member under complaint may, within seven working days from the date of receipt of the relevant parts of the draft report, make a written response to the Committee.

17. After considering the written response of the Member under complaint under paragraph 16, if any, the Committee may finalize its report. The transcripts of evidence taken at meeting(s) should be published in full as far as possible in, and form part of, the Committee's report to the Council.
18. Where the Committee is of the opinion that the Member under complaint has breached any of the relevant rule(s) of the RoP, the Committee may make a recommendation on sanction of the Member under Rule 85 of the RoP. In considering whether or not to recommend a sanction, or what sanction to recommend, the Committee may take into account, among other things, whether there is evidence that the breach of the relevant rule(s) of the RoP by the Member under complaint:
  - (a) was a deliberate act; and
  - (b) involved any conflict of interests with the Member's role as a Legislative Council Member.
19. Upon reporting to the Council, the Committee should make available a copy of the report to the complainant.

#### **Part V: Suspension of work on a complaint**

20. If, in the course of considering or investigating a complaint, the Committee has come to the knowledge that the complaint is or matters related to it are being investigated by a law enforcement agency or related to a case pending in a court of law, the Committee may suspend its consideration or investigation of the complaint until the conclusion of the investigation by the law enforcement agency or the legal proceedings.

#### **Part VI: Confidentiality requirements**

21. All members, and other persons attending closed meetings of the Committee (except the Member under complaint), must each sign a confidentiality undertaking that the member or person will not publish, without the prior written authorization of the Committee, any matter relating to the proceedings of closed meetings of the Committee, including evidence taken before the Committee, documents produced to it, its deliberations and decisions, except such matter that has already been published or contained in any report presented by the Committee to the Council.

22. Where the Committee finds that a member or any person has breached the undertaking given to the Committee, the Committee will consider whether and how to deal with the member or that person, and may take actions including moving a motion in the Council for the admonishment or reprimand of the member under Rule 81 (Premature Publication of Evidence) of the RoP, or passing a motion of the Committee expressing its disapproval of the member or that person for breaching the undertaking.
23. Before the Committee forwards the relevant parts of its draft report to the Member under complaint under paragraph 16, the latter must sign a confidentiality undertaking that the Member will not publish, without the prior written authorization of the Committee, any matter relating to the draft report, except such matter that has already been published or contained in any report presented by the Committee to the Council. Where the Committee finds that the Member under complaint has breached the undertaking given to the Committee, the Committee may consider whether and how to deal with the Member, and may take actions including passing a motion of the Committee expressing its disapproval of the Member for breaching the undertaking.

#### **Part VII: Participation of members in the handling of complaints**

24. No member is allowed to participate as a member of the Committee in the handling of a complaint or to attend any of the meetings of the Committee to deliberate on or inquire into a complaint where the complaint is made by or against that member.

**立法會**  
***Legislative Council***

SC(2)(WK) Paper No.: L1

Ref : CB2/SC/11

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

**Practice and Procedure**

The Legislative Council ("LegCo") passed the following resolution on 29 February 2012 to appoint the Select Committee -

"That this Council appoints a select committee for the purpose of studying Mr LEUNG Chun-ying's involvement as a member of the Jury in the West Kowloon Reclamation Concept Plan Competition, and related issues; and that in the performance of its duties the committee be authorized under section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to exercise the powers conferred by section 9(1) of that Ordinance."

The resolution sets out the Terms of Reference of the Select Committee and authorizes the Select Committee to exercise the powers conferred by section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382). The Chairman, Deputy Chairman and the 10 members of the Select Committee were appointed by the President on 2 March 2012.

2. The procedures of select committees are regulated by the Rules of Procedure of the Legislative Council, Cap. 382, and the following practice and procedure.

**Principles**

3. In determining its own practice and procedure, the Select Committee has drawn reference from those adopted by previous select committees and



committees which carry out investigations and has applied the following principles:

- (a) the practice and procedure should be fair and seen to be fair, especially to parties whose interests or reputation may be affected by the proceedings of the Select Committee;
- (b) there should be maximum transparency in its proceedings as far as practicable;
- (c) the practice and procedure should facilitate the ascertaining of the facts relevant to, and within the scope of, its inquiry, as set out in the Select Committee's Terms of Reference, which do not include the adjudication of the legal liabilities of any parties or individuals;
- (d) its proceedings should be conducted with efficiency; and
- (e) the cost of the proceedings should be kept within reasonable bounds.

## **Practice and procedure**

### Term of office

4. In accordance with Rules 78(4) and (5) of the Rules of Procedure, the Select Committee shall be dissolved upon reporting to the Council or at the end of a term. If the Select Committee is of the opinion that it will not be able to complete consideration of the matter before the end of a term, it shall so report to the Council.

### Chairmanship

5. All meetings of the Select Committee are chaired by the Chairman or, in his absence, by the Deputy Chairman. In accordance with Rule 79(3) of the Rules of Procedure, in the event of the temporary absence of the Chairman and Deputy Chairman, the Select Committee may elect a chairman to act during such absence.

### Quorum

6. Rule 78(3) of the Rules of Procedure provides that the quorum of a

select committee shall be one-third of the members excluding the chairman (a fraction of the whole number being disregarded). The Clerk to the Select Committee ("the Clerk") will draw to the attention of the Chairman on the absence of a quorum as and when there is such absence.

### Voting

7. In accordance with Rules 79(5), 79(6), and 79A(1) of the Rules of Procedure, divisions in the Select Committee shall be taken by the Clerk who shall ask each member separately how he/she wishes to vote and record the votes accordingly. Neither the Chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided in which case he/she shall have a casting vote, which shall not be exercised in such a way as to produce a majority vote in favour of the question put.

8. Decisions of the Select Committee shall be decided by a majority of the members present and voting, which is done by a show of hand. Abstentions are not counted for the purpose of determining the result of the vote.

### Obtaining evidence

9. The Select Committee may, subject to sections 13 and 14 of Cap. 382, order any person to attend before it and to give evidence or to produce any paper, book, record or document in the possession or under the control of such person.

10. The Select Committee may also request any person or body to attend a meeting to give evidence orally, invite any person or body to give evidence in writing or any person or body to produce specified documents to the Select Committee.

11. The privileges and immunities provided in Cap. 382 are available in proceedings before the Select Committee which include hearings and deliberative meetings. Any person not lawfully ordered to attend to give evidence or to produce any paper, book, record or document before the Select Committee is not protected by privileges given to witnesses by section 14(1) of Cap. 382.

### Conduct of meetings

#### *General principles*

12. In accordance with Rule 79(1) of the Rules of Procedure, the deliberations of the Select Committee shall be confined to the matter or matters referred to it by the Council.

13. A schedule of meetings for the Select Committee is usually agreed beforehand, but the Chairman has the authority to determine the agenda, and to vary the schedule by changing the date, time and venue of meetings, which includes venues outside of the Legislative Council Complex. Members of the Select Committee will be notified by the Clerk of the agenda or any variations determined by the Chairman.

14. In accordance with Rule 79(2) of the Rules of Procedure, meetings of the Select Committee shall be held in public unless the Chairman otherwise orders in accordance with a decision of the Select Committee.

*Meetings for the examination of witnesses*

15. Examination of witnesses will normally be conducted in public. Exceptions to open hearings may be made as decided by the Select Committee, based on the individual circumstances of each occasion.

16. During open hearings, members should only ask questions for the purpose of ascertaining facts relevant to, and within the scope of, the Select Committee's inquiry. Members should not make comments or statements during these hearings.

17. Public hearings are generally conducted in the following manners:

- (a) at the beginning of each open hearing, the Chairman reminds the public and the media that dissemination or disclosure of the evidence given at the hearing outside of the proceedings of the Select Committee is not protected under Cap. 382. The media should obtain legal advice as to their legal responsibilities;
- (b) where it is decided that witnesses should be examined on oath, the Chairman will administer the oath under section 11 of Cap. 382 before the examination starts;
- (c) facts are established by questions and evidence given at hearings. Usually, the Chairman will first make an introduction and then ask the witness an appropriate opening question, giving him/her an opportunity to state his/her case;

- (d) members wishing to ask questions should so indicate by a show of hand and they will ask the questions when called upon by the Chairman. The Chairman will ensure, as far as possible, that members have equal opportunities to ask questions and that the hearing is conducted in a structured and fair manner;
- (e) the Chairman will decide whether a question or evidence is relevant to, and within the scope of, the Select Committee's inquiry, as set out in its Terms of Reference;
- (f) short follow-up questions may be allowed to seek further answers to the original question or clarifications to the answers given. The Chairman has the discretion to decide whether a question is a follow-up question and whether it should be allowed or otherwise; and
- (g) the privileges provided in Cap. 382 are available only within the context of the hearings. All members, including non-Select Committee Members should refrain from making comments relating to the hearing outside of the proceedings of the Select Committee. Evidence given in closed meetings should not be made public by any members.

18. Unless excused under section 13(2) of Cap. 382 or justifiably claiming privilege under section 15, a witness ordered to attend a hearing under section 9 of Cap. 382 must answer all lawful and relevant questions from the Select Committee. If he/she refuses to do so, he/she commits an offence under section 17 of Cap. 382 and is liable to prosecution. If the witness claims privilege from disclosure of evidence on grounds of public interest immunity, the procedure as set out in the Council's resolution concerning the usage and practice in regard to the determination of claims of public interest privilege in **Appendix I** will be followed.

19. Subject to the Select Committee's decision, witnesses attending before the Select Committee may be allowed to be accompanied by other persons, who may include legal adviser(s), to assist the witnesses concerned. However, such accompanying person(s) may not address the Select Committee.

20. Witnesses attending before the Select Committee at its hearings to give evidence or to produce any paper, book, record or document may be eligible for claiming an allowance at specified rates to recompense loss of income or expenses incurred for attending the hearings. The details are in

## **Appendix II.**

### *Measures taken to avoid possible prejudice to a person's interest in pending legal proceedings*

21. In accordance with Rule 41(2) of the Rules of Procedure, a Member shall not make reference in his/her speech to a case pending in a court of law in such a way as, in the opinion of the President or the Chairman, might prejudice that case. This rule applies to the proceedings of the Select Committee by virtue of Rule 43 of the Rules of Procedure.

22. If there are pending legal proceedings arising from matters which are related to the subject of the Select Committee's inquiry, the following measures will be adopted to avoid possible prejudice to a person's interest in pending legal proceedings:

- (a) the Department of Justice will be asked to keep the Select Committee informed of the development of the criminal proceedings concerned, if any;
- (b) the Chairman would explain to each witness that the function of the Select Committee is not to adjudicate on the legal liability of any party or individual and advise him/her of the Chairman's power to disallow the making of any reference to a case pending in a court of law if such reference might, in the Chairman's opinion, prejudice the proceedings;
- (c) where it is considered necessary and justified, either on an application by a witness or on the Select Committee's own motion, the Select Committee may determine to hold closed meetings to obtain evidence from a witness;
- (d) where the Select Committee considers necessary, it will provide the Department of Justice with a copy of the draft findings and observations of the Select Committee and request it to comment whether the contents of the draft might prejudice pending criminal proceedings, if any; and
- (e) the report of the Select Committee should not contain any material which might prejudice a pending jury trial.

23. In respect of pending civil proceedings, the following principles will, in addition to any applicable measures stated in paragraph 23 above, apply:

- (a) references to matters awaiting adjudication in a court of law should be excluded if there is a risk that they might prejudice its adjudication;
- (b) references referred to in (a) would include comments on, inquiry into and the making of findings on such matters;
- (c) matters awaiting adjudication referred to in (a) would include matters in respect of which proceedings have been initiated by the filing of the appropriate documents; and
- (d) prejudice referred to in (a) might arise from an element of explicit or implicit prejudgment in the proceedings of the Select Committee in two possible ways -
  - (i) the references might hinder the court or a judicial tribunal in reaching the right conclusion or lead it to reach other than the right conclusion; and
  - (ii) whether the court or judicial tribunal is affected in its conclusion or not, the references might amount to an effective usurpation of the judicial functions of the court or judicial tribunal.

*Handling of requests for classifying documents as confidential*

24. If requests are made by witnesses for classifying certain information or documents as confidential, the Select Committee shall consider carefully the circumstances of each case and the justifications provided.

*Handling of information contained in classified documents or obtained at closed hearings*

25. In fairness to persons who have provided classified documents for the Select Committee, if information contained in such documents is to be used at a public hearing, the source of the information will only be disclosed if it is necessary to do justice to the witness or to enable him to understand a question.

26. If closed hearings are held to obtain evidence from a witness who is a party to pending legal proceedings, information obtained in these closed hearings should be used with care, and the identity of the witness who has

provided the information should not be disclosed if it is so decided by the Select Committee.

27. Where the Select Committee is inclined to refer to information obtained in closed hearings in the Select Committee's report, an extract of the relevant part of the report in draft form should be provided to the witness concerned for comment. The comments received will be carefully considered by the Select Committee before its report is finalized.

28. Any information obtained by way of oral evidence or in the form of documents provided at closed hearings shall not be disclosed.

#### *Internal deliberations*

29. Subject to Rule 79(2) of the Rules of Procedure, the Select Committee may hold closed meetings to deliberate on procedural matters, progress of its work, the logistical arrangements for hearings, the evidence obtained, the draft report of the Select Committee and any other matters relevant to the Select Committee's work. Members including the Chairman and the Deputy Chairman should not disclose any information about the internal deliberations held or documents considered at these meetings. The Select Committee Chairman or the Deputy Chairman should be the only persons authorized to handle media enquiries.

#### Handling of documents

30. All documents submitted to the Select Committee are numbered: by document and by page. Each member of the Select Committee will be given a copy of the documents produced to the Select Committee, unless advised otherwise with the consent of the Select Committee. Where a document is classified confidential, members should not make photocopy of it, in whole or in part.

#### Disclosure of interests

31. Rules 83A and 84 of the Rules of Procedure relating to Members' pecuniary interest shall apply to the proceedings of the Select Committee.

32. In addition, there may be situations in which a member wishes to declare non-pecuniary interests. In such a case, he/she should write to the Chairman to declare such interests. Where appropriate, the Chairman may announce at public meetings or hearings of the Select Committee the nature

of interests so declared by individual members.

### Participation of Non-Select Committee Members

33. While meetings held in public shall be attended by members of the Select Committee, non-Select Committee Members may also be in attendance at these meetings, but may not speak at the meeting. If a non-Select Committee Member wishes to direct any questions to a witness, he/she should put his/her questions in writing and pass them to the Chairman without interrupting the proceedings, and the Chairman will decide whether or not the Chairman will ask the questions.

34. Non-Select Committee Members are not allowed to be present at closed meetings of the Select Committee or at hearings held at closed meetings.

### Minutes of proceedings of the Select Committee

35. All proceedings of hearings and meetings are sound-recorded. Members of the public may obtain copies of the sound recordings of hearings and meetings held in public upon the payment of a fee.

36. Minutes of evidence, usually in the form of a verbatim transcript, are kept for each meeting at which witnesses are examined. Relevant parts of the draft transcript are forwarded to the person or body giving evidence for sight and correction, if any, before being incorporated into the minutes of evidence, subject to their signing of an undertaking that they would not make any copy of the draft and would return it to the Select Committee before a specified date. The procedures in **Appendix III**, which apply to witnesses, shall also apply to persons or bodies other than the witnesses giving evidence requesting copies of transcripts of evidence. Any person may obtain a copy of the finalized form of transcript for meetings held in public upon the payment of a fee.

37. For hearings held in closed meetings, no transcripts will be provided for any person including the witnesses concerned. All witnesses however are provided with the relevant parts of the draft transcripts of evidence for sight and correction. The undertaking they are required to sign includes an additional requirement that any part of the draft transcript in question must not be divulged.

38. For meetings not attended by any outside party, the minutes of meetings are normally presented in a condensed form, recording the Select



Committee's decisions, follow-up actions required, procedural matters and declarations of interest made by members. Verbatim record of such meetings may be prepared on the direction of the Select Committee.

### Report of the Select Committee

39. The draft report of the Select Committee is considered by the Select Committee at closed meetings. In accordance with Rule 79(9) of the Rules of Procedure, the minutes of proceedings of the Select Committee record all proceedings on the consideration of the report and on every amendment proposed thereto, with a note of divisions, if divisions were taken in the Select Committee, showing the names of members voting in the division or declining to vote.

40. In order to ensure that the procedure is fair and seen to be fair to people whose interests or reputations may be affected by its proceedings, any party, person or organization against whom adverse comments are intended to be made in the Select Committee's report will be given an opportunity to comment on relevant parts of the draft findings and observations of its report. The comments received will be carefully considered by the Select Committee before its report is finalized.

41. In accordance with Rule 79(10) of the Rules of Procedure, a report of the Select Committee, with the minutes of proceedings and the minutes of evidence, if evidence was taken, shall be laid on the Table of the Council by the Chairman of the Select Committee.

### Premature publication of evidence

42. In accordance with Rule 81 of the Rules of Procedure, the evidence taken before the Select Committee and documents presented to it shall not, except in the case of its meetings held in public, be published by a member of the Select Committee or by any other person before the Select Committee has presented its report to the Council. Any member of the Select Committee who fails to comply with this Rule may be admonished or reprimanded by the Council on a motion to that effect.

**Resolution under Legislative Council (Powers and Privileges) Ordinance  
passed on 25 May 1994 and amended on 20 November 1996  
and further amended on 16 April 1997**

That with effect from 25 May 1994 the usage and practice in regard to the determination of claims of "public interest privilege" made by persons appearing before a committee of the Council shall be as set out in the Schedule annexed to this Resolution.

1. In this Schedule –

"relevant body", (有關方面) in relation to a committee before which a witness is attending to give evidence or to produce any paper, book, record or document, means -

- (a) the chairman and deputy chairman of the committee, where both are present (and references to the delivering of the opinion of the relevant body shall be taken to mean the opinion of the chairman where the chairman and deputy chairman disagree);
- (b) the chairman alone where the deputy chairman is absent;
- (c) the deputy chairman alone where the chairman is absent; or
- (d) where both the chairman and deputy chairman are absent, the member elected to act as chairman during such absence.

"witness" (證人) means –

- (a) a person lawfully ordered to attend to give evidence or to produce any paper, book, record or document before a committee; and
- (b) any public officer designated by the Governor under section 8A(2)(b) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) for the purpose of attending sittings of a committee.

2. If, at a public sitting of a committee, a witness refuses to answer publicly or privately any question that may be put to him, or to produce any paper, book, record or document, and claims privilege on the ground that the

giving of the answer or the production of the paper, book, record or document would be contrary to the public interest the following procedure will apply -

- (1) The chairman shall inform the witness that he may explain his reasons in confidence to the relevant body and that the relevant body will then deliver an opinion to the committee without disclosure of any information or paper, book, record or document claimed by the witness to be privileged from disclosure.
- (2) If the witness agrees to explain his reasons to the relevant body the relevant body shall make arrangements to consider the reasons and deliver its opinion to the committee.
- (3) If the relevant body delivers its opinion that the claim of privilege by the witness is justified in respect of an answer to a question or the production of any paper, book, record or document the committee shall excuse the answering of such question or the production of such paper, book, record or document.
- (4) If the relevant body delivers its opinion that the claim of privilege by the witness is not justified in respect of any answer to a question or the production of any paper, book, record or document the committee may order the answering or production thereof.
- (5) If the witness continues to refuse to answer any question or produce any paper, book, record or document the committee may take such action within its powers as it considers appropriate.
- (6) If the witness does not agree to explain his reasons to the relevant body under subparagraph (2) the committee may take such action within its powers as it considers appropriate.

3. If, at a public sitting of a committee, a witness refuses to answer in public any question that may be put to him, or to produce in public any paper, book, record or document on the ground of public interest privilege, but requests to answer such question or produce such paper, book, record or document at a private sitting of the committee, the following procedure will apply -

- (1) The committee will deliberate in private whether to agree to the request by the witness.
- (2) The decision of the committee will be taken by formal vote.
- (3) If the committee decides to agree to the request by the witness no answer given by the witness at a private sitting nor any paper, book, record or document produced by him thereat shall be made public unless the committee decides during the private sitting that the request by the witness for confidentiality is not justified. Before reaching such a decision the committee shall give the witness an opportunity to state the grounds upon which he claims public interest privilege in respect of the particular answer or paper, book, record or document.

**Allowance for witnesses**

The following shall apply to the provision of an allowance ("the allowance") for witnesses attending before the Select Committee to Study Mr LEUNG Chun-ying's Involvement as a Member of the Jury in the West Kowloon Reclamation Concept Plan Competition and Related Issues at its hearings to give evidence and/or to produce documents -

I. Eligibility

- (a) Subject to (c) below, the allowance is payable to witnesses attending before the Select Committee at its hearings, whether or not they have the opportunity to give evidence at the particular hearings.
- (b) Witnesses who are ex-civil servants and have ceased active service with the Government and left the Government on expiry of their final leave will be eligible for the allowance.
- (c) The allowance is not payable to public officers<sup>1</sup> or persons in the service or employment of statutory bodies or other organizations which are funded by public money for attending the Select Committee's hearings in the course of their duties.

II. Rates

The allowance payable shall be a sum not exceeding \$180 for each attendance at a hearing of the Select Committee not exceeding four hours, and a sum not exceeding \$360 for each attendance exceeding four hours.

III. Application procedure

Eligible witnesses may submit to the Clerk claims for payment of the allowance no later than 14 days from the date of the hearings attended by the witnesses by completing the prescribed form.

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<sup>1</sup> The term "public officer" is defined in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) to mean any person holding an office of emolument under the Government, whether such office be permanent or temporary.

<b>Legislative Council Secretariat</b> <b>Application form for payment of allowance for witness</b>
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\*Please complete in BLOCK letters using black or blue pen

<b>Part I : Personal details</b>			
<b>Surname</b>		<b>Given names</b>	
<b>Home/Correspondence Address</b>			
<b>Contact telephone no.</b>			
<b>Part II : Hearing details</b>			
<b>Name of Committee</b>			
<b>Date of hearing(s)</b>	<b>Starting time of attendance required by the Committee</b>	<b>Ending time of attendance required by the Committee</b>	
<i>(Please use separate sheet(s) if space is not sufficient)</i>			
<b>Declaration of Applicant:</b>			
I hereby apply for the payment of allowance for witness in respect of the above hearings which I have attended/been ordered to attend. I understand that any allowance so approved will be payable by cheque in my name and the cheque will be sent to my home/correspondence address as stated above.			
Signature _____		Date _____	
<b>For Official use only</b>			
<b>Part III</b> <i>(To be completed by Secretariat officers of the relevant Committee)</i>		<b>Part IV</b> <i>(To be completed by Accounts Office)</i>	
Total amount to be paid	\$ _____	Payment made on _____.	
Checked by:	Approved by:		
_____	_____		
Signature/Title	Signature/Title	Charged to cost center of _____.	
Date _____	Date _____	Signature _____ Post _____ Date _____	

- Notes:
- (i) A claim must be made within 14 days from the date of a hearing attended by a witness.
  - (ii) The witness allowance payable shall be \$180 for each attendance at a hearing not exceeding four hours, and \$360 for each attendance exceeding four hours.

**Provision of Transcripts of Evidence**

The following procedures shall apply to the provision of transcripts of evidence taken by the Select Committee to Study Mr LEUNG Chun-ying's Involvement as a Member of the Jury in the West Kowloon Reclamation Concept Plan Competition and Related Issues -

- (a) where considered appropriate, the Select Committee may permit copies of the transcripts of evidence taken in public be provided to witnesses and prospective witnesses on request;
- (b) "witnesses" refers to persons on whom summonses have been served by the Select Committee to order their appearance before it; "prospective witnesses" refers to witnesses whom the Select Committee has decided to summon to appear before it;
- (c) where copies of transcripts of evidence taken in public are provided to witnesses or prospective witnesses, the unpublished and/or uncorrected status of the transcripts shall be stated clearly; and
- (d) the provision of unpublished and/or uncorrected transcripts of evidence taken in public to witnesses or prospective witnesses be made on the condition that they shall not make public use of the transcripts; shall not quote directly from the transcripts; and shall not use the transcripts in a manner prejudicial to the interest of the Select Committee or other persons.

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

**Practice and Procedure of the Select Committee**

"The terms of reference of the Select Committee, which reflect the substance of the petition jointly presented by Hon Dennis KWOK and Hon Cyd HO at the Council meeting of 8 May 2013 and referred to the Select Committee under Rule 20(6) of the Rules of Procedure, are as follows -

"To inquire into whether the official duty visits, entertainment, and the bestowing and receipt of gifts by Mr Timothy TONG during his tenure as Commissioner of the Independent Commission Against Corruption are commensurate with his official capacity and the values of probity and integrity advocated by the Independent Commission Against Corruption, and how the Independent Commission Against Corruption provided information related to the above matters to the Finance Committee of the Legislative Council."

2. The procedure of the Select Committee is governed by the Rules of Procedure of the Legislative Council and the relevant provisions in the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) insofar as they are applicable. For reason of operational needs and in the interest of fair conduct of business, the Select Committee has determined and established its own set of practice and procedure, as detailed in the ensuing paragraphs. The practice and procedure include those not expressly provided for in the Rules of Procedure and Cap. 382.

**Principles**

3. In determining its own practice and procedure, the Select Committee has drawn reference from those adopted by previous select committees and committees which carry out investigations and has applied the following principles:

- (a) the practice and procedure should be fair and seen to be fair, especially to parties whose interests or reputation may be affected by the proceedings of the Select Committee;
- (b) there should be maximum transparency in its proceedings as far as practicable;



- (c) the practice and procedure should facilitate the ascertaining of the facts relevant to, and within the scope of, its inquiry, as set out in the Select Committee's Terms of Reference, which do not include the adjudication of the legal liabilities of any parties or individuals;
- (d) its proceedings should be conducted with efficiency; and
- (e) the cost of the proceedings should be kept within reasonable bounds.

## **Practice and procedure**

### Term of office

4. In accordance with Rules 78(4) and (5) of the Rules of Procedure, the Select Committee shall be dissolved upon reporting to the Council or at the end of a term. If the Select Committee is of the opinion that it will not be able to complete consideration of the matter before the end of a term, it shall so report to the Council.

### Chairmanship

5. All meetings of the Select Committee are chaired by the Chairman or, in his absence, by the Deputy Chairman. In accordance with Rule 79(3) of the Rules of Procedure, in the event of the temporary absence of the Chairman and Deputy Chairman, the Select Committee may elect a chairman to act during such absence.

### Quorum

6. Rule 78(3) of the Rules of Procedure provides that the quorum of a select committee shall be one-third of the members excluding the chairman (a fraction of the whole number being disregarded). The Clerk to the Select Committee ("the Clerk") will draw to the attention of the Chairman on the absence of a quorum as and when there is such absence.

### Voting

7. In accordance with Rules 79(5), 79(6), and 79A(1) of the Rules of Procedure, divisions in the Select Committee shall be taken by the Clerk who shall ask each member separately how he/she wishes to vote and record the votes accordingly. Neither the Chairman nor any other member presiding shall

vote, unless the votes of the other members are equally divided in which case he/she shall have a casting vote, which shall not be exercised in such a way as to produce a majority vote in favour of the question put.

8. Decisions of the Select Committee shall be decided by a majority of the members present and voting, which is done by a show of hand. Abstentions are not counted for the purpose of determining the result of the vote.

#### Obtaining evidence

9. The Select Committee may invite any person or body to attend a meeting to give evidence orally. The Select Committee may also request any person or body to give evidence in writing or any person or body to produce specified documents to the Select Committee.

10. Any person attending before the Select Committee to give evidence or to produce any paper, book, record or document before the Select Committee is not protected by privileges given to witnesses by section 14(1) of Cap. 382.

#### Conduct of meetings

##### *General principles*

11. In accordance with Rule 79(1) of the Rules of Procedure, the deliberations of the Select Committee shall be confined to the matter or matters referred to it by the Council.

12. A schedule of meetings for the Select Committee is usually agreed beforehand, but the Chairman has the authority to determine the agenda, and to vary the schedule by changing the date, time and venue of meetings, which includes venues outside of the Legislative Council Complex. Members of the Select Committee will be notified by the Clerk of the agenda or any variations determined by the Chairman.

13. In accordance with Rule 79(2) of the Rules of Procedure, meetings of the Select Committee shall be held in public unless the Chairman otherwise orders in accordance with a decision of the Select Committee.

##### *Meetings for the examination of witnesses*

14. Examination of witnesses will normally be conducted in public. Exceptions to open hearings may be made as decided by the Select Committee, based on the individual circumstances of each occasion.

15. During open hearings, members should only ask questions for the purpose of ascertaining facts relevant to, and within the scope of, the Select Committee's inquiry. Members should not make comments or statements during these hearings.

16. Open hearings are generally conducted in the following manner:

- (a) at the beginning of each open hearing, the Chairman reminds the public and the media that dissemination or disclosure of the evidence given at the hearing outside of the proceedings of the Select Committee is not protected under Cap. 382. The media should obtain legal advice as to their legal responsibilities;
- (b) before the examination of a witness, the Chairman will remind the witness as appropriate that –
  - (i) the witness is not protected under Cap. 382; and
  - (ii) any person, who before the Select Committee intentionally gives a false answer to any question material to the subject of inquiry during the course of any examination or presents to the Select Committee any false, untrue, fabricated or falsified document with intent to deceive the Select Committee, commits an offence;
- (c) facts are established by questions and evidence given at hearings. Usually, the Chairman will first make an introduction and then ask the witness an appropriate opening question, giving him/her an opportunity to state his/her case;
- (d) members wishing to ask questions should so indicate by a show of hand and they will ask the questions when called upon by the Chairman. The Chairman will ensure, as far as possible, that members have equal opportunities to ask questions and that the hearing is conducted in a structured and fair manner;
- (e) the Chairman will decide whether a question or evidence is relevant to, and within the scope of, the Select Committee's inquiry, as set out in its Terms of Reference;
- (f) short follow-up questions may be allowed to seek further answers to the original question or clarifications to the answers given. The Chairman has the discretion to decide whether a question is a

follow-up question and whether it should be allowed or otherwise;  
and

- (g) the privileges of Members provided in Cap. 382 are available only within the context of the hearings. All Members, including non-Select Committee Members should refrain from making comments relating to the hearing outside of the proceedings of the Select Committee. Evidence given in closed meetings should not be made public by any members.

17. Subject to the Select Committee's decision, witnesses attending before the Select Committee may be allowed to be accompanied by other persons, who may include legal adviser(s), to assist the witnesses concerned. However, such accompanying person(s) may not address the Select Committee.

*Measures taken to avoid possible prejudice to a person's interest in pending legal proceedings*

18. In accordance with Rule 41(2) of the Rules of Procedure, a Member shall not make reference in his/her speech to a case pending in a court of law in such a way as, in the opinion of the President or the Chairman, might prejudice that case. This rule applies to the proceedings of the Select Committee by virtue of Rule 43 of the Rules of Procedure.

19. If there are pending legal proceedings arising from matters which are related to the subject of the Select Committee's inquiry, the following measures will be adopted to avoid possible prejudice to a person's interest in pending legal proceedings:

- (a) the Department of Justice will be asked to keep the Select Committee informed of the development of the criminal proceedings concerned, if any;
- (b) the Chairman would explain to each witness that the function of the Select Committee is not to adjudicate on the legal liability of any party or individual and advise him/her of the Chairman's power to disallow the making of any reference to a case pending in a court of law if such reference might, in the Chairman's opinion, prejudice the proceedings;
- (c) where it is considered necessary and justified, either on an application by a witness or on the Select Committee's own motion, the Select Committee may determine to hold closed meetings to obtain evidence from a witness;

- (d) where the Select Committee considers necessary, it will provide the Department of Justice with a copy of the draft findings and observations of the Select Committee and request it to comment whether the contents of the draft might prejudice pending criminal proceedings, if any; and
- (e) the report of the Select Committee should not contain any material which might prejudice a pending jury trial.

20. In respect of pending civil proceedings, the following principles will, in addition to any applicable measures stated in paragraph 19 above, apply:

- (a) references to matters awaiting adjudication in a court of law should be excluded if there is a risk that they might prejudice its adjudication;
- (b) references referred to in (a) would include comments on, inquiry into and the making of findings on such matters;
- (c) matters awaiting adjudication referred to in (a) would include matters in respect of which proceedings have been initiated by the filing of the appropriate documents; and
- (d) prejudice referred to in (a) might arise from an element of explicit or implicit prejudgment in the proceedings of the Select Committee in two possible ways -
  - (i) the references might hinder the court or a judicial tribunal in reaching the right conclusion or lead it to reach other than the right conclusion; and
  - (ii) whether the court or judicial tribunal is affected in its conclusion or not, the references might amount to an effective usurpation of the judicial functions of the court or judicial tribunal.

*Handling of requests for classifying documents as confidential*

21. If requests are made by witnesses for classifying certain information or documents as confidential, the Select Committee shall consider carefully the circumstances of each case and the justifications provided.

*Handling of information contained in classified documents or obtained at closed hearings*

22. In fairness to persons who have provided classified documents for the Select Committee, if information contained in such documents is to be used at a public hearing, the source of the information will only be disclosed if it is necessary to do justice to the witness or to enable him to understand a question.

23. If closed hearings are held to obtain evidence from a witness who is a party to pending legal proceedings, information obtained in these closed hearings should be used with care, and the identity of the witness who has provided the information should not be disclosed if it is so decided by the Select Committee.

24. Where the Select Committee is inclined to refer to information obtained in closed hearings in the Select Committee's report, an extract of the relevant part of the report in draft form should be provided to the witness concerned for comment. The comments received will be carefully considered by the Select Committee before its report is finalized.

25. Any information obtained by way of oral evidence or in the form of documents provided at closed hearings shall not be disclosed.

*Internal deliberations*

26. Subject to Rule 79(2) of the Rules of Procedure, the Select Committee may hold closed meetings to deliberate on procedural matters, progress of its work, the logistical arrangements for hearings, the evidence obtained, the draft report of the Select Committee and any other matters relevant to the Select Committee's work. Members including the Chairman and the Deputy Chairman should not disclose any information about the internal deliberations held or documents considered at these meetings. The Select Committee Chairman or the Deputy Chairman should be the only persons authorized to handle media enquiries.

Handling of documents

27. All documents submitted to the Select Committee are numbered: by document and by page. Each member of the Select Committee will be given a copy of the documents produced to the Select Committee, unless advised otherwise with the consent of the Select Committee. Where a document is classified confidential, members should not make photocopy of it, in whole or in part.

### Disclosure of interests

28. Rules 83A and 84 of the Rules of Procedure relating to Members' pecuniary interest shall apply to the proceedings of the Select Committee.

29. In addition, there may be situations in which a member wishes to declare non-pecuniary interests. In such a case, he/she should write to the Chairman to declare such interests. Where appropriate, the Chairman may announce at public meetings or hearings of the Select Committee the nature of interests so declared by individual members.

### Participation of Non-Select Committee Members

30. While meetings held in public shall be attended by members of the Select Committee, non-Select Committee Members may also be in attendance at these meetings, but may not speak at the meeting. If a non-Select Committee Member wishes to direct any questions to a witness, he/she should put his/her questions in writing and pass them to the Chairman without interrupting the proceedings, and the Chairman will decide whether or not the Chairman will ask the questions.

31. Non-Select Committee Members are not allowed to be present at closed meetings of the Select Committee or at hearings held at closed meetings.

### Minutes of proceedings of the Select Committee

32. All proceedings of hearings and meetings are sound-recorded. Members of the public may obtain copies of the sound recordings of hearings and meetings held in public upon the payment of a fee.

33. Minutes of evidence, usually in the form of a verbatim transcript, are kept for each meeting at which witnesses are examined. Relevant parts of the draft transcript are forwarded to the person or body giving evidence for sight and correction, if any, before being incorporated into the minutes of evidence, subject to their signing of an undertaking that they would not make any copy of the draft and would return it to the Select Committee before a specified date. The procedures in the **Annex**, which apply to witnesses, shall also apply to persons or bodies other than the witnesses giving evidence requesting copies of transcripts of evidence. Any person may obtain a copy of the finalized form of transcript for meetings held in public upon the payment of a fee.

34. For hearings held in closed meetings, no transcripts will be provided for any person including the witnesses concerned. All witnesses however are provided with the relevant parts of the draft transcripts of evidence for sight and

correction. The undertaking they are required to sign includes an additional requirement that any part of the draft transcript in question must not be divulged.

35. For meetings not attended by any outside party, the minutes of meetings are normally presented in a condensed form, recording the Select Committee's decisions, follow-up actions required, procedural matters and declarations of interest made by members. Verbatim record of such meetings may be prepared on the direction of the Select Committee.

#### Report of the Select Committee

36. The draft report of the Select Committee is considered by the Select Committee at closed meetings. In accordance with Rule 79(9) of the Rules of Procedure, the minutes of proceedings of the Select Committee record all proceedings on the consideration of the report and on every amendment proposed thereto, with a note of divisions, if divisions were taken in the Select Committee, showing the names of members voting in the division or declining to vote.

37. In order to ensure that the procedure is fair and seen to be fair to people whose interests or reputations may be affected by its proceedings, any party, person or organization against whom adverse comments are intended to be made in the Select Committee's report will be given an opportunity to comment on relevant parts of the draft findings and observations of its report. The comments received will be carefully considered by the Select Committee before its report is finalized.

38. In accordance with Rule 79(10) of the Rules of Procedure, a report of the Select Committee, with the minutes of proceedings and the minutes of evidence, if evidence was taken, shall be laid on the Table of the Council by the Chairman of the Select Committee.

#### Premature publication of evidence

39. In accordance with Rule 81 of the Rules of Procedure, the evidence taken before the Select Committee and documents presented to it shall not, except in the case of its meetings held in public, be published by a member of the Select Committee or by any other person before the Select Committee has presented its report to the Council. Any member of the Select Committee who fails to comply with this Rule may be admonished or reprimanded by the Council on a motion to that effect.



### **Provision of Transcripts of Evidence**

The following procedures shall apply to the provision of transcripts of evidence taken by the Select Committee to Inquire into Matters Relating to Mr Timothy TONG's Duty Visits, Entertainment, and Bestowing and Receipt of Gifts during his Tenure as Commissioner of the Independent Commission Against Corruption -

- (a) where considered appropriate, the Select Committee may permit copies of the transcripts of evidence taken in public be provided to witnesses and prospective witnesses on request;
- (b) where copies of transcripts of evidence taken in public are provided to witnesses or prospective witnesses, the unpublished and/or uncorrected status of the transcripts shall be stated clearly; and
- (c) the provision of unpublished and/or uncorrected transcripts of evidence taken in public to witnesses or prospective witnesses be made on the condition that they shall not make public use of the transcripts; shall not quote directly from the transcripts; and shall not use the transcripts in a manner prejudicial to the interest of the Select Committee or other persons.

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

**Terms of reference**

The Investigation Committee ("IC") is responsible for establishing the facts stated in the censure motion moved under Rule 49B(1A) of the Rules of Procedure ("RoP"), and giving its views on whether or not the facts as established constitute grounds for the censure of the Member who is the subject of the motion (Rule 73A(2) of the RoP).

**The investigation process**

Collation of information before hearings

2. The IC will first invite:
  - (a) the Members who initiated the censure motion (i.e. the mover and the three Members who jointly signed the notice of the motion) to provide in writing information in support of the particulars of misbehaviour set out in the schedule to the censure motion and any information which may assist the IC in carrying out its work; and
  - (b) the Member who is the subject of the censure motion ("Member under investigation") to respond in writing to the censure motion and information provided under (a) above by the Members who initiated the censure motion, and to provide any information which may assist the IC in carrying out its work.
3. The IC will also instruct the Clerk to the IC to gather information relevant to the censure motion.

Meetings and hearings

4. For the purposes of this Practice and Procedure, meetings of the IC at which the Member under investigation or a witness or witnesses appear, whether by invitation or by summons issued under section 10 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) ("LegCo (P&P)O"), to give evidence or to produce documents, and whether such meetings are held in public or private, are referred to as "hearings".

5. On the basis of the information and responses provided to the IC under paragraphs 2 and 3 above, the IC will decide if it is necessary to conduct hearings for the purpose of establishing the facts stated in the censure motion. If it is considered necessary, the IC will decide the persons to be called to attend its hearings to give evidence. These persons may include the Members who initiated

the censure motion, the Member under investigation and any person whom the IC considers to be able to provide information which will be relevant and useful to the investigation.

6. Subject to paragraph 7, all meetings of the IC, including hearings at which the Member under investigation or a witness or witnesses appear, will be held in private (Rule 73A(4) of the RoP).

7. Only the Member under investigation may elect for hearings to be held in public, and the election must be made before the first of all the hearings. Where he makes such an election, all hearings shall be held in public throughout the entire investigation unless, upon an application by a witness or a request from a member of the IC, the IC on sufficient reason decides otherwise (Rule 73A(5)(a) and (b) of the RoP).

8. Any witness and the Member under investigation may apply to the IC for any hearing or any part of it to be held in private where an election for hearings to be held in public has been made by the Member under investigation. Similarly, any member of the IC may request, throughout the investigation, that any hearing or any part of it be held in private (Rule 73A(5)(b) of the RoP). Such an application or request may be made after an election for hearings in public has been made by the Member under investigation and before or after the relevant person(s) attends a hearing, and during a hearing. In deciding whether or not to grant such an application or accede to such a request, the factors that the IC will take into account include whether the evidence to be obtained concerns matters of privacy and whether sufficient protection is accorded to the person(s) concerned.

9. Where appropriate, the IC may hold a hearing at a venue away from the LegCo Building.

10. Apart from hearings, meetings of the IC to consider the following matters are held in private: procedural matters, progress of its work, logistical arrangements for hearings, the evidence obtained, the draft report of the IC and any other matters relevant to or arising from the IC's work.

### Witnesses

11. Witnesses are to be invited to attend hearings to be examined and to provide information to the IC. If considered necessary by the IC and authorized by the Council to exercise the power to summon under section 9(1) of LegCo (P&P)O, the IC may order the attendance of witnesses by summons. Only witnesses summoned under section 9(1) to give evidence or to produce any paper, book, record or document at a hearing will enjoy the same right or privilege as before a court of law in accordance with section 14(1) of LegCo (P&P)O.

12. In determining whether witnesses should be invited or summoned, the IC will have regard to factors including the views of the witnesses, whether the relevant hearings will be held in private or public, and whether sufficient protection is accorded to the witness concerned.

13. The Member under investigation will be informed of the witnesses whom the IC has decided to call and he may propose additional witnesses for the IC's consideration.

#### Accompanying persons

14. The Member under investigation and witnesses appearing before the IC may be accompanied by a maximum of three persons, including no more than one legal adviser. During a hearing, the witness must not engage in discussions with the accompanying persons nor receive any prompting, whether oral or in writing, from such persons but he may, with the permission of the Chairman, seek advice from his legal adviser.

#### Conduct of hearings

15. The IC may ask the Member under investigation to submit a written statement to the IC before attending the relevant hearings. The IC may also forward the written statement and relevant information submitted by him, or relevant parts thereof, to the relevant witnesses, who may make a written response, to which the Member under investigation may respond.

16. Also, the IC may ask the witnesses to submit written statements to the IC before attending the relevant hearings. The IC may also forward the written statement and relevant information submitted by a witness, or relevant parts thereof, to the Member under investigation, who may make a written response, to which the witness may respond.

17. Hearings are conducted for the examination of witnesses by way of questions and answers in order to establish the facts stated in the schedule to the censure motion. Hearings are normally conducted in the following manner:

- (a) the Chairman opens a hearing by stating the purpose of the hearing and reminds the witness of the role of the accompanying persons;
- (b) where it is decided that the witness should be examined on oath, the Chairman will administer the oath under section 11 of LegCo (P&P)O before the examination starts;
- (c) the Chairman will first ask a witness to formally produce his written statement to the IC and if he has anything to add;
- (d) the Chairman will then ask the witness an appropriate opening question, giving him an opportunity to state his case;
- (e) the Chairman will then allow members to put questions to the witness; and
- (f) the Chairman will decide whether a question or evidence is relevant to, and within the scope of, the IC's investigation.

### Attendance of non-IC Members

18. Members who are not members of the IC ("non-IC Members") are not allowed to be present at the IC's meetings and hearings held in private unless they are summoned or invited to attend a hearing as witnesses. Where a hearing is held in public, non-IC Members may attend but they may not speak, either by way of addressing the IC or putting questions to witnesses.

### Provision of verbatim transcripts

19. The relevant parts of the draft verbatim transcripts of the proceedings of the hearings containing the evidence of a witness or the Member under investigation are forwarded to that person for sight and correction, before they are incorporated into the minutes of evidence. For hearings held in private, before the verbatim transcripts are passed to such persons, they are required to sign an undertaking that they would not make copies of the drafts, make public use of them (including quoting from the transcripts at hearings held in public), use the transcripts in a manner prejudicial to the work of the IC and they would return the drafts to the IC before a specified date.

20. Any witness and the Member under investigation may also, on request, be provided with the verbatim transcripts of the proceedings of hearings held in public containing the evidence of another witness. He may also be provided, on his request, with the verbatim transcripts of hearings held in private containing the evidence of another witness, subject to his signing of an undertaking that he would not make copies of the transcripts, make public use of them (including quoting from the transcripts at hearings held in public), and use the transcripts in a manner prejudicial to the work of the IC, and that he would return the transcripts before a specified date. The IC may, on sufficient reason, reject such requests for transcripts of hearings held in private.

21. If a hearing is held in public, members of the public may obtain a copy of the verbatim transcript for that hearing upon the payment of a fee prescribed by the LegCo Secretariat.

### Preparation and publication of report

22. Those parts of the IC's report which set out the evidence, on the basis of which the IC has established the facts stated in the censure motion, will be forwarded to the Member under investigation and the witnesses concerned for comment. Such comments will be recorded in the IC's report and will be taken into account by the IC in finalizing its report.

23. Upon completion of its report, the IC will table it in the Council pursuant to Rule 73A(12) of the RoP. The report will then be made public on the same day. Shortly before the report is tabled, the Member under investigation and the witnesses concerned will be provided with an advance copy of the report on the condition that it will not be released to the public until the relevant Council meeting has begun. This arrangement is to enable the Member under investigation and

witnesses concerned to prepare themselves for responding to the public and media enquiries.

### **Confidentiality requirement**

#### Classification of confidential information

24. Evidence obtained in hearings held in private, written statements and other documents provided to the IC, information relating to other meetings of the IC and any related correspondence are confidential and remain so unless and until they are published or declassified by the IC.

#### Use of confidential information

25. The source of information obtained at hearings held in private may be disclosed at a hearing held in public only if it is necessary to do justice to the witness or to enable him to understand a question. Before such disclosure, the IC may consult the relevant persons who may be affected by the disclosure.

26. Information obtained at hearings held in private from a witness who is a party to pending legal proceedings shall be used with care so as to avoid possible prejudice to that person's interest in such proceedings, and where possible, the identity of the witness who has provided the information should not be disclosed.

#### Application for exclusion of confidential information from report

27. The minutes of evidence, which form part of the report to be submitted to the Council upon completion of investigation under Rule 73A(12) of the RoP, shall contain all evidence taken by the IC at hearings held in private and public. However, the IC may, upon a request made by a witness, decide to exclude confidential information from the report on grounds that such exclusion is necessary to protect privacy without jeopardizing the public interest in knowing the material facts on which the IC has based its views.

#### Communications between Members and members of the IC

28. Non-IC Members, the Member under investigation and Members who expect to be or have been called to appear before the IC as witnesses, should not, outside meetings of the IC, engage in communications by conversations or any other form with members on any matter relating to the work of the IC.

#### Communications with the media

29. With the consent of the IC, the Chairman or the Deputy Chairman may respond in general terms to enquiries from the media on the progress of the investigation. No member other than the Chairman or the Deputy Chairman shall be authorized to handle media enquiries on matters relating to the work of the IC.

### Confidentiality undertaking

30. All members of the IC, the Member under investigation and witnesses as well as accompanying persons attending meetings or hearings of the IC held in private shall be required to sign a confidentiality undertaking that they will not publish, without the prior written authorization of the IC, any matter relating to the proceedings of meetings or hearings of the IC held in private, including evidence taken before the IC, documents produced to it, its deliberations and decisions, except such matter that has already been published or contained in any report presented by the IC to the Council. They are also required to take the necessary steps to prevent publication of such matter either before or after the IC presents its report to the Council, unless the confidential classification has been removed by the IC.

### Premature publication of evidence

31. Rule 81 of the RoP provides that the evidence taken before the IC under Rule 80 (Attendance of Witness) and documents presented to it shall not, except in the case of its meetings held in public, be published by a member of the IC or by any other person before the IC has presented its report to the Council. Any member of the IC who fails to comply with this Rule may be admonished or reprimanded by the Council on a motion to that effect.

## **Other matters**

### Term of office

32. The IC shall be dissolved upon the tabling of its report in the Council (Rule 73A(12) of the RoP).

### Chairmanship

33. All meetings of the IC are chaired by the Chairman or, in the Chairman's absence, by the Deputy Chairman. In the event of the temporary absence of the Chairman and Deputy Chairman, the IC may elect a chairman to act during such absence (Rule 73A(6) of the RoP).

### Quorum

34. The quorum of the IC shall be five members including the Chairman (Rule 73A(3) of the RoP). The Clerk will draw to the attention of the Chairman the absence of a quorum as and when there is such absence.

### Voting

35. Decisions of the IC shall be decided by a majority of the members present and voting, which is done by a show of hands. Non-IC Members attending hearings held in public are not allowed to vote.

36. Where a member claims a division, the Clerk shall take divisions by asking each member separately how he wishes to vote and record the votes accordingly (Rule 73A(8) of the RoP). Abstentions are not counted for the purpose of determining the result of the vote.

37. Neither the Chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided in which case he shall have a casting vote (Rule 73A(9) of the RoP). The casting vote shall not be exercised in such a way as to produce a majority vote in favour of the question put (Rule 79A(1) of the RoP).

#### Appointment of experts

38. Where appropriate, the IC may appoint experts to advise on any matter relevant to or arising from its work.

#### Verbatim transcripts and minutes of proceedings of meetings of the IC

39. Verbatim transcripts of the proceedings will be kept for all hearings and, on the IC's direction, for particular meetings. Minutes will be kept for other meetings, which are normally presented in a condensed form, recording the IC's decisions, follow-up actions required, procedural matters and declarations of interest made by members. Where a meeting or part thereof is for the consideration of the draft report of the IC, the minutes of proceedings of the IC will record all proceedings on the consideration of the report and on every amendment proposed thereto, with a note of divisions, if divisions were taken in the IC, showing the names of members voting in the division or declining to vote (Rule 73A(10) of the RoP).

#### Reports of the IC

40. The report to be tabled in the Council pursuant to Rule 73A(12) of the RoP for the purpose of resumption of the debate on the censure motion shall be so stated when the report is tabled. Apart from that report, the IC may table reports in the Council on any matter relating to or arising from its work as and when it considers necessary.

#### Disclosure of interests

41. Rules 83A and 84 of the RoP relating to Members' pecuniary interest shall apply to the proceedings of the IC.

42. In addition, there may be situations in which a member wishes to declare non-pecuniary interests. In such a case, the member should write to the Chairman to declare such interests. Where appropriate, the Chairman may announce at public hearings of the IC the nature of interests so declared by individual members.



Revival of the IC

43. The IC may be revived to deal with any further matters arising from the censure motion by resolution of the Council (Rule 73A(12) of the RoP).

Legislative Council Secretariat  
9 February 2010

**Procedure for Election of the Chairman and  
Deputy Chairman of a Committee**

The election of the chairman and deputy chairman of a committee shall be conducted at a meeting of the committee.

Election of chairman

*Presiding member*

2. For the House Committee and Panels —
  - (a) Where the election takes place at the first meeting of the House Committee or a Panel in a term of the Legislative Council, the member present who has the highest precedence shall preside at the election. If he is being nominated for the office, the member present who has the highest precedence among the members not nominated for the office shall preside;
  - (b) At any other election of chairman, the member who was the chairman of the House Committee or the Panel before the election shall preside at the election. If he is absent or is being nominated for the office, the member who was deputy chairman of the House Committee or the Panel before the election shall preside. If both members who were chairman and deputy chairman before the election are absent or are being nominated for the office, the member present who has the highest precedence shall preside. If he is being nominated for the office, the member present who has the highest precedence among the members not nominated for the office shall preside.
3. For bills committees and subcommittees —
  - (a) for the election of chairman at the first meeting of the committee concerned, the member present who has the highest precedence shall preside at the election. If he is being nominated for the office, the member present who has the highest precedence among the members not nominated for the office shall preside;
  - (b) for the election to fill a vacancy in the office of chairman, the deputy chairman, if any, shall preside at the election. If the committee concerned does not have a deputy chairman or if the deputy chairman is absent or is being nominated for the office, the member present who has the highest precedence shall preside at the election. If he is being nominated for the office, the member present who has the highest precedence among the members not nominated for the office shall preside.

*Election procedure*

4. At the start of the election, the presiding member shall call for nominations for the chairmanship. A valid nomination shall be made orally by a member, seconded by at least one other member who should not be the member being nominated, and accepted by the member being nominated. A member who nominates an absent member for the office is required to state that the absent member's acceptance of the nomination has been secured.
5. If the presiding member is being nominated for the office, he shall be replaced in accordance with paragraph 2 or 3 above, as appropriate, unless otherwise decided by the committee.
6. If there is only one nomination, the presiding member shall declare the nominee elected as chairman.
7. If there are two or more nominations, the presiding member shall announce a vote by secret ballot and shall order the clerk to distribute a ballot paper to each of the members present, including the presiding member. Each nominee shall be assigned a nominee number according to the order of their nominations made during the election.
8. A member present who wishes to vote shall mark on a ballot paper using a chop with a "√" in the box opposite the nominee number of his choice, and place the ballot paper into the ballot box. Any ballot paper not marked, not properly marked or marked with a "√" in the respective boxes opposite two or more nominee numbers shall be discarded.
9. After all the members present who wish to vote have done so, the clerk shall count the ballot papers in front of all the members present and report the result to the presiding member who shall check the result for confirmation.
10. The presiding member shall declare elected as chairman the nominee who receives the highest number of valid votes among all the nominees.
11. If two or more nominees receive the same highest number of valid votes, the presiding member shall announce that lots will be drawn by him to decide how he shall give the casting vote in respect of these nominees.
12. The presiding member shall then draw lots and give the casting vote to one of the nominees in accordance with the lot drawn, and shall forthwith declare that nominee elected as chairman.

## Election of deputy chairman

### *Presiding member*

13. The Member to preside at the election of the deputy chairman of a committee is the chairman thereof. If he is absent, the incumbent deputy chairman, if any, shall preside. If no deputy chairman is present or if the deputy chairman is being nominated for the office, the Member present who has the highest precedence shall preside. If such a Member is being nominated for the office, the Member present who has the highest precedence among the Members not nominated for the office shall preside.

### *Election procedure*

14. The presiding member shall call for nominations for the deputy chairmanship. A valid nomination shall be made orally by a member, seconded by at least one other member who should not be the member being nominated, and accepted by the member being nominated. A member who nominates an absent member for the office is required to state that the absent member's acceptance of the nomination has been secured.

15. If there is only one nomination, the presiding member shall declare the nominee elected as deputy chairman.

16. If there are two or more nominations, the presiding member shall announce a vote by secret ballot and shall order the clerk to distribute a ballot paper to each of the members present, including the chairman. Each nominee shall be assigned a nominee number according to the order of their nominations made during the election.

17. A member present who wishes to vote shall mark on a ballot paper using a chop with a "√" in the box opposite the nominee number of his choice, and place the ballot paper into the ballot box. Any ballot paper not marked, not properly marked or marked with a "√" in the respective boxes opposite two or more nominee numbers shall be discarded.

18. After all the members present who wish to vote have done so, the clerk shall count the ballot papers in front of all the members present and report the result to the presiding member who shall check the result for confirmation.

19. The presiding member shall declare elected as deputy chairman the nominee who receives the highest number of valid votes among all the nominees.

20. If two or more nominees receive the same highest number of valid votes, the presiding member shall announce that lots will be drawn by him to decide how he shall give the casting vote in respect of these nominees.

21. The presiding member shall then draw lots and give the casting vote to one of the nominees in accordance with the lot drawn, and shall forthwith declare that nominee elected as deputy chairman.

**Note for Hon Emily Lau, Chairman of the Finance Committee**

*Dear Ms Lau,*

**Advice on some procedural arrangements for FC meetings**

This note contains a summary of the advice rendered to you orally by the Legislative Council Secretariat over the last few days on the following procedural issues:

- (a) the determination of meeting time by the Chairman;
- (b) the moving of motions to express a view on an agenda item under Paragraph 37A of the FC Procedure;
- (c) the moving of a motion to adjourn the discussion of an item or adjourn the proceedings under Paragraph 39 of the FC Procedure; and
- (d) the curtailment of discussion on an item

**Determination of meeting time**

2. Under Rule 71(6) of the Rules of Procedure (“RoP”), FC shall meet at the time and the place determined by the chairman. Written notice of every meeting shall be given to the members at least 5 clear days before the day of the meeting but shorter notice may be given in any case where the chairman so directs.

3. Pursuant to a decision made by FC at its meeting on 24 March 2006<sup>1</sup> the duration of a FC meeting has been limited to two hours. The meeting arrangement was reviewed again in late 2008 and members were consulted in the course of the review. FC subsequently decided on 16 January 2009<sup>2</sup> that the duration of FC meetings should be maintained at two hours, but the Chairman may extend a FC meeting for up to 15 minutes where necessary. In the case of the subcommittees of FC, the subcommittee may further extend a meeting for a specified period of time, subject to availability of venue and the extended time not clashing with meetings of the Council, and there being no dissenting voice when deciding on the further

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<sup>1</sup> The decision was made after considering the paper FCR(2007-08)33 on Review of the Procedures of the Finance Committee and its subcommittees.

<sup>2</sup> The decision was made after considering the paper FCR(2008-09)59. The arrangements as decided by the FC were set out in LC Paper No. FC56/08-09 which was issued to members on 19 January 2009.

extension. This arrangement however does not apply to FC. The above decisions were made in order to ensure that decisions of FC on a substantive item, such as a financial proposal or a proposal to change FC procedures, would be taken during a period of time which is known to members well beforehand.

4. It has been the practice of the chairman of the Finance Committee to follow the above decisions strictly when making a determination of the time and place of a Finance Committee meeting pursuant to Rule 71(6) of RoP, and where she considers that it is necessary to extend the meeting time of a meeting. However, where there is a need to consider logistical issues such as sounding out to members on the fixing of a date for the next meeting at a time when the chairman's 15-minutes extension is about to expire, it is the Secretariat's advice that the chairman should only consider extending the meeting further if she finds that the members present are representative enough of members of the committee, and that if there is no dissenting voice to such an extension.

5. As regards special meetings convened to consider urgent items or items, they are subject to the same requirement of a five-clear-day notice under Rule 71(6) of RoP. However, the Chairman may direct that shorter notice is to be given pursuant to the same rule. These procedural requirements are reflected in Paragraphs 10 and 11 of the FC Procedure.

6. Paragraph 11 of the FC Procedure also makes it clear that "[a]ny items on the agenda scheduled for discussion but not dealt with at the meeting will be carried over to the next meeting or, if the chairman so decides, to a special meeting". The notice requirement for holding such special meeting is the same as that for other meetings, i.e. at least five clear days or shorter notice if directed by the Chairman. It is for the Chairman to judge how short the notice she would give on a case-by-case basis. Nevertheless, it has been the practice of the Chairman to give regard to the urgency of the matter as explained by the Administration, and how well members had been briefed and, hence, how ready members would be to discuss the subject matter before attending the meeting. An example was the Chairman's decision to hold an urgent meeting on 14 November 2008 to consider further support measures to assist the small and medium enterprises following the financial tsunami, with one clear day's notice.

7. In the event that it is considered that a special meeting should be held urgently with notice as short as, say, less than half an hour, for dealing with items outstanding from a previous meeting, the Chairman should, before she directs that such a short notice be given, have regard to all the factors that are relevant for determining the urgency of the matter, and consistent with making a decision to extend a meeting beyond the 15-minute extension as advised above, ascertain if there is any objection from all members of the committee. Such an approach was adopted by the FC Chairman on 18 July 2008 for a special meeting to be held immediately following a scheduled meeting to consider the unfinished agenda items on the agenda of the scheduled meeting, including the financial proposal for setting a trust fund in support of reconstruction in the Sichuan earthquake stricken areas. The special meeting was held with less than one hour's notice as directed by the Chairman with the agreement of all members present at the preceding meeting.

#### **Moving of motions under Paragraph 37A of Finance Committee Procedure**

8. Members may move a motion without notice to express a view on an agenda item, such as a financial proposal, under Paragraph 37A of the FC Procedure during the deliberation of the agenda item. However, the motion will only be proceeded with if it is considered by the Chairman as directly related to the agenda item and agreed by a majority of members that it should be proceeded forthwith.

9. For moving a motion under Paragraph 37A, the member should present the proposed motion in written form when he is called upon by the Chairman to speak on the agenda item. If the motion is found related to the agenda item by the Chairman, the member may be invited to explain the reason for moving the motion within the time given to any member at that time for asking questions. The Chairman may direct that the motion be dealt with at a later stage if she needs time to consider if the motion may be considered under Paragraph 37A and for the proposed motion to be photocopied and distributed to members. Amendments to the motion should also be presented in written form. Members may speak on the motion and amendment to the motion, if any, in a joint debate.



10. The inclusion of Paragraph 37A in the FC Procedure was decided by the FC at its meeting on 2 November 2007<sup>3</sup>. Motions moved under Paragraph 37A are not intended to have any substantive effect on the financial proposal in an agenda item. If the Chairman considers that the motion is related to the agenda item, she will ask members to indicate whether it should be proceeded with at the meeting. Following an indication of support by a majority of members present for the motion to be dealt with immediately, the Chairman will allow the motion to be moved. Thereupon the motion will be proposed, debated and put to a vote at the meeting. In other words, unless the majority of members present agree to deal with the motion immediately at the meeting, the motion will not be moved or debated.

### **Moving of a motion to adjourn discussion of an item or adjourn proceedings**

11. Under Paragraph 39 of the FC Procedure, a member, when speaking on a proposal in the Committee, may move without notice that discussion of an item or further proceedings be adjourned. The Chairman shall then propose the question on the motion to adjourn. A member, when speaking on the question, may not speak for more than once and shall not make a speech for longer than any time period as decided by the Committee, or where no such decision has been made, for more than three minutes. When no more member indicates his/her intention to speak on the motion, the Chairman shall put the motion to the Committee for a decision. When a motion to adjourn the discussion of an item is passed, the Committee will not take a vote on that item and will proceed to the next item on the agenda. If a motion to adjourn the proceedings of the Committee is passed, the Chairman will declare the meeting closed without putting further questions.

### **The Chairman's role in curtailing discussion of an item and in ensuring effective use of committee time**

12. It is the responsibility of the FC Chairman to chair meetings of FC in accordance with the RoP and FC Procedure. Although not explicitly provided, in line with the principles set out in the Handbooks for chairmen of committees, this responsibility should include ensuring that the business on the agenda is transacted in a proper and efficient manner, and that members have adequate opportunities to take

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<sup>3</sup> Paper FCR(2007-08)33

part in the deliberations of the committee (e.g. paragraphs 1.9(b) and 1.16 of the Handbook for Chairmen of Panels and paragraphs 1.8(b) and 1.14 of the Handbook for Chairmen of Bills Committees). Unlike the practice and procedure in some overseas legislatures such as the United Kingdom, there is no provision in the RoP which allows discussion or debate on a motion to be curtailed through the moving of a motion “That the question be now proposed”. Even in the case of UK, the Chair may decide not to put the question if it appears to him that the motion is an abuse of the rules of the House or an infringement of the rights of the minority. Passage of such a closure motion requires support of no fewer than 100 Members of Parliament on a division being taken.

13. In the case of the Hong Kong Legislature, it is not uncommon that the Chairman of FC would advise members that the time allowed for each question in the third or fourth rounds is to be reduced and to indicate that he/she would want the discussion to come to a close after this last round of questions to be raised on an agenda item if it is considered by the Chairman that there has been adequate discussion on the item after taking into account the amount of time that has been spent on the item. The Chairman may also direct that certain information which is not available at the meeting be provided after the meeting, or the matter be referred to the relevant Panel(s) for follow up.

14. As regards the specific question of whether the Chairman has the power to “draw a line” in that no member will be allowed to speak or ask questions after members who have indicated the intention to speak or ask questions have done so, the answer is that there is no provision in the RoP nor the FC Procedure which gives the Chairman such power. However, as a matter of practice, the expression “draw a line” is a jargon used to describe the Chairman’s indication that he/she would want the discussion to come to a close after having considered that there has been adequate discussion on the item after taking into account the amount of time that has been spent on the item.

**Relevant rules**

15. The relevant provisions in the Rules of Procedure, FC Procedure and Handbooks for chairmen of committees are reproduced in the **Appendix** for your easy reference.



(Ms Pauline Ng)  
Secretary General  
14 January 2010

**Extract from the Rules of Procedure, Finance Committee Procedure and Handbooks for Chairmen of Panels and Chairmen of Bills Committees of the Legislative Council**

**Rules of Procedure**

**71. Finance Committee**

(6) The committee shall meet at the time and the place determined by the chairman. Written notice of every meeting shall be given to the members at least 5 clear days before the day of the meeting but shorter notice may be given in any case where the chairman so directs

**Finance Committee Procedure**

**Meetings**

10. The Committee meets at the time (including any time during the period when the Council is in recess between the end of one session and the beginning of the next session) and the place determined by the Chairman [Rule 71(6)]. At the beginning of each session, the Clerk shall seek the Chairman's agreement to a provisional schedule of dates of Committee meetings for the session and inform members and the Administration accordingly. The Chairman may decide to convene special meetings to consider urgent items.

11. The Clerk shall give members written notice of every meeting at least five clear days before the day of the meeting but shorter notice may be given in any case where the Chairman so directs [Rule 71(6)]. Meetings shall be held in public unless the Chairman otherwise orders in accordance with any decision of the Committee [Rule 71(7)]. Any items on the agenda scheduled for discussion but not dealt with at the meeting will be carried over to the next meeting or, if the Chairman decides, to a special meeting.

**Motions**

37A. During the deliberation of an agenda item, prior to the question on it being put to vote, a member may move a motion without notice to express a view on the agenda item if the motion is considered by the Chairman as directly related to the agenda item and agreed by a majority of members that it should be

proceeded forthwith. Any proposed motion or amendment to the motion should be presented in written form. Members may speak on the motion and amendment to the motion, if any, in a joint debate.

### **Rules of Speaking**

39. A member when speaking on a proposal in the Committee may move without notice that discussion on an item or further proceedings of the Committee be now adjourned. Thereupon the Chairman shall propose the question on the motion to adjourn [Rule 40]. A member, when speaking on the question, may not speak more than once [Rule 38] and shall not make a speech for longer than any time period as decided by the Committee, or where no such decision has been made, for more than three minutes. When no or no more member indicates his intention to speak on the question, the Chairman shall forthwith put the question on the motion to the Committee for its decision. No member may speak on the question after it has been put [Rule 33].

### **Handbook for Chairmen of Panels**

#### **Chairman**

##### Responsibilities

1.9 The responsibilities of the Chairman of a Panel are not explicitly stipulated in the Rules of Procedure or House Rules. However, it is generally accepted by Members that the Chairman has the following responsibilities -

- (a) steering the work of the Panel in consultation with its members;
- (b) chairing meetings and ensuring that the business on the agenda is transacted in a proper and efficient manner;
- (c) maintaining order at meetings;
- (d) presenting papers of the Panel to the House Committee;
- (e) tabling and speaking on reports of the Panel in Council; and
- (f) moving motions for debate in Council on behalf of the Panel.

##### Guiding principles

1.16 The Chairman should conduct himself/herself with impartiality in discharging his/her responsibilities. He/she should ensure that members have adequate opportunities to take part in the deliberations of the Panel. Where there are differences of opinion, the Chairman should give each side an equal chance to express its views.

## **Handbook for Chairmen of Bills Committees**

### **Chairman**

#### Responsibilities

1.8 The responsibilities of the Chairman of a Bills Committee are not explicitly stipulated in the Rules of Procedure or House Rules. However, it is generally accepted by Members that the Chairman has the following responsibilities -

- (a) steering the work of the Bills Committee in consultation with its members;
- (b) chairing meetings and ensuring that the business on the agenda is transacted in a proper and efficient manner;
- (c) maintaining order at meetings;
- (d) presenting the report of the Bills Committee to the House Committee;
- (e) tabling and speaking on the report of the Bills Committee in Council; and
- (f) moving Committee Stage amendments agreed to by the Bills Committee on its behalf.

#### Guiding principles

1.14 The Chairman should conduct himself/herself with impartiality in discharging his/her responsibilities. He/she should ensure that members have adequate opportunities to take part in the deliberations of the Bills Committee. Where there are differences of opinion, the Chairman should give each side an equal chance to express its views.

**Ruling of the Chairman of the Finance Committee  
on the decision to stop dealing with proposed motions  
presented by members to the Chairman under paragraph 37A  
of the Finance Committee Procedure**

At the meeting of 13 June, I mentioned to members that in order to safeguard the operation of the Finance Committee ("FC"), it is necessary for me to properly control the progress of meetings by reasonable means so as to ensure the efficient use of meeting time, thereby enabling the Committee to exercise and discharge its functions properly. Hence, I decided to stop dealing with proposed motions on "Advance site formation and engineering infrastructure works at Kwu Tung North new development area and Fanling North new development area" ("advance works") presented to me by members under paragraph 37A of the Finance Committee Procedure ("FCP").

2. Some members expressed their concerns when I announced the decision on 13 June. Before implementing the decision, I agreed to allow each member to speak for three minutes in this regard. Nine members requested to speak on the day, and four of them had spoken before the meeting ended. At the meeting of 20 June, 19 more members made their speeches. I had given careful consideration to the matter concerned after listening to the views of all these members, and decided to implement my decision made earlier to stop dealing with proposed motions presented to me by members under paragraph 37A of the FCP. I hereby present in writing my considerations in reaching the decision.

### **Functions of the FC**

3. According to Rule 71(4) of the Rules of Procedure ("RoP") and paragraph 1 of the FCP, the functions of the FC are those conferred upon the Committee by the Public Finance Ordinance ("PFO") (Chapter 2), any other law and the Rules of Procedure ("RoP") of the Legislative Council, and such as may from time to time be referred to the Committee by the Council. These functions include: (a) examination of the Estimates of Expenditure presented in accordance with Rule 67 of the RoP and referred by the President of the Council in accordance with Rule 71(11) of the RoP; and (b) approving proposals to change the approved Estimates of Expenditure presented by the Financial Secretary in accordance with section 8(1) of the PFO.

## **The function of the Chairman of the FC to chair meetings**

4. The Chairman and Deputy Chairman of FC are elected by and from among its members under Rule 71(2) of the RoP and paragraph 4 of the FCP. The Chairman of the FC ("FC Chairman") shall have the power to determine the date, time and place of meetings, and shall chair FC meetings in accordance with paragraph 13 of the FCP. Although the RoP or the FCP does not expressly provide for the ancillary powers that the FC Chairman may exercise in chairing meetings, as FC Chairman, while ensuring that members have adequate opportunities to take part in the deliberations of the Committee, I also have the responsibility to safeguard the interests of the FC. In order to safeguard the operation of the FC, I have the responsibility to ensure that the business on the agenda is transacted in a proper and efficient manner. This responsibility is in substance the same as that of the President of the Council and chairmen of other committees in presiding over or chairing meetings, in that both need to ensure the orderly, fair and proper conduct of meetings.

## **Interpretation and application of paragraph 37A of the FCP**

5. Paragraph 37A of the FCP provides that, "During the deliberation of an agenda item, prior to the question on it being put to vote, a member may move a motion without notice to express a view on the agenda item if the motion is considered by the Chairman as directly related to the agenda item and agreed by a majority of members that it should be proceeded forthwith. Any proposed motion or amendment to the motion should be presented in written form. Members may speak on the motion and amendment to the motion, if any, in a joint debate."

6. The purpose of the procedure prescribed in paragraph 37A of the FCP is to allow a member to turn his personal view into the view of the FC by way of a motion passed by the FC. I understand that members have different views regarding the number of motions a member may propose in respect of an agenda item under that paragraph during a meeting. In this connection, I have directed the Secretariat to conduct a review and prepare papers for members' discussion before reaching a final decision on the matter. Prior to this, I would make reference to past practices and would for the time being allow each member to propose more than one motion in respect of an agenda item to express their views. In fact, at the previous meetings, I allowed members to each propose more than one motion that was directly related to the agenda item in respect of the aforesaid "advance works" and referred such motions to the Committee for deciding whether they should



be proceeded forthwith. In considering whether the proposed motions are directly related to the agenda item, I have also made reference to the practice of former FC Chairmen.

### **Motions presented by members**

7. The Committee has spent some twenty-two hours on this agenda item since the deliberation of this agenda item started on 2 May. With regard to the agenda item on the "advance works", 13 members presented a total of 5 557 proposed motions to me under paragraph 37A of the FCP, of which 1 633 were received before I announced at the meeting of 13 June the decision to stop dealing with motions presented by members under paragraph 37A, while 3 924 of them were received after I had made this decision (please refer to the **Annex** for details).

8. Among the 1 633 proposed motions mentioned above, 939 of them were received before the meeting of 13 June, whereas the remaining 694 were received before the conclusion of the second meeting that day. At the meeting of 13 June, I firstly dealt with the 939 proposed motions presented by members to me before the meeting. I ruled that 40 of them were in order, whereas the remaining 899 motions were out of order. Of the 40 motions that were ruled in order, I referred all but 20 motions (for the reason of the absence of Mr LEUNG Kwok-hung) to the Committee for deciding whether they should be dealt with, and the Committee's decision was that none of them should be proceeded forthwith.

9. Before dealing with the new batch of 694 proposed motions presented by members to me at the meeting, I asked members whether they would propose other new motions. If they would, such motions should be presented and dealt with together. But no members made such indication to me.

10. As I had to scrutinize the 694 newly presented proposed motions, I adjourned the second meeting earlier than scheduled and invited the members who indicated their intention to move motions to go to Conference Room 4 during the break to discuss with me how those proposed motions should be dealt with. At the end, only Dr Fernando CHEUNG turned up. Ms Emily LAU, Deputy Chairman of FC, also attended that working meeting. At the meeting, I suggested that Dr CHEUNG should consolidate the 645 motions into 20 motions to enable the Committee to efficiently and properly deal with his proposed motions. However, Dr CHEUNG indicated that he would not accept this suggestion.

11. During the break that lasted about an hour, I reviewed the remaining 49 motions which were presented by the other five members. I considered that 28 of them were in order, whereas the remaining 21 were not. During the third meeting of that day, I referred the 28 motions which were in order one by one to the Committee for voting to decide whether they should be dealt with, and the Committee's decision was that none of them should be proceeded forthwith. After the third meeting had started, four members presented to me another batch of 169 proposed motions. In the course of the third meeting, Dr Fernando CHEUNG said that he was still in the process of drafting motions. Mr WONG Yuk-man also indicated at the meeting his intention to propose several hundred motions. On 16 and 17 June, a member presented another 203 proposed motions to me. At the meeting of 20 June, four members presented another batch of 3 349 proposed motions to me. On 26 June, another member presented 203 proposed motions to me.

12. I respect members' right to exert political pressure on the Administration in pursuit of their demands by means of procedural tactics. However, when such behaviour has obviously affected the proper operation of the FC, I, as FC Chairman, have the responsibility to safeguard the interests of the FC. I pointed out at the meeting of 13 June that if members continued to present motions without notice under paragraph 37A of the FCP while a meeting was in progress, it would not be possible for such motions to be dealt with immediately. In the past, when dealing with paragraph 37A of the FCP, the number of motions that may be proposed had not been considered or discussed. However, if allowing members to propose motions incessantly would have the effect of obstructing the FC from exercising and discharging its functions under the RoP and the Public Finance Ordinance (Cap. 2), this, I consider, could not have been the purpose for which paragraph 37A of the FCP was made. In order to safeguard the operation of the FC, it is necessary for me to properly control the progress of meetings by reasonable means, so as to ensure the efficient use of meeting time, thereby enabling the Committee to exercise and discharge its functions properly. Therefore, I decided to stop dealing with proposed motions presented to me by members under paragraph 37A of the FCP.

13. The motions I referred to the Committee at the meeting of 13 June for determining whether they should be dealt with involved a wide range of issues, and the views stated in such motions covered various subjects, such as matters related to the livelihood, rehousing, relocation and compensation to villagers, farming households, traders and commercial operators; demands of the elderly of Dills Corner Garden; the ratio between public and private housing; proposals on agricultural

rehabilitation schemes; preservation of old trees and antiquities and planting of new trees; protection of employment and health of local workers; ways to ensure that the works would not adversely affect the local environment, transport, noise and residents' health; design of district cooling system, drainage channel and sewage treatment; town planning procedure; consultation with affected parties, maintaining regular contacts and submitting working reports; tender evaluation, requirements on commissioning consultants and project monitoring; as well as declaration of interests by officials, etc. In my view, I had given members ample opportunities to seek to turn the views of individual members into the views of the FC by way of a motion passed by the FC under paragraph 37A of FCP.

14. As I have mentioned in the preceding paragraphs, some members expressed their concern after I had announced my decision. Therefore, I decided that I would listen to the views of members before implementing my decision.

15. I listened to views expressed by members on my decision to stop dealing with proposed motions presented to me by members under paragraph 37A of the FCP. However, judging from the development of events that had taken place in the past two weeks, I was satisfied that if I continued dealing with proposed motions presented by members, FC's procedure for dealing with the agenda item of "advance works" would be prolonged to the extent that the FC would not be able to properly exercise and discharge its duties. Therefore, I decided to implement my aforesaid decision, and returned to the members concerned those proposed motions which had not been dealt with and those which were presented to me after I had made this decision.

16. I am satisfied that there are sufficient justifications for my decision. I also firmly believe that, in making the decision, I have struck a proper balance between respecting the rights of individual members to propose motions and express their views and ensuring the orderly and efficient conduct of FC meetings.

(NG Leung-sing)

Chairman of the Finance Committee

27 June 2014

## FCR(2014-15)2 - PWSC(2013-14)38

Advance site formation and engineering infrastructure works  
at Kwu Tung North new development area and Fanling North new development area

**Statistics on proposed motions presented by members under  
paragraph 37A of Finance Committee Procedure**

Proposing members	Number of motions	
<b>Before the Chairman's ruling to stop dealing with proposed motions presented under paragraph 37A:</b>		
<u>Presented at meetings of 2 and 30 May</u>		
Hon LEUNG Kwok-hung	704	
Hon Gary FAN Kwok-wai	8	
Hon CHAN Chi-chuen	10	
		722
<u>Presented at meeting of 6 June</u>		
Hon LEUNG Kwok-hung	194	
Hon Gary FAN Kwok-wai	10	
Hon LEUNG Yiu-chung	1	
Hon Claudia MO	2	
Hon Albert CHAN Wai-yip	10	
		217
<u>Presented at meeting of 13 June (before conclusion of the second meeting)</u>		
Dr Hon Fernando CHEUNG Chiu-hung	645	
Hon Gary FAN Kwok-wai	6	
Hon Albert CHAN Wai-yip	22	
Hon Cyd HO Sau-lan	4	
Hon LEUNG Yiu-chung	12	
Hon CHAN Chi-chuen	5	
		694
Total		<u><u>1,633</u></u>
<b>After the Chairman's ruling to stop dealing with proposed motions presented under paragraph 37A:</b>		
<u>Presented at meeting of 13 June (during the third meeting)</u>		
Hon Gary FAN Kwok-wai	5	
Hon Albert CHAN Wai-yip	158	
Hon LEUNG Yiu-chung	5	
Hon CHEUNG Kwok-che	1	
		169
<u>Presented after meeting (twice through emails on 16 and 17 June)</u>		
Hon Claudia MO		203
<u>Presented at meeting of 20 June</u>		
Hon WONG Yuk-man (in 6 batches)	3,296	
Hon Emily LAU Wai-hing, JP	30	
Dr Hon KWOK Ka-ki	10	
Hon WU Chi-wai, MH	13	
		3,349
<u>Presented after meeting (26 June)</u>		
Hon Gary FAN Kwok-wai		203
Total		<u><u>3,924</u></u>
<b>Total</b>		<b>5,557</b>

**立法會**  
***Legislative Council***

LC Paper No. FC5/15-16

Ref : CB1/F/A/9 (1)

Tel : 3919 3129

Date : 14 October 2015

From : Clerk to the Finance Committee

To : Members of the Finance Committee

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**Finance Committee**

**Application for leave to apply for judicial review (HCAL78/2014)**

Further to LC Paper No. FC261/14-15 dated 7 October 2015, I attach a summary of the salient points of the judgment of the Court of First Instance of the High Court on the captioned leave application for judicial review prepared by the Legal Service Division for members' information.

(Ms Anita SIT)  
Clerk to the Finance Committee

Encl.

c.c. President, Legislative Council

**Summary of Judgment of Hon Mr Justice AU on  
Application for Leave for Judicial Review made by  
Hon WONG Yuk-man  
HCAL 78/2014**

1. On 8 July 2014, the Applicant, Hon WONG Yuk-man, sought leave to apply for judicial review (leave application) against the decisions of the Chairman of the Finance Committee (FC) made during the meeting of FC on 27 June 2014 when FC was considering the funding approval for the advance site formation and engineering infrastructure works at Kwu Tung new development area and Fanling North new development area (the Funding Proposal). The leave application was heard before Hon Au J in the Court of First Instance (the Court) on 11 June 2015 and the judgment was given on 7 October 2015. The decisions under challenge are –

- (a) the Chairman stopped dealing with any further motions presented by members of FC under paragraph 37A of the Finance Committee Procedure (FCP) (1<sup>st</sup> Decision)<sup>1</sup>; and
- (b) the Chairman's decision to put the Funding Proposal to vote (2<sup>nd</sup> Decision)<sup>2</sup>.

2. The Applicant's grounds of challenging the 1<sup>st</sup> Decision are that the Chairman did not have the power under paragraph 37A of FCP to stop dealing with motions presented by members. By doing so, the Chairman had in fact changed FCP on his own. The 1<sup>st</sup> Decision also infringed the legitimate expectations of FC members to have reasonable time to present motions after the "deadline" for presenting motions had been set<sup>3</sup>.

3. In relation to the 2<sup>nd</sup> Decision, the Applicant sought to have it quashed because during the FC's deliberating process that culminated in the 2<sup>nd</sup> Decision, the FC Chairman has already contravened paragraph 37A of FCP in making the 1<sup>st</sup> Decision, and the Chairman contravened paragraph 46 of FCP in that he put the Funding Proposal to vote even though many FC members still had questions to ask on the Funding Approval<sup>4</sup>.

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<sup>1</sup> Paragraph 14 of the Judgment of the Hon Mr Justice AU dated 7 October 2015 (Judgment).

<sup>2</sup> Paragraph 18 of the Judgment.

<sup>3</sup> Paragraph 23(1) of the Judgment.

<sup>4</sup> Paragraph 23(2) of the Judgment.

4. The Applicant argued that the common law non-intervention principle confirmed and explained by the Court of Final Appeal (CFA) in *LEUNG Kwok-hung v The President of the Legislative Council*<sup>5</sup> had been codified and modified by section 23 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382)<sup>6</sup>. According to the Applicant, section 23 of Cap. 382 imposed a statutory duty on the Court to look at whether the exercise of power by LegCo was "lawful", which must include looking at whether LegCo had complied with procedural regularity in exercising its power<sup>7</sup>.

5. Further, the Applicant argued that the non-intervention principle must be reconsidered under the special political and legislative model in Hong Kong and it should not be applied without any qualification<sup>8</sup>.

6. The Court refused the Applicant's leave application. The reasons for the Court's decision are summarized below:

- (a) The Court considered the non-intervention principle confirmed and explained by CFA in *Leung Kwok Hung* (under which the court should not adjudicate matters concerning procedural compliance of the Legislative Council (LegCo) unless there are provisions in the Basic Law requiring the court to do so), and held that the principle should similarly apply to the workings of FC as one of LegCo's standing committees<sup>9</sup>.
- (b) After considering Article 73(1) and 73(3) of the Basic Law<sup>10</sup>, the Court held that the Article 73(3) could not displace the non-intervention principle and require the court to look at procedural compliance of LegCo and FC in performing the function to approve taxation and public expenditure<sup>11</sup>.

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<sup>5</sup> (2014) 17 HKCFAR 689.

<sup>6</sup> Section 23 provides that "[t]he Council, the President or any officer of the Council shall not be subject to the jurisdiction of any court in respect of the lawful exercise of any power conferred on or vested in the Council, the President or such officer by or under this Ordinance or the Rules of Procedure."

<sup>7</sup> Paragraph 44 of the Judgment.

<sup>8</sup> Paragraph 54 of the Judgment.

<sup>9</sup> Paragraphs 34 and 35 of the Judgment.

<sup>10</sup> Article 73 of the Basic Law provides for the powers and functions of the Legislative Council. Article 73(1) empowers the Legislative Council "to enact, amend or repeal laws in accordance with provisions of this Law and legal procedures;" and under Article 73(3), "to approve taxation and public expenditure".

<sup>11</sup> Paragraphs 39 to 43 of the Judgment.

- (c) in relation to the Applicant's argument on section 23 of Cap. 382, the Court was of the view that the word "lawful" in section 23 was to ensure the court's jurisdiction to scrutinize LegCo's exercise of its powers to the extent recognized under the non-intervention principle. Therefore, section 23 of Cap. 382 was intended to be read consistently with the common law principle of non-intervention<sup>12</sup>.
- (d) In relation to the Applicant's last argument in paragraph 5 above, the Court held that there was no substance in that argument as in *Leung Kwok Hung*, CFA has specifically taken into account the constitutional structure of the Executive, Legislative and the independent Judiciary as laid down by the Basic Law in explaining the non-intervention principle as applied in Hong Kong<sup>13</sup>.
- (e) Alternatively, the Court held that the FC Chairman, who is vested with the power to chair FC meetings under paragraph 13 of FCP, has the power to regulate the process of the FC meetings under FCP, including the power to set limits to and terminate a debate. In coming to this decision, the Court has referred to CFA's decision in *Leung Kwok Hung* and concluded that the meanings of "to chair" under paragraph 13 of FCP and "to preside over meetings" under Article 72(1) of the Basic Law are for practical purposes the same. As the Court was satisfied that the FC Chairman has the power to regulate the process of FC meetings, the Court held that under the non-intervention principle, it was not for the court to determine the occasion on the matter of the exercise of this power<sup>14</sup>.

7. The Court makes an order *nisi* that there be no order as to costs (i.e. each party to pay for its own costs)<sup>15</sup>. This order will become absolute 14 days from the date of judgment<sup>16</sup> (i.e. on or before 22 October 2015, as 21 October is a public holiday) unless any of the parties applies to vary it by summons. In making the order, the Court recognized that generally, the court should, as a starting position, make no order as to

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<sup>12</sup> Paragraphs 44 to 53 of the Judgment.

<sup>13</sup> Paragraph 55 of the Judgment.

<sup>14</sup> Paragraphs 57 to 64 of the Judgment.

<sup>15</sup> Paragraph 66 of the Judgment.

<sup>16</sup> The deadline for making the application to vary the costs order *nisi* is 21 October 2015.



costs in a contested failed leave application, unless there are good reasons or exceptional circumstances to justify a departure<sup>17</sup>. In this case, the Court does not find any such exceptional circumstances or good reasons to justify departure from the usual position, in particular, because this is the first time the court is asked to consider the arguments based on section 23 of Cap. 382.

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<sup>17</sup> This is the principle laid down by CFA in *LEUNG Kwok-hung v The President of the Legislative Council* (2014) 17 HKCFAR 841, paragraphs 17(1) to (6).

**Rule 40 of the Rules of Procedure  
and Paragraph 39 of the Finance Committee Procedure**

<p align="center"><b>Rule of 40 of the Rules of Procedure</b></p>	<p align="center"><b>Paragraph 39 of the Finance Committee Procedure</b></p>
<p><b>40. Adjournment of Debate or of Proceedings of a Committee of the Whole Council</b></p> <p>(1) A Member who has risen to speak on a question in the Council may move without notice that the debate be now adjourned. Thereupon the President shall propose the question on that motion.</p> <p>(2) When a motion that the debate be now adjourned has been agreed to, the debate on the question then before the Council shall stand adjourned and the Council shall proceed to the next item of business.</p> <p>(3) When a motion that the debate be now adjourned has been negatived, the debate on the question then before the Council shall be continued and no further motion that the debate be now adjourned shall be moved during that debate except by a designated public officer.</p> <p>(4) When the Council is in committee a Member may move without notice that further proceedings of the committee be now adjourned. Thereupon the Chairman shall propose the question on that motion. If the motion is agreed to, the Council shall resume; but if the motion is negatived, the committee shall continue its proceedings.</p>	<p><b>Rules of Speaking</b></p> <p>39. A member when speaking on a proposal in the Committee may move without notice that discussion on an item or further proceedings of the Committee be now adjourned. Thereupon the Chairman shall propose the question on the motion to adjourn [Rule 40]. A member, when speaking on the question, may not speak more than once [Rule 38] and shall not make a speech for longer than any time period as decided by the Committee, or where no such decision has been made, for more than three minutes. When no or no more member indicates his intention to speak on the question, the Chairman shall forthwith put the question on the motion to the Committee for its decision. No member may speak on the question after it has been put [Rule 33].</p> <p align="right">(FCR(2007-08)33)</p>

<p style="text-align: center;"><b>Rule of 40 of the Rules of Procedure</b></p>	<p style="text-align: center;"><b>Paragraph 39 of the Finance Committee Procedure</b></p>
<p>(5) It shall not be in order to move an amendment to a motion under the provisions of this Rule.</p> <p>(6) Except as otherwise provided in subrule (6A), a debate adjourned under the provisions of subrule (2) may be resumed at a subsequent meeting of the Council provided that the Member or public officer who moved the motion for that debate, or in the case of a debate on a bill, the Member or public officer in charge of the bill, shall give notice in writing to the Clerk of his intention to resume the debate not less than 5 clear days before the day on which the debate is to be resumed: <i>(L.N. 107 of 1999)</i></p> <p>Provided that the President may in his discretion dispense with such notice.</p> <p>(6A) A debate adjourned under the provisions of Rule 49B(2A) (Disqualification of Member from Office) shall be resumed at the earliest meeting of the Council at which normal business is transacted after the report of the investigation committee has been laid on the Table of the Council. <i>(L.N. 107 of 1999)</i></p> <p>(7) Proceedings of a committee of the whole Council adjourned under the provisions of subrule (4) may be resumed at a subsequent meeting of the committee provided that the Member or public officer in charge of the bill to which the adjourned proceedings relate shall give notice in writing to the Clerk of his intention to resume the proceedings not less than 5 clear days before the day on which the proceedings are to be resumed:</p>	

<p style="text-align: center;"><b>Rule of 40 of the Rules of Procedure</b></p>	<p style="text-align: center;"><b>Paragraph 39 of the Finance Committee Procedure</b></p>
<p>Provided that the Chairman may in his discretion dispense with such notice.</p> <p>(8) The provisions of subrules (1), (2), (3), (4) and (5) shall apply to any debate or proceedings resumed under the provisions of subrules (6) and (7).</p>	

**Mechanism for handling Members' visits conducted under the name of the Council or its committees outside Hong Kong in response to invitations**

Detailed procedures of the mechanism are –

1. If the President is invited to lead a delegation of Members in a visit conducted under the name of the Council, he should be consulted as to the acceptance of the invitation. If a quota is prescribed on the number of participating Members by the relevant organisation, the President should consult Members through the House Committee on the composition of the delegation as well as the programme content and logistics of the visit.
2. If the invitation is extended to all Members of the Council, the House Committee should convene a meeting to discuss whether to accept the invitation. If the House Committee considers that the proposed visit is related to Council business and agrees to accept the invitation, it should also consider whether the expenditure of the visit should be charged to individual Members' Overseas Duty Visit (ODV) accounts and the detailed arrangements of the proposed visit. If the invitation is extended to Members of the Council (except the President) but a quota is prescribed on the number of participating Members by the relevant organisation, the House Committee should also consider the composition of the delegation which should normally be broadly representative of the membership of the Council.
3. If the invitation is extended to members of more than one Panel<sup>1</sup>, the Chairmen of the Panels should discuss and agree as to whether a joint meeting should be convened or whether the Panel having a prominent interest in the subject matter should convene a meeting and invite members of the other Panel(s) to attend. The notice of the meeting should be copied to all other non-Panel Members who are welcome to attend the meeting and participate in the discussion, but they do not have any voting right in respect of the issues under discussion. At the meeting, members should discuss whether to accept the invitation and the details of the proposed visit.
4. If the invitation is extended to one Panel only, the meeting should be convened by the Chairman of the Panel. The same meeting arrangement as in step (3) above should be adopted.
5. Any views or requests made by Members at the meeting should be relayed by the Secretariat to the relevant organisation for consideration, and Members should be informed of any feedback received.

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<sup>1</sup> The same arrangement will apply to invitations extended to Bills Committees and subcommittees on subsidiary legislation/policy issues.

6. If the invitation is not accepted, the relevant organisation should be so informed.
7. If the invited Panel(s) considers that the proposed visit is related to Council business and agrees to accept the invitation, it should issue a circular to invite members to indicate whether they will join the visit. The Panel(s) should submit a paper on the detailed arrangements of the visit to the House Committee. Where the Panel(s) considers that the expenses incurred ought to be charged to the ODV accounts of Members, such a proposal should be included in its paper and the House Committee's endorsement is required.
8. If the endorsement of the House Committee on the financial arrangement is obtained, the expenditure of the visit should be charged to individual Members' ODV accounts.
9. If the endorsement of the House Committee on the financial arrangement is not obtained, Members may join the visit on a self-financing basis or claim reimbursement of the expenses incurred for the visit under the Operating Expenses Reimbursement system<sup>2</sup>.
10. A report on a visit outside Hong Kong that has been approved by the House Committee shall be submitted to the House Committee after the conduct of the visit.

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<sup>2</sup> Under the "Guide for Reimbursement of Operating Expenses for Members", entertainment, liaison or travelling expenses incurred by a Member or his staff in or outside Hong Kong for Legislative Council business may be reimbursed against claims certified by the Member without supporting documents.

**Terms of Reference of the Panels**

<b><u>Panel on</u></b>	<b><u>Corresponding Bureau/Body</u></b>	<b><u>Policy Areas</u></b>	<b><u>Terms of Reference</u></b>
1. Manpower	(a) Labour and Welfare Bureau (b) Education Bureau	labour, manpower planning, vocational training and education, and qualifications framework	<a href="http://www.legco.gov.hk/general/english/panels/yr12-16/mrp.htm">http://www.legco.gov.hk/general/english/panels/yr12-16/mrp.htm</a>
2. Commerce and Industry	Commerce and Economic Development Bureau	commerce, industry, business and services promotion, innovation and technology, intellectual property protection and inward investment promotion	<a href="http://www.legco.gov.hk/general/english/panels/yr12-16/ci.htm">http://www.legco.gov.hk/general/english/panels/yr12-16/ci.htm</a>
3. Public Service	(a) Civil Service Bureau (b) Financial Services and the Treasury Bureau	matters relating to the civil service and Government-funded public bodies, and other public service organizations	<a href="http://www.legco.gov.hk/general/english/panels/yr12-16/ps.htm">http://www.legco.gov.hk/general/english/panels/yr12-16/ps.htm</a>
4. Administration of Justice and Legal Services	(a) Judiciary (b) Department of Justice (c) Administration Wing of the Chief Secretary for Administration's Office (d) Home Affairs Bureau	matters relating to the administration of justice and legal services	<a href="http://www.legco.gov.hk/general/english/panels/yr12-16/ajls.htm">http://www.legco.gov.hk/general/english/panels/yr12-16/ajls.htm</a>

<b><u>Panel on</u></b>	<b><u>Corresponding Bureau/Body</u></b>	<b><u>Policy Areas</u></b>	<b><u>Terms of Reference</u></b>
5. Home Affairs	Home Affairs Bureau	district, community and rural matters, civic education, building management, youth matters, provision of leisure and cultural services, development of arts and culture, public entertainment, sport and recreation	<a href="http://www.legco.gov.hk/general/english/panels/yr12-16/ha.htm">http://www.legco.gov.hk/general/english/panels/yr12-16/ha.htm</a>
6. Transport	Transport and Housing Bureau	transport	<a href="http://www.legco.gov.hk/general/english/panels/yr12-16/tp.htm">http://www.legco.gov.hk/general/english/panels/yr12-16/tp.htm</a>
7. Housing	Transport and Housing Bureau	private and public housing	<a href="http://www.legco.gov.hk/general/english/panels/yr12-16/hg.htm">http://www.legco.gov.hk/general/english/panels/yr12-16/hg.htm</a>
8. Security	(a) Security Bureau (b) Independent Commission Against Corruption	security, public order, public safety, corruption-related matters, nationality and immigration	<a href="http://www.legco.gov.hk/general/english/panels/yr12-16/se.htm">http://www.legco.gov.hk/general/english/panels/yr12-16/se.htm</a>
9. Constitutional Affairs	(a) Constitutional and Mainland Affairs Bureau (b) Labour and Welfare Bureau	matters relating to implementation of the Joint Declaration and the Basic Law, relations between the Hong Kong Special Administrative Region Government and the Central People's Government and other Mainland authorities, electoral matters, district organizations, human rights, personal data protection and press freedom	<a href="http://www.legco.gov.hk/general/english/panels/yr12-16/ca.htm">http://www.legco.gov.hk/general/english/panels/yr12-16/ca.htm</a>



<u>Panel on</u>	<u>Corresponding Bureau/Body</u>	<u>Policy Areas</u>	<u>Terms of Reference</u>
10. Food Safety and Environmental Hygiene	Food and Health Bureau	food safety, environmental hygiene, agriculture and fisheries	<a href="http://www.legco.gov.hk/general/english/panels/yr12-16/fseh.htm">http://www.legco.gov.hk/general/english/panels/yr12-16/fseh.htm</a>
11. Financial Affairs	Financial Services and the Treasury Bureau	financial and finance matters	<a href="http://www.legco.gov.hk/general/english/panels/yr12-16/fa.htm">http://www.legco.gov.hk/general/english/panels/yr12-16/fa.htm</a>
12. Education	Education Bureau	education	<a href="http://www.legco.gov.hk/general/english/panels/yr12-16/ed.htm">http://www.legco.gov.hk/general/english/panels/yr12-16/ed.htm</a>
13. Development	Development Bureau	lands, buildings, planning, water supply, development-related heritage conservation, Public Works Programme and other works matters	<a href="http://www.legco.gov.hk/general/english/panels/yr12-16/dev.htm">http://www.legco.gov.hk/general/english/panels/yr12-16/dev.htm</a>
14. Welfare Services	(a) Labour and Welfare Bureau (b) Home Affairs Bureau	welfare (including women welfare), rehabilitation services, poverty, social enterprise and Family Council	<a href="http://www.legco.gov.hk/general/english/panels/yr12-16/ws.htm">http://www.legco.gov.hk/general/english/panels/yr12-16/ws.htm</a>

<b><u>Panel on</u></b>	<b><u>Corresponding Bureau/Body</u></b>	<b><u>Policy Areas</u></b>	<b><u>Terms of Reference</u></b>
15. Information Technology and Broadcasting	Commerce and Economic Development Bureau	information technology, telecommunications, broadcasting, film services and creative industry	<a href="http://www.legco.gov.hk/general/english/panels/yr12-16/itb.htm">http://www.legco.gov.hk/general/english/panels/yr12-16/itb.htm</a>
16. Economic Development	(a) Commerce and Economic Development Bureau (b) Transport and Housing Bureau (c) Environment Bureau	matters relating to economic infrastructure and services, including air and sea transport facilities and services, postal and weather information services, energy supply and safety, consumer protection, competition policy and tourism	<a href="http://www.legco.gov.hk/general/english/panels/yr12-16/edev.htm">http://www.legco.gov.hk/general/english/panels/yr12-16/edev.htm</a>
17. Health Services	Food and Health Bureau	medical and health services	<a href="http://www.legco.gov.hk/general/english/panels/yr12-16/hs.htm">http://www.legco.gov.hk/general/english/panels/yr12-16/hs.htm</a>
18. Environmental Affairs	Environment Bureau	environmental matters (including those on energy), conservation and sustainable development	<a href="http://www.legco.gov.hk/general/english/panels/yr12-16/ea.htm">http://www.legco.gov.hk/general/english/panels/yr12-16/ea.htm</a>

**Extract from the Rules of Procedure**

**79. Procedure of Select Committees**

(1) The deliberations of a select committee shall be confined to the matter or matters referred to it by the Council, and in the case of a select committee on a bill shall be confined to the bill committed to it and relevant amendments.

(2) A select committee shall meet at the time and the place determined by the chairman. The meetings of a select committee shall be held in public unless the chairman otherwise orders in accordance with any decision of the committee. *(L.N. 227 of 2006)*

(3) In the event of the temporary absence of the chairman and deputy chairman, the committee may elect a chairman to act during such absence. *(L.N. 214 of 2005)*

(4) The clerk to the committee appointed under Rule 6(7) (Duties of the Clerk) shall attend meetings of the committee and shall keep the minutes of proceedings of the committee.

(5) Divisions in a select committee shall be taken by the clerk to the committee who shall ask each member of the committee separately how he wishes to vote and record the votes accordingly.

(6) Neither the chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided in which case he shall give a casting vote. *(L.N. 214 of 2005)*

(7) (a) A member of a select committee may bring a report for their consideration. When all the reports have been brought up the chairman shall propose the reports in order until one is accepted as a basis for discussion, beginning with his own report and proceeding with the remainder in the order in which they were brought up. The question to be proposed by the chairman on a report shall be that the chairman's (or Mr. ....'s) report be read a second time paragraph by paragraph. When this question has been agreed to, it shall not be proposed on further reports but portions thereof may be offered as amendments to the report under consideration if they are relevant to it.

- (b) The committee shall then go through the report paragraph by paragraph and the provisions of Rule 58 (Procedure in Committee of the Whole Council on a Bill) shall apply as if the report were a bill and the paragraphs were the clauses of the bill.
- (c) When consideration of the report paragraph by paragraph is concluded and when all proposed new paragraphs have been considered the chairman shall put the question that this report be the report of the committee to the Council.

(8) A select committee may make a special report relating to the powers, functions and proceedings of the committee on matters which it thinks fit to bring to the notice of the Council.

(9) The minutes of proceedings of the committee shall record all proceedings on consideration of a report or bill in the committee and on every amendment proposed to the report or bill, with a note of divisions, if divisions were taken in the committee, showing the names of members voting in the division or declining to vote.

(10) A report or special report, with the minutes of proceedings of a select committee and the minutes of evidence, if evidence was taken, shall be laid on the Table of the Council by the chairman of the committee.

**Resolution under Legislative Council (Powers and Privileges) Ordinance  
passed on 25 May 1994 and amended on 20 November 1996  
and further amended on 16 April 1997**

That with effect from 25 May 1994 the usage and practice in regard to the determination of claims of "public interest privilege" made by persons appearing before a committee of the Council shall be as set out in the Schedule annexed to this Resolution.

1. In this Schedule –

"relevant body", (有關方面) in relation to a committee before which a witness is attending to give evidence or to produce any paper, book, record or document, means -

- (a) the chairman and deputy chairman of the committee, where both are present (and references to the delivering of the opinion of the relevant body shall be taken to mean the opinion of the chairman where the chairman and deputy chairman disagree);
- (b) the chairman alone where the deputy chairman is absent;
- (c) the deputy chairman alone where the chairman is absent; or
- (d) where both the chairman and deputy chairman are absent, the member elected to act as chairman during such absence.

"witness" (證人) means –

- (a) a person lawfully ordered to attend to give evidence or to produce any paper, book, record or document before a committee; and
- (b) any public officer designated by the Governor under section 8A(2)(b) of the Legislative Council (Powers and Privileges)

Ordinance (Cap. 382) for the purpose of attending sittings of a committee.

2. If, at a public sitting of a committee, a witness refuses to answer publicly or privately any question that may be put to him, or to produce any paper, book, record or document, and claims privilege on the ground that the giving of the answer or the production of the paper, book, record or document would be contrary to the public interest the following procedure will apply -

- (1) The chairman shall inform the witness that he may explain his reasons in confidence to the relevant body and that the relevant body will then deliver an opinion to the committee without disclosure of any information or paper, book, record or document claimed by the witness to be privileged from disclosure.
- (2) If the witness agrees to explain his reasons to the relevant body the relevant body shall make arrangements to consider the reasons and deliver its opinion to the committee.
- (3) If the relevant body delivers its opinion that the claim of privilege by the witness is justified in respect of an answer to a question or the production of any paper, book, record or document the committee shall excuse the answering of such question or the production of such paper, book, record or document.
- (4) If the relevant body delivers its opinion that the claim of privilege by the witness is not justified in respect of any answer to a question or the production of any paper, book, record or document the committee may order the answering or production thereof.
- (5) If the witness continues to refuse to answer any question or produce any paper, book, record or document the committee may take such action within its powers as it considers appropriate.

- (6) If the witness does not agree to explain his reasons to the relevant body under subparagraph (2) the committee may take such action within its powers as it considers appropriate.

3. If, at a public sitting of a committee, a witness refuses to answer in public any question that may be put to him, or to produce in public any paper, book, record or document on the ground of public interest privilege, but requests to answer such question or produce such paper, book, record or document at a private sitting of the committee, the following procedure will apply -

- (1) The committee will deliberate in private whether to agree to the request by the witness.
- (2) The decision of the committee will be taken by formal vote.
- (3) If the committee decides to agree to the request by the witness no answer given by the witness at a private sitting nor any paper, book, record or document produced by him thereat shall be made public unless the committee decides during the private sitting that the request by the witness for confidentiality is not justified. Before reaching such a decision the committee shall give the witness an opportunity to state the grounds upon which he claims public interest privilege in respect of the particular answer or paper, book, record or document.

立法會  
*Legislative Council*

SC(2) Paper No. L3 (revised)

Ref : CB2/SC/08

**Select Committee to Inquire into Matters relating to  
the Post-service Work of Mr LEUNG Chin-man**

**Practice and Procedure  
(as at 30 May 2009)**

The Legislative Council passed a resolution to appoint the Select Committee on 10 December 2008. The resolution sets out the Terms of Reference of the Select Committee and authorizes the Select Committee to exercise the powers conferred by section 9(1) of the Legislative Council (Power and Privileges) Ordinance (Cap. 382). The Chairman, Deputy Chairman and the 10 members of the Select Committee were appointed by the President on 12 December 2008.

2. The procedures of select committees are regulated by the relevant provisions in the Legislative Council Rules of Procedure and Cap. 382. The practice and procedure in this paper include those not expressly provided for in the Rules of Procedure and Cap. 382.

**Principles**

3. In determining its own practice and procedure, the Select Committee has drawn reference from those adopted by previous select committees. Due regard has also been given to the following principles:

- (a) the practice and procedure should be fair and seen to be fair, especially to parties whose interests or reputation may be affected by the proceedings of the Select Committee;
- (b) there should be maximum transparency in its proceedings as far as practicable;
- (c) the practice and procedure should facilitate the ascertaining of the facts relevant to, and within the scope of, its inquiry, as set out in the Select Committee's Terms of Reference, which do not include the adjudication of the legal liabilities of any parties or individuals;



- (d) its proceedings should be conducted with efficiency; and
- (e) the cost of the proceedings should be kept within reasonable bounds.

## **Practice and procedure**

### Term of office

4. In accordance with Rule 78(4) and (5) of the Rules of Procedure, the Select Committee shall be dissolved upon reporting to the Council or at the end of a term. If the Select Committee is of the opinion that it will not be able to complete consideration of the matter before the end of a term, it shall so report to the Council.

### Chairmanship

5. All meetings of the Select Committee are chaired by the Chairman or, in his/her absence, by the Deputy Chairman. In accordance with Rule 79(3) of the Rules of Procedure, in the event of the temporary absence of the Chairman and Deputy Chairman, the Select Committee may elect a chairman to act during such absence.

### Quorum

6. Rule 78(3) of the Rules of Procedure provides that the quorum of a select committee shall be one-third of the members excluding the chairman (a fraction of the whole number being disregarded). The quorum of the Select Committee shall therefore be three members excluding the Chairman. The Clerk to the Select Committee will draw to the attention of the Chairman on the absence of a quorum as and when there is such absence.

### Voting

7. In accordance with Rule 79(5), 79(6), and 79A(1) of the Rules of Procedure, divisions in the Select Committee shall be taken by the Clerk to the Select Committee who shall ask each member separately how he/she wishes to vote and record the votes accordingly. Neither the Chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided in which case he/she shall have a casting vote, which shall not be exercised in such a way as to produce a majority vote in favour of the question put.

8. Decisions of the Select Committee shall be decided by a majority of the members present and voting, which is done by a show of hands. Abstentions are not counted for the purpose of determining the result of the vote.

### Power to compel evidence

9. The Select Committee may, subject to sections 13 and 14 of Cap. 382, order any person to attend before it and to give evidence or to produce any paper, book, record or document in the possession or under the control of such person.

10. The Select Committee may also request any person or body to attend a meeting to give evidence orally, invite any person or body to give evidence in writing or any person or body to produce specified documents to the Select Committee.

11. The privileges and immunities provided in Cap. 382 are available in proceedings before the Select Committee which include hearings and deliberative meetings. Any person not lawfully ordered to attend to give evidence or to produce any paper, book, record or document before the Select Committee is not protected by section 14(1) of Cap. 382 relating to privileges of witnesses.

### Conduct of meetings

#### *General principles*

12. In accordance with Rule 79(1) of the Rules of Procedure, the deliberations of the Select Committee shall be confined to the matter or matters referred to it by the Council.

13. A schedule of meetings for the Select Committee is usually agreed beforehand, but the Chairman has the authority to determine the date and time of meetings. Members will be notified by the Clerk of the time and venue of meetings. Where considered appropriate, the Select Committee may meet outside the Legislative Council Building.

14. In accordance with Rule 79(2) of the Rules of Procedure, meetings of the Select Committee shall be held in public unless the Chairman otherwise orders in accordance with any decision of the Select Committee.

#### *Meetings for the examination of witnesses*

15. Examination of witnesses will normally be conducted in public. Exceptions to open hearings may be made as decided by the Select Committee, based on the individual circumstances of each occasion.

16. During open hearings, members should only ask questions for the purpose of establishing the facts in connection with the inquiry. Members should not make comments or statements during these hearings.

17. Public hearings are generally conducted in the following manners:
- (a) at the beginning of each open hearing, the Chairman reminds the public and the media that dissemination or disclosure of the evidence given at the hearing outside the proceedings is not protected under Cap. 382. The media should obtain legal advice as to their legal responsibilities;
  - (b) where it is decided that witnesses should be examined on oath, the Chairman will administer the oath under section 11 of Cap. 382 before the examination starts;
  - (c) facts are established by questions and evidence given at hearings. Usually, the Chairman will first make an introduction and then ask the witness an appropriate opening question, giving him/her an opportunity to state his/her case;
  - (d) members wishing to ask questions should so indicate by a show of hands, and are called upon to ask questions. The Chairman will ensure, as far as possible, that members have equal opportunities to ask questions and that the hearing is conducted in a structured manner;
  - (e) the Chairman will decide whether a question or evidence is relevant to, and within the scope of, the Select Committee's inquiry, as set out in its Terms of Reference;
  - (f) short follow-up questions may be allowed. Follow-up questions should be questions seeking further answers to the original question or clarifications to the answers given. The Chairman has the discretion to decide whether a question is a follow-up question and whether it should be allowed or otherwise; and
  - (g) The privilege in Cap. 382 is available only within the context of the hearings. All members, including non-Select Committee Members should refrain from making comments relating to the hearing outside the proceedings. Evidence given in closed meetings should not be made public by any members.

18. Unless excused under section 13(2) of Cap. 382 or justifiably claiming privilege under section 15, a witness summonsed under section 9 of Cap. 382 must answer all lawful and relevant questions from the Select Committee. If he/she refuses to do so, he/she commits an offence under section 17 of Cap. 382 and is liable to prosecutions. If the witness claims privilege from disclosure of evidence on grounds of public interest immunity, the procedure as set out in the Council's resolution concerning the usage and practice in regard to the determination of claims of public interest privilege in **Appendix I** will be followed.

19. Subject to the Select Committee's decision, witnesses attending before the Select Committee may be allowed to be accompanied by other persons, who may include legal adviser(s), to assist the witnesses concerned. However, such accompanying person(s) may not address the Select Committee.

20. Witnesses attending before the Select Committee at its hearings to give evidence or to produce any paper, book, record or document may be eligible for claiming an allowance at specified rates to recompense loss of income or expenses incurred for attending the hearings. The details are in **Appendix II**.

*Measures taken to avoid possible prejudice to a person's interest in pending legal proceedings*

21. In accordance with Rule 41(2) of the Rules of Procedure, a Member shall not make reference in his/her speech to a case pending in a court of law in such a way as, in the opinion of the President or the Chairman, might prejudice that case. This rule applies to the proceedings of the Select Committee by virtue of Rule 43 of the Rules of Procedure.

22. If there are pending legal proceedings arising from matters which are related to the subject of the Select Committee's inquiry, the following measures will be adopted to avoid possible prejudice to a person's interest in pending legal proceedings:

- (a) the Department of Justice will be asked to keep the Select Committee informed of the development of the criminal proceedings concerned, if any;
- (b) the Chairman would explain to each witness that the function of the Select Committee is not to adjudicate on the legal liability of any party or individual and advise him/her of the Chairman's power to disallow the making of any reference to a case pending in a court of law if such reference might, in the Chairman's opinion, prejudice the proceedings;
- (c) where it is considered necessary and justified, either on an application by a witness or on the Select Committee's own motion, the Select Committee may determine to hold closed meetings to obtain evidence from a witness;
- (d) where the Select Committee considers necessary, it will provide the Department of Justice with a copy of the draft findings and observations of the Select Committee and request it to comment whether the contents of the draft might prejudice pending criminal proceedings, if any; and

- (e) the report of the Select Committee should not contain any material which might prejudice a pending criminal jury trial.
23. In respect of pending civil proceedings, the following principles also apply:
- (a) references to matters awaiting adjudication in a court of law should be excluded if there is a risk that they might prejudice its adjudication;
  - (b) references referred to in (a) would include comments on, inquiry into and the making of findings on such matters;
  - (c) matters awaiting adjudication referred to in (a) would include matters in respect of which proceedings have been initiated by the filing of the appropriate documents; and
  - (d) prejudice referred to in (a) might arise from an element of explicit or implicit prejudgment in the proceedings of the Select Committee in two possible ways -
    - (i) the references might hinder the court or a judicial tribunal in reaching the right conclusion or lead it to reach other than the right conclusion; and
    - (ii) whether the court or judicial tribunal is affected in its conclusion or not, the references might amount to an effective usurpation of the judicial functions of the court or judicial tribunal.

*Handling of requests for classifying documents as confidential*

24. If requests are made by witnesses for classifying certain information or documents as confidential, the Select Committee shall consider carefully the circumstances of each case and the justifications provided.

*Handling of information contained in classified documents or obtained at closed hearings*

25. In fairness to persons who have provided classified documents for the Select Committee, if information contained in such documents is to be used at a public hearing, the source of the information will only be disclosed if it is necessary to do justice to the witness or to enable him to understand a question.

26. If closed meetings are held to obtain evidence from a witness who is a party to pending legal proceedings, information obtained in these closed hearings should be used with care, and where possible, the identity of the witness who has provided the information should not be disclosed.

27. Where the Select Committee is inclined to refer to information obtained in closed hearings in the Select Committee's report, an extract of the relevant part of the report in draft form should be provided to the witness concerned for comment. The comments received will be carefully considered by the Select Committee before its report is finalized.

28. Any information obtained by way of oral evidence or in the form of documents provided at closed hearings shall not be disclosed.

#### *Internal deliberations*

29. Subject to Rule 79(2) of the Rules of Procedure, the Select Committee may hold closed meetings to deliberate on procedural matters, progress of its work, the logistical arrangements for hearings, the evidence obtained, the draft report of the Select Committee and any other matters relevant to the Select Committee's work. Members including the Chairman and the Deputy Chairman should not disclose any information about the internal deliberations held or documents considered at these meetings. The Select Committee Chairman or the Deputy Chairman should be the only persons authorized to handle media enquiries.

#### Handling of documents

30. All documents submitted to the Select Committee are numbered: by document and by page. Each member of the Select Committee will be given a copy of the documents produced to the Select Committee, unless advised otherwise with the consent of the Select Committee.

31. To facilitate members in perusing documents produced by the Select Committee, a room in the Legislative Council Building is reserved for keeping a complete set of documents produced to or compiled by the Select Committee. Only members of the Select Committee and the relevant staff can have access to the room. If the document is voluminous, a full copy is not issued to members of the Select Committee. Instead, members will peruse the documents which are placed inside the room. Members should not remove any paper from the room. Where a document is classified confidential, they should not make photocopy of it, in whole or in part.

#### Disclosure of interests

32. Rules 83A and 84 of the Rules of Procedure relating to Members' pecuniary interest shall apply to the proceedings of the Select Committee.

33. In addition, there may be situations in which a member wishes to declare non-pecuniary interests. In such a case, he/she should write to the Chairman to declare such interests. Where appropriate, the Chairman may announce at public meetings or hearings of the Select Committee the nature of interests so declared by individual members.

#### Participation of Non-Select Committee Members

34. While meetings held in public shall be attended by members of the Select Committee, non-Select Committee Members may also be in attendance at these meetings, but may not speak at the meeting. If a non-Select Committee Member wishes to direct any questions to a witness, he/she should put his/her questions in writing and pass them to the Chairman without interrupting the proceedings, and the Chairman will decide whether or not the Chairman will ask the questions.

35. Non-Select Committee Members are not allowed to be present at closed meetings of the Select Committee or at hearings held at closed meetings.

#### Minutes of proceedings of the Select Committee

36. All proceedings of hearings and meetings are sound-recorded. Members of the public may obtain copies of the sound recordings of hearings and meetings held in public upon the payment of a fee.

37. Minutes of evidence, usually in the form of a verbatim transcript, are kept for each meeting at which witnesses are examined. Relevant parts of the draft transcript are forwarded to the person or body giving evidence for sight and correction, if any, before being incorporated into the minutes of evidence, subject to their signing of an undertaking that they would not make any copy of the draft and would return it to the Select Committee before a specified date. The procedures in **Appendix III**, which apply to witnesses, shall also apply to persons or bodies other than the witnesses giving evidence requesting copies of transcripts of evidence. Any person may obtain a copy of the finalized form of transcript for meetings held in public upon the payment of a fee.

38. For hearings held in closed meetings, no transcripts will be provided for any person including the witnesses concerned. All witnesses however are provided with the relevant parts of the draft transcripts of evidence for sight and correction. The undertaking they are required to sign includes an additional requirement that any part of the draft transcript in question must not be divulged.

39. For meetings not attended by any outside party, the minutes of meetings are normally presented in a condensed form, recording the Select Committee's decisions, follow-up actions required, procedural matters and declarations of interest made by members. Verbatim record of such meetings may be prepared on the direction of the Select Committee.

### Report of the Select Committee

40. The draft report of the Select Committee is considered by the Select Committee at closed meetings. In accordance with Rule 79(9) of the Rules of Procedure, the minutes of proceedings of the Select Committee record all proceedings on the consideration of the report and on every amendment proposed thereto, with a note of divisions, if divisions were taken in the Select Committee, showing the names of members voting in the division or declining to vote.

41. In order to ensure that the procedure is fair and seen to be fair to people whose interests or reputations may be affected by its proceedings, any party, person or organization against whom adverse comments are intended to be made in the Select Committee's report will be given an opportunity to comment on relevant parts of the draft findings and observations of its report. The comments received will be carefully considered by the Select Committee before its report is finalized.

42. In accordance with Rule 79(10) of the Rules of Procedure, a report of the Select Committee, with the minutes of proceedings and the minutes of evidence, if evidence was taken, shall be laid on the Table of the Council by the Chairman of the Select Committee.

### Premature publication of evidence

43. In accordance with Rule 81 of the Rules of Procedure, the evidence taken before the Select Committee and documents presented to it shall not, except in the case of its meetings held in public, be published by a member of the Select Committee or by any other person before the Select Committee has presented its report to the Council. Any member of the Select Committee who fails to comply with this Rule may be admonished or reprimanded by the Council on a motion to that effect.



**Resolution under Legislative Council (Powers and Privileges) Ordinance  
passed on 25 May 1994 and amended on 20 November 1996  
and further amended on 16 April 1997**

That with effect from 25 May 1994 the usage and practice in regard to the determination of claims of "public interest privilege" made by persons appearing before a committee of the Council shall be as set out in the Schedule annexed to this Resolution.

1. In this Schedule –

"relevant body", (有關方面) in relation to a committee before which a witness is attending to give evidence or to produce any paper, book, record or document, means -

- (a) the chairman and deputy chairman of the committee, where both are present (and references to the delivering of the opinion of the relevant body shall be taken to mean the opinion of the chairman where the chairman and deputy chairman disagree);
- (b) the chairman alone where the deputy chairman is absent;
- (c) the deputy chairman alone where the chairman is absent; or
- (d) where both the chairman and deputy chairman are absent, the member elected to act as chairman during such absence.

"witness" (證人) means –

- (a) a person lawfully ordered to attend to give evidence or to produce any paper, book, record or document before a committee; and
- (b) any public officer designated by the Governor under section 8A(2)(b) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) for the purpose of attending sittings of a committee.

2. If, at a public sitting of a committee, a witness refuses to answer publicly or privately any question that may be put to him, or to produce any paper, book, record or document, and claims privilege on the ground that the giving of the answer or the production of the paper, book, record or document would be contrary to the public interest the following procedure will apply -

- (1) The chairman shall inform the witness that he may explain his reasons in confidence to the relevant body and that the relevant body will then deliver an opinion to the committee without disclosure of

any information or paper, book, record or document claimed by the witness to be privileged from disclosure.

- (2) If the witness agrees to explain his reasons to the relevant body the relevant body shall make arrangements to consider the reasons and deliver its opinion to the committee.
  - (3) If the relevant body delivers its opinion that the claim of privilege by the witness is justified in respect of an answer to a question or the production of any paper, book, record or document the committee shall excuse the answering of such question or the production of such paper, book, record or document.
  - (4) If the relevant body delivers its opinion that the claim of privilege by the witness is not justified in respect of any answer to a question or the production of any paper, book, record or document the committee may order the answering or production thereof.
  - (5) If the witness continues to refuse to answer any question or produce any paper, book, record or document the committee may take such action within its powers as it considers appropriate.
  - (6) If the witness does not agree to explain his reasons to the relevant body under subparagraph (2) the committee may take such action within its powers as it considers appropriate.
3. If, at a public sitting of a committee, a witness refuses to answer in public any question that may be put to him, or to produce in public any paper, book, record or document on the ground of public interest privilege, but requests to answer such question or produce such paper, book, record or document at a private sitting of the committee, the following procedure will apply -

- (1) The committee will deliberate in private whether to agree to the request by the witness.
- (2) The decision of the committee will be taken by formal vote.
- (3) If the committee decides to agree to the request by the witness no answer given by the witness at a private sitting nor any paper, book, record or document produced by him thereat shall be made public unless the committee decides during the private sitting that the request by the witness for confidentiality is not justified. Before reaching such a decision the committee shall give the witness an opportunity to state the grounds upon which he claims public interest privilege in respect of the particular answer or paper, book, record or document.

**Allowance for witnesses**

The following shall apply to the provision of an allowance ("the allowance") for witnesses attending before the Select Committee to Inquire into Matters relating to the Post-service Work of Mr LEUNG Chin-man at its hearings to give evidence and/or to produce documents -

I. Eligibility

- (a) Subject to (c) below, the allowance is payable to witnesses attending before the Select Committee at its hearings, whether or not they have the opportunity to give evidence at the particular hearings.
- (b) Witnesses who are ex-civil servants and have ceased active service with the Government and left the Government on expiry of their final leave will be eligible for the allowance.
- (c) The allowance is not payable to public officers<sup>1</sup> or persons in the service or employment of statutory bodies or other organizations which are funded by public money for attending the Select Committee's hearings in the course of their duties.

II. Rates

The allowance payable shall be a sum not exceeding \$180 for each attendance at a hearing of the Select Committee not exceeding four hours, and a sum not exceeding \$360 for each attendance exceeding four hours.

III. Application procedure

Eligible witnesses may submit to the Clerk to the Select Committee claims for payment of the allowance no later than 14 days from the date of the hearings attended by the witnesses by completing the prescribed form.

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<sup>1</sup> The term "public officer" is defined in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) to mean any person holding an office of emolument under the Government, whether such office be permanent or temporary.

<b>Legislative Council Secretariat</b> <b>Application form for payment of allowance for witness</b>
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\*Please complete in BLOCK letters using black or blue pen

<b>Part I : Personal details</b>			
<b>Surname</b>		<b>Given names</b>	
<b>Home/Correspondence Address</b>			
<b>Contact telephone no.</b>			
<b>Part II : Hearing details</b>			
<b>Name of Committee</b>			
<b>Date of hearing(s)</b>	<b>Starting time of attendance required by the Committee</b>	<b>Ending time of attendance required by the Committee</b>	
<i>(Please use separate sheet(s) if space is not sufficient)</i>			
<b>Declaration of Applicant:</b>			
I hereby apply for the payment of allowance for witness in respect of the above hearings which I have attended/been ordered to attend. I understand that any allowance so approved will be payable by cheque in my name and the cheque will be sent to my home/correspondence address as stated above.			
Signature _____		Date _____	
<b>For Official use only</b>			
<b>Part III</b> <i>(To be completed by Secretariat officers of the relevant Committee)</i>		<b>Part IV</b> <i>(To be completed by Accounts Office)</i>	
Total amount to be paid	\$	Payment made on _____.	
Checked by:	Approved by:		
_____	_____		
Signature/Title	Signature/Title	Charged to cost center of _____.	
Date _____	Date _____	Signature _____ Post _____ Date _____	

- Notes:
- (i) A claim must be made within 14 days from the date of a hearing attended by a witness.
  - (ii) The witness allowance payable shall be \$180 for each attendance at a hearing not exceeding four hours, and \$360 for each attendance exceeding four hours.

**Provision of Transcripts of Evidence**

The following procedures shall apply to the provision of transcripts of evidence taken by the Select Committee to Inquire into Matters relating to the Post-service Work of Mr LEUNG Chin-man -

- (a) where considered appropriate, the Select Committee may permit copies of the transcripts of evidence taken in public be provided to witnesses and prospective witnesses on request;
- (b) "witnesses" refers to persons on whom summonses have been served by the Select Committee to order their appearance before it; "prospective witnesses" refers to witnesses whom the Select Committee has decided to summon to appear before it;
- (c) where copies of transcripts of evidence taken in public are provided to witnesses or prospective witnesses, the unpublished and/or uncorrected status of the transcripts shall be stated clearly; and
- (d) the provision of unpublished and/or uncorrected transcripts of evidence taken in public to witnesses or prospective witnesses be made on the condition that they shall not make public use of the transcripts; shall not quote directly from the transcripts; and shall not use the transcripts in a manner prejudicial to the interest of the Select Committee or other persons.

立法會  
*Legislative Council*

SC Ref. No. SC1-G0003

Ref: CB1/SE/HG/2

**Select Committee on Building Problems of Public Housing Units**

**Revised Work plan of the Select Committee and time frame**

**I Collection and collation of relevant information**

(3 weeks) (late February to mid-March 2001)

1. To identify the problems in the production of public housing units as revealed in the investigations into the incidents undertaken by various bodies; and
2. To ascertain the present progress in the institution of criminal proceedings against persons involved in the incidents.

(internal deliberations)

**II Examination and comparison of the existing working mechanisms for the production of housing units subject to and exempted from the Buildings Ordinance**

(9 weeks) (mid-March to late May 2001)

1. To study the internal working of the Housing Authority, the Housing Society, the Housing Bureau and the Housing Department on the production of public housing units and the interface of these authorities;
2. To analyse the line of command and the staffing structure within the Housing Department in overseeing the production of public housing units;
3. To examine the policies, procedures, practices and institutional structure of the relevant authorities, including the Housing Authority, which may have bearing on the quality of public housing units;
4. To understand the experience and the practical difficulties encountered by the staff of the Housing Department in the production of public housing units, and the degree of compliance with the standards laid down by the Housing Department; and
5. To understand the differences between the working mechanism for the production of housing units which are subject to the provisions of the Buildings Ordinance for ensuring building quality and those which are exempted.

(Witnesses to be invited: Housing Authority, Housing Society, Housing Bureau, Housing Department, staff associations, relevant persons of a specific public housing development project, works departments, building professional bodies, building professionals and persons with extensive experience on production of both private and public housing units) (Visits to construction sites where necessary)

**III Ascertaining the causes of and/or circumstances leading to the building problems in the four incidents**

(3 months) (from June up to the week of 9 July, early September to October 2001)

1. To ascertain the causes and/or circumstances leading to the building problems in the four incidents; and
2. To understand the roles of different parties involved in the four incidents and the extent of responsibility of the parties concerned.

(Witnesses to be invited: persons involved in the four incidents)

**IV Identification of improvement measures**

(2 months) (November and December 2001)

1. Based on the evidence collected from II to III, to find out from the authorities concerned the extent of their awareness of the problems in the production of public housing units and any actions taken/contemplated to address the problems, if any;
2. To analyse the staffing structure, line of command and new initiatives adopted by the authorities for ensuring quality in the production of public housing units in future; and
3. Subject to the completion of the review on the institutional framework for public housing headed by the Chief Secretary, to analyse how the proposals consequent to the review would help bring about a more effective process on the production of public housing units.

(Witnesses to be invited: Housing Authority, Housing Society, Housing Bureau, Housing Department and professional bodies)

**V Drafting of and discussion on report**

(2 months) (December 2001 and January 2002)

1. To discuss the approach in drafting the report of the Select Committee; and
2. To discuss the draft report.

(internal deliberations)

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

**Summons issued under section 10(1) of  
the Legislative Council (Powers and Privileges) Ordinance (Cap. 382)**

To : Name of Witness

You are ordered to attend before the Select Committee to Study Mr LEUNG Chun-ying's Involvement as a Member of the Jury in the West Kowloon Reclamation Concept Plan Competition and Related Issues ("the Select Committee") at a hearing of the Select Committee to be held in **Conference Room 3 of the Legislative Council Complex on Saturday, X March 2012, at 9:00 am**, and at such other places or times as decided and notified by the Select Committee, to give evidence and to produce such papers, books, records and documents as specified and notified by the Select Committee.

Issued on X March 2012 by direction of the President of the Legislative Council.

(Ms Pauline M W NG)  
Clerk to the Legislative Council

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To : Clerk to the Legislative Council

I hereby acknowledge receipt of the above summons.

Signature : \_\_\_\_\_

Name : \_\_\_\_\_

Date : \_\_\_\_\_



## **Allowance for witnesses**

The following shall apply to the provision of an allowance ("the allowance") for witnesses attending before the Select Committee to Study Mr LEUNG Chun-ying's Involvement as a Member of the Jury in the West Kowloon Reclamation Concept Plan Competition and Related Issues at its hearings to give evidence and/or to produce documents -

### **I. Eligibility**

- (a) Subject to (c) below, the allowance is payable to witnesses attending before the Select Committee at its hearings, whether or not they have the opportunity to give evidence at the particular hearings.
- (b) Witnesses who are ex-civil servants and have ceased active service with the Government and left the Government on expiry of their final leave will be eligible for the allowance.
- (c) The allowance is not payable to public officers<sup>1</sup> or persons in the service or employment of statutory bodies or other organizations which are funded by public money for attending the Select Committee's hearings in the course of their duties.

### **II. Rates**

The allowance payable shall be a sum not exceeding \$180 for each attendance at a hearing of the Select Committee not exceeding four hours, and a sum not exceeding \$360 for each attendance exceeding four hours.

### **III. Application procedure**

Eligible witnesses may submit to the Clerk claims for payment of the allowance no later than 14 days from the date of the hearings attended by the witnesses by completing the prescribed form.

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<sup>1</sup> The term "public officer" is defined in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) to mean any person holding an office of emolument under the Government, whether such office be permanent or temporary.

<b>Legislative Council Secretariat</b> <b>Application form for payment of allowance for witness</b>
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\*Please complete in BLOCK letters using black or blue pen

<b>Part I : Personal details</b>			
Surname		Given names	
Home/Correspondence Address			
Contact telephone no.			
<b>Part II : Hearing details</b>			
Name of Committee			
Date of hearing(s)	Starting time of attendance required by the Committee	Ending time of attendance required by the Committee	
<i>(Please use separate sheet(s) if space is not sufficient)</i>			
<b>Declaration of Applicant:</b> I hereby apply for the payment of allowance for witness in respect of the above hearings which I have attended/been ordered to attend. I understand that any allowance so approved will be payable by cheque in my name and the cheque will be sent to my home/correspondence address as stated above.			
Signature _____		Date _____	
<b>For Official use only</b>			
<b>Part III</b> <i>(To be completed by Secretariat officers of the relevant Committee)</i>		<b>Part IV</b> <i>(To be completed by Accounts Office)</i>	
Total amount to be paid	\$	Payment made on _____  Charged to cost center of _____  Signature _____ Post _____ Date _____	
Checked by:	Approved by:		
_____ Signature/Title	_____ Signature/Title		
Date _____	Date _____		

**Notes:**

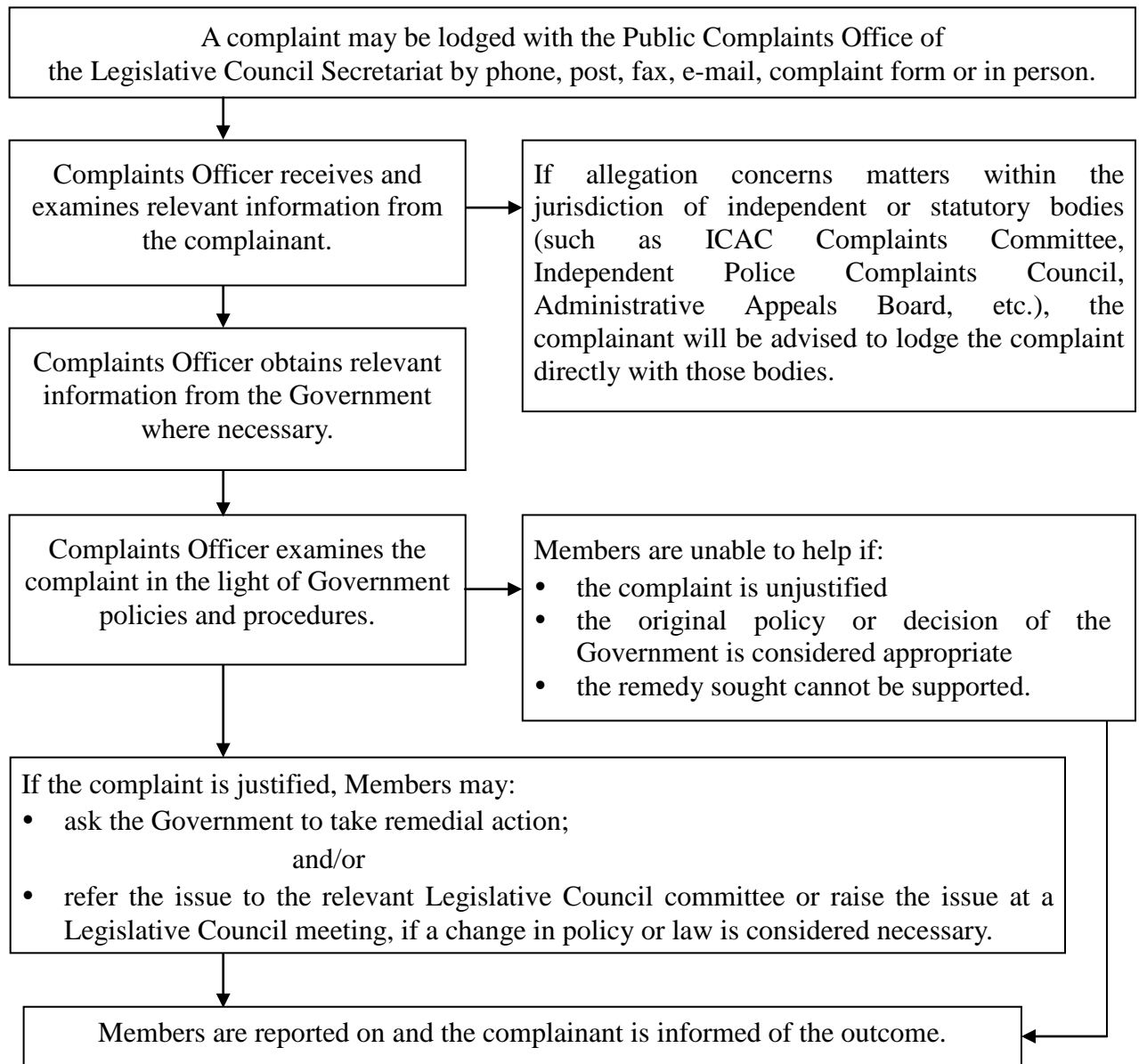
- (i) A claim must be made within 14 days from the date of a hearing attended by a witness.
- (ii) The witness allowance payable shall be \$180 for each attendance at a hearing not exceeding four hours, and \$360 for each attendance exceeding four hours.

**Provision of Transcripts of Evidence**

The following procedures shall apply to the provision of transcripts of evidence taken by the Select Committee on Building Problems of Public Housing Units:

- (a) where considered appropriate, the Select Committee may permit copies of the transcripts of evidence taken in public be provided to witnesses and prospective witnesses on request;
- (b) "witnesses" refers to persons on whom summonses have been served by the Select Committee to order their appearance before it; "prospective witnesses" refers to witnesses whom the Select Committee has decided to summon to appear before it;
- (c) where copies of transcripts of evidence taken in public are provided to witnesses or prospective witnesses, the unpublished and/or uncorrected status of the transcripts shall be stated clearly; and
- (d) the provision of unpublished and/or uncorrected transcripts of evidence taken in public to witnesses or prospective witnesses be made on the condition that they shall not make public use of the transcripts; shall not quote directly from the transcripts; and shall not use the transcripts in a manner prejudicial to the interest of the Select Committee or other persons.

## How is a complaint handled?



Note:

At any of the above stages, Complaints Officer may consult Members where necessary.



## Legislative Council Redress System Complaint Form

Hotline : 3919 3919 Fax No. : 2521 7518
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**Please complete the following items:**

Name of complainant (Mr/Mrs/Ms/Miss\*): \_\_\_\_\_

Correspondence address: \_\_\_\_\_

Daytime contact telephone no.: \_\_\_\_\_

Government department(s)/public organization(s) under complaint: \_\_\_\_\_

Government department(s)/public organization(s) with which you have lodged this complaint:

\_\_\_\_\_

Details of the complaint (Use the sheet overleaf or additional sheets of paper, if necessary, and attach copies of relevant documents and correspondence exchanged with the Government department(s)/public organization(s), if any):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

State your request(s) for the Government department(s)/public organization(s): \_\_\_\_\_

\_\_\_\_\_

### **The handling of personal data**

While the provision of your personal data is voluntary, the Public Complaints Office of the Legislative Council Secretariat may not be able to handle the complaint if you refuse to provide your personal data.

The information of your complaint may be used for compilation of statistics on the number and nature of complaints received by the Public Complaints Office or summarized in a case summary to illustrate the significant cases handled by the Public Complaints Office. Your personal data will not be revealed in the outcome of the statistics or contents of the case summary.

You have a right to request access to and correction of personal data in accordance with the Personal Data (Privacy) Ordinance (Cap.486). A request for personal data access or correction should be made in writing, with relevant information to identify the case, to Administrative Assistant I (Complaints and Resources Management)<sup>2</sup> at the following address:

Public Complaints Office of the Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

The Legislative Council Secretariat may charge a fee for supplying copy/copies of such personal data to you.

\* *Please delete where appropriate*

I/we\* understand that my/our\* personal data will be collected by the Public Complaints Office of the Legislative Council Secretariat for the purpose of handling the complaint.

I/we\* consent/object\* to

(a) the release of my/our\* personal data and other relevant information to the Administration and other relevant organizations by the Public Complaints Office;  
and

(b) the release of my/our\* personal data and other relevant information by the Administration and other relevant organizations to the Public Complaints Office

for the purpose of handling the complaint.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

This complaint form can also be downloaded from the Legislative Council website ([www.legco.gov.hk](http://www.legco.gov.hk)).

\* *Please delete where appropriate*

January 2015

核對表及指引  
Check List and Instructions

《規限獲准進入立法會大樓的人士及其行為的行政指令》

(第 382 章，附屬法例 A)

ADMINISTRATIVE INSTRUCTIONS FOR REGULATING ADMITTANCE AND  
CONDUCT OF PERSONS

(CAP. 382 sub. leg. A)

如欲確定此乃本成文法則的最新核對表及指引，請參閱第 1 冊內的總核對表及指引第 II 部所載本成文法則的核對表及指引的刊印期數，該刊印期數應與此頁右下角所示的刊印期數相同。

To verify that this is the latest Check List and Instructions for this enactment, please refer to the issue number of Check List and Instructions for this enactment shown in Part II of the Master Check List and Instructions in Volume I. Such issue number should be the same as the issue number shown at the lower right hand corner of this page.

如欲知悉本成文法則文本切合何時的法律情況，請參閱第 1 冊內的總核對表及指引第 I 部。

To determine how up to date the text of this enactment is, please see Part I of the Master Check List and Instructions in Volume I.

移去頁數 Withdraw pages	加插頁數 Insert pages	目前應有頁數 You should now have pages	刊印期數 Issue number
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制定史

本為 1992 年第 227 號法律公告 — 1993 年第 134 號法律公告，1993 年第 448 號法律公告，1994 年第 174 號法律公告，1995 年第 132 號法律公告，1996 年第(C)22 號法律公告(中文真確本)，1999 年第 91 號法律公告，2000 年第 71 號，2002 年第 23 號，2011 年第 58 號法律公告

Enactment History

Originally L.N. 227 of 1992 — L.N. 134 of 1993, L.N. 448 of 1993, L.N. 174 of 1994, L.N. 132 of 1995, L.N. (C) 22 of 1996 (Chinese authentic version), L.N. 91 of 1999, 71 of 2000, 23 of 2002, L.N. 58 of 2011

尚未實施 —

無

The following are not yet in operation —

Nil

《規限獲准進入立法會大樓的人士及其行為的行政指令》

ADMINISTRATIVE INSTRUCTIONS FOR  
REGULATING ADMITTANCE AND  
CONDUCT OF PERSONS

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(第 382 章第 8 條)

本行政指令由立法會主席發出。不遵從本指令或不遵從根據本指令所訂立的任何規定者，可被檢控。

(2000 年第 71 號第 3 條)

[1992 年 7 月 10 日]

第 I 部

導言

1. 釋義

在本指令中——

**大樓** (Building) 指在圖則上註明是會議廳所座落的建築物或處所； (2011 年第 58 號法律公告)

“公眾席” (public gallery) 指在圖則上註明是公眾席的地方；

ADMINISTRATIVE INSTRUCTIONS FOR  
REGULATING ADMITTANCE AND  
CONDUCT OF PERSONS

(Cap. 382, section 8)

These administrative instructions are issued by the President of the Legislative Council. Failure to comply with these instructions or any requirement made thereunder may render the offender liable to prosecution.

[10 July 1992]

PART I

PRELIMINARY

1. Interpretation

In these instructions—

**Building** (大樓) means the building or premises in which the Chamber is situated marked as such on the plan; (*L.N. 58 of 2011*)

“Chamber” (會議廳) means the Chamber in which the proceedings of the Council are conducted, and any galleries and places therein provided for members of the public and representatives of the press, radio and television, and includes any lobbies, offices or precincts used exclusively in connection with the proceedings of the Council;

“立法會人員”(officer of the Council) 指秘書或根據主席的命令在會議廳範圍內行事的任何其他人員或人士，包括在會議廳範圍內當值的任何警務人員；(2000 年第 71 號第 3 條)

“立法會辦事處”(office of the Council) 指秘書辦事處或任何其他立法會人員的辦事處；(2000 年第 71 號第 3 條)

“主席”(President) 指立法會主席或代理主席，包括正在主持立法會會議時的任何其他立法會議員；(1993 年第 134 號法律公告；2000 年第 71 號第 3 條)

“委員會”(committee) 指——

- (a) 立法會的任何常設委員會、專責委員會或其他委員會；(2000 年第 71 號第 3 條；2002 年第 23 號第 126 條)
- (b) (a) 段所提述的任何委員會的小組委員會；(1994 年第 174 號法律公告)

“委員會會議室”(committee room) 指在大樓並在圖則上註明是會議室的任何會議室；(2002 年第 23 號第 126 條；2011 年第 58 號法律公告)

“記者席”(press gallery) 指在圖則上註明是記者席的地方；

“秘書”(Clerk) 指立法會秘書或任何以其代理身分行事的人；(1994 年第 174 號法律公告；2000 年第 71 號第 3 條)

“會議廳”(Chamber) 指供立法會進行會議程序的會議廳，以及其內為公眾人士與報界、電台及電視台的代表而提供的任何旁聽席及地方，包括為與立法會之會議程序有關的用途而專用的任何大堂、辦事處或範圍；(2000 年第 71 號第 3 條)

“會議廳範圍”(precincts of the Chamber) 指會議廳及立法會辦事處及毗鄰的旁聽席，以及供公眾人士與報界、電台及電視台的代表使用或用以容納他們的地方，而除主席作出例外規定者外，在立法會或任何委員會舉行會議當日全部時間，此詞亦包括在圖則上註明是會議廳範圍的地方；(1994 年第 174 號法律公告；2000 年第 71 號第 3 條)

“Clerk” (秘書) means the Clerk to the Legislative Council or any person acting as his deputy; (*L.N. 174 of 1994*)

“committee” (委員會) means—

- (a) a standing or select committee or any other committee of the Council;
- (b) a subcommittee of any committee referred to in paragraph (a); (*L.N. 174 of 1994*)

“committee room” (委員會會議室) means any of the conference rooms of the Building marked as such on the plan; (*23 of 2002 s. 126; L.N. 58 of 2011*)

“Council” means the Legislative Council;

“Member” (議員) means a Member of the Legislative Council; (*L.N. 134 of 1993*)

“office of the Council” (立法會辦事處) means the office of the Clerk or of any other officers of the Council; (*71 of 2000 s. 3*)

“officer of the Council” (立法會人員) means the Clerk or any other officer or person acting within the precincts of the Chamber under the orders of the President, and includes any police officer on duty within the precincts of the Chamber; (*71 of 2000 s. 3*)

**plan** (圖則) means—

- (a) a plan of the Building; or
- (b) a plan of the precincts of the Chamber, marked and signed by the Clerk and deposited in the office of the Clerk; (*L.N. 58 of 2011*)

“precincts of the Chamber” (會議廳範圍) means the Chamber and offices of the Council and any adjacent galleries, and places provided for the use or accommodation of members of the public and representatives of the press, radio and television, and subject to any exceptions made by the

**圖則** (plan) 指經秘書註明和簽署，並存放於秘書辦事處的以下圖則——

- (a) 大樓的圖則；或
- (b) 會議廳範圍的圖則； (2011 年第 58 號法律公告)

“議員”(Member) 指立法會議員。 (1993 年第 134 號法律公告；  
2000 年第 71 號第 3 條)

President includes, during the whole of any day the Council or a committee is sitting, the area marked as such on the plan; (*L.N. 174 of 1994*)

“President” (主席) means the President of the Council or President’s deputy, and includes any other Member of the Council when presiding at a sitting of the Council; (*L.N. 134 of 1993*)

“press gallery” (記者席) means a press gallery marked as such on the plan;

“public gallery” (公眾席) means a public gallery marked as such on the plan.

## 第 II 部

### 進入

2. 准許公眾人士進入公眾席  
每當立法會或任何委員會在會議廳或委員會會議室舉行公開會議時，公眾人士可獲准進入公眾席。  
*(2000 年第 71 號第 3 條)*
3. 訪客須領取和展示訪客證  
除列席立法會或任何委員會公開會議的訪客外，所有進入會議廳範圍的訪客均須向立法會人員申領訪客證，並須於逗留在會議廳範圍內的時間一直予以展示。  
*(2000 年第 71 號第 3 條)*
4. 進入議員專用範圍的限制
  - (1) 除議員或立法會人員外，任何人未經主席准許，不得進入在圖則上註明是前廳的地方或任何委員會會議室。
  - (2) 除議員或立法會人員外，任何人未經議員或秘書准許，不得進入在圖則上註明是議員專用範圍的地方。*(2011 年第 58 號法律公告)*  
*(1995 年第 132 號法律公告；2000 年第 71 號第 3 條)*
5. 進入主席套房的限制  
任何人未經主席或秘書准許，不得進入主席套房。

## PART II

### ACCESS

2. **Members of the public to be admitted to public galleries**  
Members of the public may be admitted to a public gallery whenever the Council or a committee is sitting in public in the Chamber or in a committee room.
3. **Visitors to obtain and display pass**  
Visitors to the precincts of the Chamber, other than those attending public sittings of the Council or a committee, shall apply to an officer of the Council for a pass, and shall display the pass at all times when within the precincts of the Chamber.
4. **Restriction on access to areas reserved for Members**
  - (1) No person other than a Member or an officer of the Council shall enter the antechamber marked as such on the plan or any committee room without the permission of the President.
  - (2) No person other than a Member or an officer of the Council shall enter any of the areas reserved for Members, marked as such on the plan, without the permission of a Member or the Clerk. *(L.N. 58 of 2011)*  
*(L.N. 132 of 1995)*
5. **Restriction on access to the President's suite**  
No person shall enter the President's suite without the permission of the President or the Clerk.

6. 進入立法會辦事處的限制

除議員或立法會人員外，任何人未經立法會人員、議員或主席准許，不得進入立法會的任何辦事處。

(2000 年第 71 號第 3 條)

7. 進入一般辦事處的限制

除議員或立法會人員外，任何人未經議員或一般辦事處的獲授權職員准許，不得進入在圖則上註明是一般辦事處的地方。

(2000 年第 71 號第 3 條)

8. 使用議員入口的限制

立法會或委員會舉行會議時，除主席、議員、秘書、立法機關法律顧問或獲上述任何人士許可的人外，任何人不得使用在圖則上註明是議員入口的地方進出大樓，亦不得使用毗鄰該入口的升降機或扶手電梯。

(2000 年第 71 號第 3 條；2002 年第 23 號第 126 條；2011 年第 58 號法律公告)

9. 攜帶行李進入會議廳範圍的限制

(1) 除議員或立法會人員，或獲議員或立法會人員許可的人外，任何人不得攜帶行李進入會議廳範圍，但手袋或類似物品除外，而報界、電台及電視台的代表則可攜帶錄音或錄影器具或攝影機。(2011 年第 58 號法律公告)

(2) 第 (1) 款所適用的人，如在進入會議廳範圍時或在內逗留時，攜帶手袋或類似物品，則在立法會人員要求下，須准許該人員搜查該手袋或類似物品。

(2000 年第 71 號第 3 條)

6. **Restriction on access to offices of the Council**

No person other than a Member or an officer of the Council shall enter any office of the Council without the permission of an officer of the Council or a Member or the President.

7. **Restriction on access to general offices**

No person other than a Member or an officer of the Council shall enter any general office marked as such on the plan without the permission of a Member or an authorized member of the staff of such office.

8. **Restriction on use of Members' entrance**

When the Council or a committee is sitting no person shall enter or leave the Building by the Members' entrances marked as such on the plan or use the adjacent lifts or escalators except the President, a Member, the Clerk, the Counsel to the Legislature or any person authorized by one of those persons.

(L.N. 58 of 2011)

9. **Restriction on carrying baggage into precincts**

(1) No person other than a Member or an officer of the Council or a person authorized by a Member or an officer of the Council shall carry any item of baggage other than a handbag or similar item into the precincts of the Chamber, but representatives of the press, radio and television may carry audio or video recording devices or cameras. (L.N. 58 of 2011)

(2) Any person to whom subsection (1) applies who is carrying a handbag or similar item into or within the precincts of the Chamber shall, if so requested by an officer of the Council, permit such officer to search such handbag or similar item.

### 第 III 部

#### 行為

#### 10. 吸煙及進食的限制

- (1) 任何人不得在大樓內吸煙。 (1999 年第 91 號法律公告)
- (2) (由 1999 年第 91 號法律公告廢除)
- (3) 任何人不得——
  - (a) 於立法會或任何委員會舉行會議時在會議廳內進食；或 (2000 年第 71 號第 3 條)
  - (b) 於任何委員會或小組委員會開會時，在委員會會議室內進食，但如該委員會的主席准許則除外。

(1993 年第 448 號法律公告)

#### 11. 遵守秩序的規定

進入會議廳範圍或在內逗留的人均須遵守秩序，並須遵從立法會人員為維持秩序而發出的任何指示。

(2000 年第 71 號第 3 條)

#### 12. 在旁聽席上的行為

- (1) 在記者席或公眾席上，任何人不得展示任何標誌、標語或橫幅。
- (2) 在記者席或公眾席上，任何人不得展示在任何衣物上的標誌或標語。
- (3) 任何人展示標誌、標語或橫幅，或展示在任何衣物上的標誌或標語，或立法會人員認為該人會展示標誌、標語或橫幅，

### PART III

#### CONDUCT

#### 10. Restriction on smoking and eating

- (1) No person shall smoke in the Building. (*L.N. 91 of 1999*)
- (2) (*Repealed L.N. 91 of 1999*)
- (3) No person shall eat—
  - (a) inside the Chamber while the Council or a committee is sitting; or
  - (b) in a committee room while a committee or subcommittee is in session, unless the chairman permits eating to take place.

(*L.N. 448 of 1993*)

#### 11. Requirement for orderly behaviour

Persons entering or within the precincts of the Chamber shall behave in an orderly manner and comply with any direction given by any officer of the Council for the purpose of keeping order.

#### 12. Conduct in galleries

- (1) No person shall, in a press or public gallery, display any sign, message or banner.
- (2) No person shall, in a press or public gallery, display any sign or message on any item of clothing.
- (3) An officer of the Council may refuse admission to a press or public gallery to any person displaying any sign, message or banner, or to any person displaying any sign or message on any item of clothing, or to any person who, in the opinion of an officer of the Council, may so display any

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[附屬法例]

第 III 部  
第 12 條

或會展示在衣物上的標誌或標語，又或會作出其他不檢的行為，立法會人員可拒絕讓他進入記者席或公眾席。(2000 年第 71 號第 3 條)

- (4) 立法會人員可暫時保管獲准進入記者席或公眾席的人所交出的任何物品。(2000 年第 71 號第 3 條)

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Section 12

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sign, message or banner, may so display any sign or message on any item of clothing or may otherwise behave in a disorderly manner.

- (4) An officer of the Council may take into his temporary custody any item surrendered by any person admitted to a press or public gallery.



## 第 IV 部

## PART IV

### 提供予報界、電台及電視台的設施

### FACILITIES FOR THE PRESS, RADIO AND TELEVISION

#### 13. 使用記者席的限制

- (1) 除報界、電台或電視台的代表，立法會人員或經秘書許可的人外，任何人不得進入或使用記者席。
- (2) 報界、電台或電視台的代表只可在立法會或委員會在會議廳或在設有記者席的委員會會議室舉行會議時，進入或使用記者席。

(2000 年第 71 號第 3 條)

#### 13. Restriction on use of press gallery

- (1) No person other than a representative of the press, radio or television, an officer of the Council or a person authorized by the Clerk, shall enter or make use of a press gallery.
- (2) Representatives of the press, radio or television may enter or make use of a press gallery only when the Council or a committee is sitting in the Chamber or in a committee room where that gallery is situated.

#### 14. 使用報界、電台及電視台的代表專用範圍的限制

(2011 年第 58 號法律公告)

除議員或立法會人員或經秘書許可的人外，任何人不得進入或使用在圖則上註明是報界、電台及電視台的代表專用範圍的地方。

(2000 年第 71 號第 3 條；2011 年第 58 號法律公告)

#### 14. Restriction on use of areas reserved for representatives of the press, radio and television

(L.N. 58 of 2011)

No person other than a Member or an officer of the Council or a person authorized by the Clerk, shall enter or make use of the areas reserved for representatives of the press, radio and television, marked as such on the plan.

(L.N. 58 of 2011)

#### 15. 拍攝的限制

立法會或任何委員會舉行會議時—— (2000 年第 71 號第 3 條)

- (a) 任何人不得拍攝會議程序，但如經秘書許可並從其指定的位置進行拍攝，則屬例外；

#### 15. Restriction on taking of photographs, etc.

(L.N. 58 of 2011)

During a sitting of the Council or a committee—

- (a) no person shall take any photograph or make any video of the proceedings except if authorized by and from a position designated by the Clerk;

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(b) 不准在會議廳或委員會會議室內使用閃光燈進行拍攝。

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[Subsidiary]

(b) flash photography or video lighting is not permitted in the Chamber or in a committee room.

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## 第 V 部

## PART V

### 緊急情況

### EMERGENCIES

#### 16. 從大樓疏散的措施

如有須從大樓疏散的命令發出，則除因職責所需留下的人員外，所有人須立即離開大樓，而在此情況下，不得使用升降機。

#### 16. Evacuation of Building

If the order is given to evacuate the Building all persons except persons whose duties require them to remain shall leave the Building immediately, but lifts shall not be used in such circumstances.

**Guidelines and Arrangements for Media Representatives  
in the Legislative Council Complex**

**GENERAL**

It is the policy of The Legislative Council Commission to enable media representatives to interview with Members of the Legislative Council ("LegCo") in an environment which is conducive to facilitating the reporting of LegCo business by media representatives. These guidelines and arrangements are set out for the reference of media representatives and for the LegCo Secretariat to follow. They may have to be changed from time to time to reflect changing circumstances. Should that be considered necessary, media representatives will be consulted before any proposed changes are implemented.

Seating for media representatives at the Chamber and Conference Rooms

All meetings of LegCo are open to the public and the media. Meetings of LegCo committees are normally held in public, unless otherwise provided by the Rules of Procedure of LegCo or decided by the committees concerned. There are seats reserved for the media in the press gallery of the Chamber, and in Conference Rooms 1, 2, 3 and 4 of the LegCo Complex. Seats are allocated on a first-come-first-served basis and may be reserved by calling 3919 3399 during office hours, from 9 am to 6 pm, Monday to Friday.

Weekly Meeting Schedule

A press release is issued by the LegCo Secretariat weekly, normally on Fridays, to provide details of the meetings of the Council and its committees to be held in the following week. However, it does not contain agendas for closed meetings. A copy of the press release is posted on the notice board inside the Press Room. Information on the schedule and agendas of meetings is also available via the LegCo Telephone and Fax Enquiry Hotline (Tel. 3919 3333) and in the "LegCo Calendar" on the LegCo Website (<http://www.legco.gov.hk>). Please note that sometimes it may be necessary to make last minute changes to the information for reasons beyond our control.

Admission Pass for Media Representatives

To facilitate media representatives to do their work in the LegCo Complex, the LegCo Secretariat issues Admission Passes or Temporary Admission Passes to them for facilitating their access to and use of the LegCo Complex and some of the facilities such as the LegCo Library and the Cafeteria within the Complex.

As a general policy, Admission Passes are issued to media representatives of mainstream local news media and major overseas news organizations who need to come to the LegCo Complex frequently to cover LegCo meetings and events.

For the purpose of issuing Admission Passes to media representatives, the following are considered as mainstream local news media:

- a. Local newspapers published at least five days a week and are put on sale in the newspaper kiosks, stalls, convenient shops and other outlets;
- b. Free local newspapers published at least five days a week and are distributed in

various locations throughout Hong Kong;

- c. Local news magazines published at least once a month and carry at least one article about LegCo or LegCo Members in every issue and are put on sale in the newspaper kiosks, stalls, convenient shops and other outlets;
- d. Government-funded TV/radio broadcasters;
- e. Commercial TV broadcasters that operate legally in HKSAR and possess a Domestic Free Television Programme Service Licence or a Domestic Pay Television Programme Service Licence granted by the Chief Executive in Council under section 8(1) of the Broadcasting Ordinance (Cap.562), or a Non-domestic Television Programme Service License granted by the Broadcasting Authority under section 8(2) of the Broadcasting Ordinance (Cap 562);
- f. TV organizations that operate legally in HKSAR and possess the Fixed Telecommunications Network Services Licence, or Fixed Carrier Licence, or Unified Carrier Licence issued by the Telecommunications Authority under the Telecommunications Ordinance (Cap 106);
- g. Radio organizations that possess a Sound Broadcast Licence granted by the Chief Executive in Council under section 13C(2) of the Telecommunications Ordinance (Cap 106);
- h. Online news media associated with an eligible mainstream local news media; and
- i. Other types of news media registered under the Registration of Local Newspapers Ordinance (Cap.268).

And, news agencies, newspapers, magazines and television/radio on the list of "Overseas Journalists in Hong Kong" compiled by the Overseas Public Relations Sub-division of the Information Services Department are considered as major overseas news organizations.

Admission Pass holders can access the LegCo Complex without undergoing the registration procedure at the reception counters. An Admission Pass is valid for a LegCo term unless it is stated otherwise on the pass. In order that these passes may be updated, media representatives should apply for new passes before a new LegCo term begins or anytime considered necessary by the LegCo Secretariat.

Media representatives of news organizations who are not eligible to apply for Admission Passes or only need to access the LegCo Complex on an ad hoc basis to cover LegCo meetings and activities may apply for Temporary Admission Passes. Temporary Admission Passes are only issued to persons who are able to produce written proof that they are media representatives. Such written proof may be in the following form:

- Staff card of the applicant (with photo) issued by the news organization he/she represents; and either
  - (a) a copy of the Business Registration Certificate of the news organization as well as evidence showing that it is operating on a commercial premises and employs at least one full time staff in the editorial department; or
  - (b) at least one issue of the newspaper or magazine published which carries at least one article about LegCo or LegCo Members if the applicant is from the print media; or
  - (c) website address for online news media applicants with evidence proving

that the news portal has covered LegCo news or has interviewed LegCo Members.

Admission Pass holders who fail to present their Admission Passes or media representatives who do not have an Admission Pass are required to apply for Temporary Admission Passes when entering the LegCo Complex. To prove their identity, they must show their staff cards which bear their photo to the LegCo Secretariat staff. Business cards will not be accepted as sufficient proof of identity.

Subject to the availability of space and facilities in the LegCo Complex, student reporters of news publications or electronic news media operated by the journalism departments of tertiary institutions may be issued Temporary Admission Passes. Due to constraint of space, only two Temporary Admission Passes will be issued to one such news publications/electronic news media at any one time. Students working for experimental newspapers and electronic media in secondary and primary schools will not be issued Temporary Admission Passes for media representatives. These students may be issued Admission Passes for general visitors and are seated at the public gallery.

As it will take some time to verify the identity of news media and its representatives, it is strongly advised that all applicants for an Admission Pass should have all the relevant documents ready before making the applications. An application may be handed in by hand or sent by email with all the pertinent documents to [pid@legco.gov.hk](mailto:pid@legco.gov.hk) one day before the applicant turns up at the LegCo Secretariat to follow up the application. Each application for an Admission Pass will be considered individually by the LegCo Secretariat which may decline such application if the applicant does not meet the conditions set out above.

All Temporary Admission Passes are valid on the date of issue only. Holders of the Temporary Admission Passes must return the passes to the reception counters before leaving the LegCo Complex.

Media representatives should display their Admission Passes or Temporary Admission Passes prominently at all times when they are in the LegCo Complex.

## **GUIDELINES AND ARRANGEMENTS FOR MEDIA COVERAGE OF COUNCIL MEETINGS**

### Agenda

Council meeting agendas are normally uploaded onto the LegCo Website (<http://www.legco.gov.hk>) and put on the LegCo Telephone and Fax Enquiry Hotline on Monday afternoons. Limited copies of the agenda are placed inside the Press Room before a Council meeting starts.

### Television Coverage

Media representatives of TV news organizations may film the proceedings of the Council from the designated positions in the press gallery of the Chamber on 2/F during Council meetings. Care should be taken to ensure that no objects will fall from the press gallery whilst doing so. They may also film the proceedings from inside the TV/Radio Rooms, the four Photo Rooms, and from the Education Gallery. Moreover, they may use

the audio/video signals of the proceedings provided by the in-house TV production team of the LegCo Secretariat.

### Still Photography

Media photographers may take pictures from the press gallery of the Chamber before a Council meeting starts. Once the meeting is in progress, they may take pictures (without using flashes or lighting) from the Photo Rooms on 1/F and 1M/F, and from the Education Gallery. Where a photo room is full, staff of the LegCo Secretariat may ask a photographer seeking entry to go to other photo rooms which are not yet full.

Photographers working for the LegCo Secretariat may be given priority in the use of the Photo Rooms and other designated locations for taking photographs. These photographers are Secretariat staff, photographers commissioned by the Commission or photographers deployed to work for the Commission by the Information Services Department.

### TV Lighting

Use of TV lighting or flashes is not allowed when filming the proceedings of the Council from the press gallery of the Chamber, inside the TV/Radio Rooms or the Photo Rooms, or from the Education Gallery if it causes disturbance to the conduct of proceedings of the Council.

### Sound Recording

Media representatives may use the clean sound box installed inside the Press Room or the recording sockets installed at the seats in the press gallery to record the proceedings of the Council. They may also watch on television the live broadcast of Council meetings in the Press Room.

### Distribution of Voting Results and Members' Draft Speeches

Copies of voting result of divisions and Members' draft speeches will be placed in the Press Room when they are available. Voting results can also be obtained through the LegCo Telephone and Fax Enquiry Hotline and from the LegCo Website.

## **GUIDELINES AND ARRANGEMENTS FOR MEDIA COVERAGE OF COMMITTEE AND SUBCOMMITTEE MEETINGS**

### Agenda and Papers

Limited copies of the agenda and papers of a committee meeting will be available outside the public/press galleries of the meeting venue and inside the Press Room before the meeting starts.

### TV Camera Positions

In the rooms mentioned below, fixed locations are designated for setting up of cameras and all cameras must be mounted on proper stands or tripods when filming.

- Room 1:** Designated positions in the press gallery on 3/F. Care should be taken to ensure that no objects will fall from the press gallery which might endanger those sitting below. TV camera crews may also film the meetings in the Photo Rooms on 2/F and 3/F, but photographers have priority in using these Photo Rooms.
- Room 2A:** Designated positions in the press gallery on 3/F. Care should be taken to ensure that no objects will fall from the press gallery which might endanger those sitting below. TV camera crews may also film the meetings in the Photo Room on 2/F, but photographers have priority in using this Photo Room.
- Room 2B:** Designated positions in the press gallery on 3/F. Care should be taken to ensure that no objects will fall from the press gallery which might endanger those sitting below. TV camera crews may also film the meetings in the Photo Rooms on 2/F, but photographers have priority in using these Photo Rooms.
- Room 3:** Designated positions in the press gallery on 3/F. Care should be taken to ensure that no objects will fall from the press gallery which might endanger those sitting below. TV camera crews may also film the meetings in the Photo Room on 2/F, but photographers have priority in using this Photo Room.
- Room 4:** Where a meeting to be held in Room 4 is open to the public, designated positions will be set up at the back of the room for TV camera crews to cover the meeting.

#### TV Lighting

Use of TV lighting or flashes is not allowed when filming the open meetings of the committees and subcommittees held in Conference Rooms 1, 2, 3 and 4.

#### Still Photography

- Room 1:** Photographers may take pictures from the press gallery on 3/F before a committee or subcommittee meeting starts. Once the meeting is in progress, they should take pictures in the Photo Rooms on 2/F and 3/F. Use of flashes or lighting is not allowed during the meeting.



- Room 2A:** Photographers may take pictures from the press gallery on 3/F before a committee or subcommittee meeting starts. Once the meeting is in progress, they should take pictures in the Photo Room on 2/F. Use of flashes or lighting is not allowed during the meeting.
- Room 2B:** Photographers may take pictures from the press gallery on 3/F before a committee or subcommittee meeting starts. Once the meeting is in progress, they should take pictures in the Photo Rooms on 2/F. Use of flashes or lighting is not allowed during the meeting.
- Room 3:** Photographers may take pictures from the press gallery on 3/F before a committee or subcommittee meeting starts. Once the meeting is in progress, they should take pictures in the Photo Room on 2/F. Use of flashes or lighting is not allowed during the meeting.
- Room 4:** Photographers may take pictures from the back of the room before an open meeting of a committee or subcommittee starts.

#### Sound Recording

- Rooms 1, 2A, 2B and 3:** Media representatives may use the recording sockets installed in the Press Room and at the seats for the media in the press gallery on 3/F. Media representatives who wish to record from the sockets are requested to bring their own recording cords, with the same specifications as those for the seats in the Chamber.
- Room 4:** No sound recording device is available in this room. Media representatives are advised to make use of the recording sockets installed in the Press Room.

### **OTHER GUIDELINES AND ARRANGEMENTS**

#### Requirements for Orderly Behaviour

Media representatives in the LegCo Complex should behave in an orderly manner and comply with directions given by staff of the Secretariat for the purpose of keeping order. They must also observe all the rules that apply to members of the public while in the Complex. Details of these rules are on display at various locations of the Complex. They may be inspected upon request.

Media representatives should not disturb any open meetings of the Council and its committee when working in the LegCo Complex, including in the TV/Radio Rooms and the Photo Rooms.

Media representatives should turn off their pagers, mobile phones and speakers of their notebook computers when covering these meetings. It is suggested that they set their pagers or mobile phones to vibrating mode if they wish to maintain outside contact during meetings. Media representatives should not answer any phone calls while in any meeting venue.

Press positions may be set up to facilitate media representatives to conduct "stand-up" interviews with Members, Government officials or other attendees of meetings of the Council and its committees.

#### Audio/Video Recording of Meetings

Media representatives can use the web-client desktop computers provided by the LegCo Secretariat in the Press Room to watch the live broadcast of open meetings of the Council and its committees, or to retrieve the audio/video records of previous open meetings.

#### Interviews with Members, Government Officials and Members of the Public

Media representatives who wish to conduct "stand-up" interviews with Members or Government officials before or after a meeting may do so at the press positions on G/F, 1/F and 2/F of the LegCo Complex.

LegCo Members have exclusive use of the Press Room and the Press Conference Room for media interviews on matters related to Council business. Media representatives who wish to conduct "stand-up" interviews with other attendees of a meeting may do so at the press positions on 1/F and 2/F of the LegCo Complex. The interviews should be related to matters discussed at the meetings concerned. Care should also be taken not to block the passageway when conducting the interviews.

Media representatives wishing to interview members of the public who are not attending a meeting should do so outside the LegCo Complex.

#### Press Room and TV/Radio Rooms

The opening hours of the Press Room and TV/Radio Rooms are as follows:

Mondays to Sundays and public holidays:	from 8:00 am or one hour before the first open meeting (whichever is the earlier) to 12:00 midnight or two hours after the last open meeting ends (whichever is the later)
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### Press Conference Rooms and Press Interview Room

The Press Conference Rooms are open from 9:00 am to 6:00 pm or, at the request of Members, any time outside office hours. The Press Interview Room on 1/F is subject to booking for TV interviews on matters related to Council business and is open from 8:00 am to 8:00 pm during weekdays, or one hour before the first open meeting and two hours after the last open meeting, and from 11:00 am to 8:00 pm on Saturdays, Sundays and public holidays.

### Dining Hall

Media representatives are not allowed to enter or block the entrance of the Dining Hall unless invited by Members as their guests or by the LegCo Secretariat to cover LegCo events. Media representatives must not take videos or photos, or interview Members inside the Dining Hall except during official events organized by the LegCo Secretariat.

### Ante-Chamber, Members' Reading Area in the Library

Media representatives are not allowed to enter the Ante-Chamber or Members' Reading Area on GM/F of the Library.

### Coffee Corner and Roof Garden

Media representatives may have access to the Coffee Corner and Roof Garden on 5/F if invited and accompanied by a Member.

### Cafeteria

Media representatives are authorized users who may use the service of the Cafeteria on G/F.

### Use of Notebook Computers in Meeting Venues

Media representatives may use notebook computers in meeting venues for reporting purposes. However, they must turn off the speakers to avoid disturbance to the meeting.

#### *Note:*

- 1. The above guidelines and arrangements are subject to revision as and when necessary.*
- 2. Media representatives are requested to co-operate with the Security Assistants and follow their directions while in the LegCo Complex.*

**The Legislative Council Commission Ordinance**

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**Resolution**

(Under section 17(2) of The Legislative Council  
Commission Ordinance (Cap. 443))

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**Resolved** that this Council directs The Legislative Council Commission to use social media websites to share information contained in records of the proceedings of the Council for the purpose of enhancing the public dissemination of such information.

## **Archives and Records Management Policy of the Legislative Council**

### **1. Policy Statement**

1.1 It is the policy of The Legislative Council Commission (“the Commission”) to recognize that records are vital information assets which give evidence of decisions and actions, facilitate on-going business operation, provide for organizational transparency and accountability, and support archival functions and services.

1.2 To ensure proper recordkeeping, enhance operational efficiency and effectiveness and preserve archival records for continuous access and use, the Commission provides the necessary policy framework, resources and supporting structure to improve records management practices, information access and preservation of archival records according to institutional mission and goal, and in compliance with regulatory requirements.

### **2. Scope**

This policy applies to all permanent and temporary staff of the Legislative Council.

### **3. Application**

This policy covers all records of the Legislative Council regardless of their content, format, storage media and security classification that are created, received or acquired by the Legislative Council but excludes private papers and records of Legislators.

### **4. Authority**

This policy has been developed in consultation with the staff of the Legislative Council Secretariat (“the Secretariat”) and endorsed by the Commission on 28 September 2011.

### **5. Purpose**

5.1 The purpose of this policy is to ensure that adequate, accurate, reliable and usable records of Legislative Council in the course of its business are created, captured, managed, stored, accessed to and disposed of properly with

those of enduring value be preserved as archival records for continuous access to meet operational needs, legal requirements, accountability and public interest.

5.2 This policy provides for the functions, duties and power of the Legislative Council Archives in the management of the records of the Legislative Council; selection and processing of archival records for preservation and continuous access; and promotion of public awareness, understanding and use of the archival records under its care. Responsibilities of Heads of Divisions and staff of the Secretariat, and their working relationship with the Legislative Council Archives are specified to facilitate implementation of this policy.

## **6. Definitions**

6.1 For the purpose of this policy, the following definitions are used:

***Appraisal:*** the process of determining which records have enduring evidential, informational and/or historical value for permanent preservation as archives and which records could be disposed of by destruction or other means.

***Archives (Archival records):*** the records appraised by archivists of possessing enduring value and should be permanently preserved. It also means the organization responsible for performing archival functions and services.

***Classification:*** systematic identification and arrangement of records based on their business activities, content and security requirement and according to logically structured conventions, methods and procedural rules.

***Classification Scheme:*** an approved hierarchical list of terms to be used in the classification of papers, correspondence and other recorded information that are to be kept as records.

***Disposal:*** the range of processes relating to the decision and implementation of retention, destruction, transfer or technology migration of or relating to the records.

***Inactive records:*** those records rarely or no longer required for action or reference.

***Legislative Council:*** this includes the Legislative Council and its committees and subcommittees, The Legislative Council Commission and the Legislative Council Secretariat unless otherwise specified.

***Metadata:*** data describing context, content and structure of records and their management through time.

***Records:*** means recorded information regardless of the form or medium created,

received or acquired during official business by any organization or individual that serve as evidence of the business transactions and activities and are kept for reference and other official purposes.

***Records Retention and Disposal Schedule:*** a set of authorized instructions allocated to a class or a group of records that determines the length of time for which the records should be retained for operational, fiscal or legal purposes and their eventual disposal by destruction or transfer to the archives, etc.

***Recordkeeping:*** the making, capturing and maintaining of complete, adequate, usable and reliable evidence of business functions and transactions in the form of recorded information as and when needed.

***Records management:*** planning, directing, controlling, reviewing, training and other managerial activities involved with respect to the creation, classification, indexing, distribution, handling, use, tracking, storage, retrieval, protection and disposal of records to achieve adequate and proper documentation of policies, decisions and transactions as well as efficient and cost-effective operation.

***Records system:*** any information system whether manual or electronic that captures, classifies, manages and provides for access, use, storage, maintenance and disposal of records through time.

***Transfer:*** means sending archival records from one office to the custody of the Legislative Council Archives for preservation and access.

## **7. Roles and Responsibilities of the Legislative Council Archives**

7.1 The Legislative Council Archives headed by the Chief Archivist ensures proper management of all records of or acquired by the Legislative Council regardless of their nature, content, physical format or security grading. It appraises and nominates records of enduring value as archives. It is also responsible for description and preservation of archives for access and use by Members and their staff, staff of the Secretariat and the general public in compliance with institutional policy and prevailing laws of Hong Kong; as well as promoting public awareness, understanding and use of archival records for educational and other lawful purposes.

7.2 In performing the above tasks, the Legislative Council Archives develops an archives and records management program for the Legislative Council and issues records related policies, standards, guidelines, and mandatory requirements and procedures according to international standards and best practices. It provides related advice, assistance, training and services to staff of the Secretariat to assist program implementation.

7.3 The Legislative Council Archives reviews implementation of the archives and records management program and monitors compliance of mandatory requirements and procedures by conducting record surveys, inspection and audit of the Divisions of the Secretariat. Cases of non compliance entailing possible serious consequences will be reported to the Secretary General via Heads of Divisions.

## **8. Responsibilities of Heads of Divisions**

8.1 Heads of Divisions are responsible for the application of this Archives and Records Management Policy in their area of responsibility so that there will be proper control of the quality and quantity of records from the moment the records are created or received to their final disposal.

8.2 A Head of Division should nominate one or more Records Officer as required by the size or the number of functional units in the Division for liaising with the Legislative Council Archives to ensure compliance with this policy and implementation of the related standards, guidance and procedures issued by the Legislative Council Archives.

## **9. Responsibilities of Staff**

9.1 Information technology system administrators are responsible for involving the Legislative Council Archives in the creation of new databases and/or development of automated records systems to determine the recordkeeping rules and tools that need to be accommodated.

9.2 All staff of the Secretariat should make themselves understand the requirements of this policy and ensure that in their daily work, they create and manage records in accordance with the standards, guidelines and procedures laid down in this policy.

## **10. The Policy and Related Standards, Guidelines and Procedures**

All records created or received by the Legislative Council in the course of official business of Legislative Council shall be the property of the Commission and be managed according to this policy in association with relevant standards, guidelines and procedures issued by the Legislative Council Archives that are endorsed by the Secretary General.



## **11. An Integrated Approach**

11.1 Under this policy, the Legislative Council Archives will take an integrated approach in instituting and implementing an archives and records management program including without limiting to the proper classification, handling and storage of records, disposal arrangements, management of electronic records and monitoring of the archives and records program.

11.2 This approach will integrate the selection, nomination and preservation of archives with active records management under centralized policies, standards, guidelines, and mandatory requirements and procedures covering the entire life cycle of records that are sufficient to ensure consistent application but permit flexible and practical implementation to meet operational needs.

## **12. Active Records Management**

12.1 Each Division of the Secretariat must have in place an adequate recordkeeping system for documenting its business activities and provide for convenient information retrieval. This must take into account the operational, legislative, financial and regulatory environment in which the Legislative Council operates, the records standards, guidance and procedures issued by the Legislative Council Archives and compliance with this Archives and Records Management Policy.

12.2 Records created for a business activity must be complete, accurate and captured into the recordkeeping system to ensure their authenticity, integrity, reliability as well as their accessibility and usability at all times throughout their life cycle.

12.3 Records of sensitive nature or submitted in confidence should be classified into Restricted, Confidential, Secret or Top Secret as appropriate to help identify their requirements for special handling, authorized access and secure storage. Authorized officers should declassify those records no longer required to be security graded as soon as possible or at least every 4 years.

12.4 Each record shall be assigned a unique reference number arranged under a consistent and logical classification scheme for easy retrieval and systematic disposal according to the records retention and disposal schedules drawn up by the respective Division and the Legislative Council Archives if available.

12.5 Electronic systems holding records must retain adequate metadata to ensure the integrity of records and the accessibility of the information recorded as long as required. In the short run, all official records created electronically should be printed and filed until such time that a viable electronic recordkeeping system is installed.

12.6 Maintenance of electronic records may involve migration of data. Migration must be authorized by the Chief Archivist and must produce authentic, complete, accessible and useable records. If data loss is unavoidable, what and where data loss will occur must be documented in detail.

12.7 The recordkeeping system, whether manual or electronic, must include rules for classification, titling, security grading, and retention and disposal requirements to facilitate retrieval, handling, maintenance and disposal. These requirements should be included at the design stage of any such systems.

12.8 The location and movement of records shall be controlled and updated to ensure that the records can be easily traced and retrieved as needed. An auditable trail of record movement should be prepared and updated regularly. The audit trail should include at least information on who has retrieved the respective record, if there is any addition or change made to the record and the dates of record retrieval and return.

12.9 Storage accommodation for records should be clean, tidy and secure, meet regulatory requirements for fire safety and prevent damage to the records. Equipment used must be safe for people and records, and allow maximum accessibility to records commensurate with their frequency of use. Classified records should be stored under lock when not in use and never be left unattended.

12.10 Staff must not alter, mutilate, damage, destroy or remove any official document, file or recorded information in any format that is kept or intended to be kept as an official record of the Legislative Council.

### **13. Inactive Records Management: Records Disposal**

13.1 Records shall be retained for as long as they are required to support business requirements and legal obligations. At the end, the records will either be destroyed or transferred to the Legislative Council Archives if they are appraised by the Chief Archivist to have enduring value.

13.2 Rarely used records or those not used for official purpose but are still required for retention should be sent to the Chief Archivist for inactive storage.

13.3 No records shall be destroyed without consulting the Chief Archivist. Records should be disposed of according to the time and action prescribed by their respective records retention and disposal schedules developed by Divisions with guidance of and approval by the Legislative Council Archives. Records or samples of records that are proposed for disposal should be sent timely to the Chief Archivist as and when required for appraisal and/or the drawing up of records disposal and retention schedules.

13.4 Inactive electronic records may either be retained on servers or offline (on CD ROMs, DVDs, magnetic disks or other removable media). Records of short term value will be disposed of at suitable intervals according to the respective records retention and disposal schedule. Records of archival value should be transferred to the Legislative Council Archives for preservation in the formats and media required by the Chief Archivist.

13.5 The Legislative Council Archives shall have in place systems for managing appraisal and recording the disposal decisions taken. Disposal decisions must take into account the values of the records, the risks to the business associated with destruction or delay in appraisal, the volume and nature of records, the time taken to appraise records.

13.6 Records selected by the Chief Archivist as archives must be transferred to the Legislative Council Archives for permanent preservation. Records that are not selected and have reached the end of their administrative life should be destroyed in a secure manner.

13.7 Classified archival records should be reviewed for declassification by the records transferring Division before they are transferred to the Legislative Council Archives. Those remain classified after transfer will be reviewed for declassification by the transferring Division (or its successor in function) and the Legislative Council Archives.

13.8 A destruction log should be maintained by Divisions to record the destruction of records, showing their reference number, description, date and the authority for their destruction. If a record due for destruction is required for audit, investigation or any information request by law, destruction must be postponed until the matter is closed and all actions of complaint, appeal or claims have been completed and settled.

## **14. Archives Administration**

14.1 The Legislative Council Archives shall develop and maintain policies about what records will be selected for permanent preservation and how the archival records shall be accessed.

14.2 The Chief Archivist shall determine which records have sufficient historical or other enduring value to warrant their continuous preservation as the archives of the Legislative Council. The Chief Archivist may consult experts from the relevant fields in ascertaining the archival values of any record and report to the Secretary General.

14.3 Records nominated as archives must be timely transferred in the form required by the Chief Archivist for preservation to the Legislative Council Archives or to a suitable place assigned by the Chief Archivist and approved by the Secretary General. The time for transfer should be specified in the records retention disposal schedules or if there is none, it should be specified by the Chief Archivist in written form.

14.4 The Chief Archivist develops and implements an archival access policy with approval of the Commission. The archival access policy should determine what records and when such records will be made available to staff of the Secretariat, Members and their Assistants and the general public subject to institutional requirements in meeting transparency, accountability, promotion of research and studies and in compliance with the laws of Hong Kong.

## **15. Monitoring**

The Legislative Council Archives may review the recordkeeping system and practices of Divisions from time to time in compliance with this policy and other mandatory records management requirements and procedures, and give advice to improve the management of records. In cases of a serious violation or a serious risk is posed to official business because of improper records practice, the Chief Archivist shall report the matter to Secretary General via the Heads of Divisions.

## **16. Standards, Guidelines and Procedures**

To ensure effective and consistent implementation of the archives and records management program, this policy shall be supported by standards, guidelines and procedures to be issued by the Legislative Council Archives.

17. **Review**

The Policy will be reviewed at least once every three years. The next review will be conducted in 2014.

18. **Enquiry**

All enquiries relating to this policy should be addressed to the Chief Archivist of the Legislative Council Archives.

**Rules on Use of Services of the Legislative Council Archives**

The Legislative Council Archives ("the Archives") preserves unique records of enduring value and makes them available for Members and staff of the Legislative Council. Members of the public may access these records in the designated Archives Reading Area. In order to protect these valuable resources so that they will remain accessible and usable for generations to come, users are requested to observe the following Rules:

1. Admission to the LegCo Archives is conditional upon the presentation of an access card, a Library/Archives Card issued by the Library, a Reader's Card issued by the Archives, or a Temporary Pass for Visitor obtained at the reception counter at the Main Lobby.
2. First time users are required to complete a Reader's Card Application Form. The user number issued should be quoted in ordering archival records for consultation. Users may be asked to produce photo proof of identity.
3. Users under the age of 14 should be accompanied by an adult relative, teacher or friend.
4. Bags, umbrellas, raincoats and any items not reasonably required during records inspection should be kept in the lockers provided at the Main Lobby or in such other places as required by the Archives staff.
5. No food, drink, gum, candy, tobacco, pens, scissors, cutters, sticky tapes or any objects which may pose a threat to the preservation of archival records are allowed in the Archives Reading Area.
6. Users should conduct themselves in an orderly and quiet manner. Mobile phones, pagers, and other beeping/ringing devices should be turned to silent mode, and phone calls should not be made.
7. Users may have access to a maximum of six records at the Archives Reading Area at any one time.
8. All archival records and material must be handled with great care without causing any damage. Users should wear the provided clean cotton gloves and turn pages slowly and carefully to minimize damage to documents.
9. Users must not re-arrange archival records in any way or mark, highlight, trace, fold, alter or remove any documents from archival records.
10. Users may use a lead pencil or laptop computer or similar portable device in taking notes. No copies should be made of the issued archival records or material in any manner without prior permission of the Archives staff.
11. Only plain paper may be used as a bookmark. Post-it notes, paper clips or any objects which may cause damage to records should not be used.
12. Users should not lean on archival records or use them as support for writing. Archival records must remain on the table before they are returned to the Archives staff. Opened bound volumes must not be placed face downward on the table.
13. Any damaged or missing documents should be reported immediately to the Archives staff.
14. Users must return all the issued records and material to the Archives staff before leaving the Archives.
15. Users may be denied access to archival records and/or archival services and facilities if they refuse to follow these Rules.
16. The above Rules are subject to review and may be changed as and when required.

**Exempted categories**

Access may be refused if the requested documents and records fall under the following exempted categories. Where circumstances warrant, such documents and records may be made available if public interest outweighs the harm and prejudice of disclosure unless it is prohibited by law.

- (a) Information or records the disclosure of which is prohibited by statute law or common law that applies to Hong Kong;
- (b) information or records relating to law enforcement, legal proceedings and legal professional privilege the disclosure of which would harm or prejudice the enforcement of law, the administration of justice, any legal proceedings being conducted or likely to be conducted or the parties concerned;
- (c) information or records held for or provided by any party under an explicit understanding that it would not be disclosed without the consent of that party;
- (d) information or records relating to individual complaint cases;
- (e) information or records relating to LegCo and its committees authorized by LegCo to exercise the powers under section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and investigation committees that is subject to declassification the premature disclosure of which would cause harm or damage to the parties concerned or impede the operation of such committees or later committees;
- (f) information or records relating to the on-going work of LegCo and its committees, commercially sensitive information, research, statistics, data and planned publications the premature disclosure of which would be misleading, unfair or lead to improper gain or advantage;
- (g) information or records obtained or transferred in confidence between Members and the Secretariat;

- (h) information or records relating to the business and operation of the Commission and the Secretariat the disclosure of which would harm or prejudice such business and operation; and
- (i) information or records the access to which would be detrimental to their preservation.

2. The above exempted categories were drawn up with reference made to the freedom of information laws and policies of various jurisdictions including Australia, Canada, Germany, New Zealand, the United Kingdom, the United States and the HKSAR Government as well as a number of public bodies in Hong Kong. These exemptions have been incorporated into the Access to Information Policy (**Appendix 16-G**) launched by The Legislative Council Commission on 1 January 2014.



## **Access to information policy**

### **Introduction**

The Legislative Council ("LegCo") is the legislature of the Hong Kong Special Administrative Region. The Legislative Council Commission ("the Commission") provides administrative support and services for LegCo through the LegCo Secretariat ("the Secretariat").

2. The Commission recognizes the importance of informing the public about the work of LegCo and promoting openness and public confidence in its decisions and activities. Such information is released to the public through the Secretariat according to the established procedures given in this Access to Information Policy ("this Policy").

3. This Policy defines the scope of information which is made available to the public and sets out how the information will be disclosed either by routine publication or in response to request. It authorizes the Secretariat to provide wide information access for members of the public unless the requested information falls under the exempted categories of information and records specified in paragraph 14 below. Where circumstances warrant, information under the exempted categories may be made available if public interest outweighs the harm and prejudice that could result unless the disclosure is prohibited by law.

4. The procedures for making a request for information are kept as simple as practicable and all requests received will be handled promptly.

5. This Policy also provides the procedures for review and appeal if any applicant is not satisfied with the decision of the Secretariat and considers that the provisions of this Policy have not been applied properly to his or her request for information.

### **Scope of application**

6. This Policy applies to the information or records in existence and kept by the Secretariat. This Policy does not oblige the Secretariat to acquire information not in its custody or create a document or a record not in existence. Vexatious requests will not be entertained.

7. This Policy does not affect any legal rights of access to information, nor does it affect any legal restrictions on access to information whether they are prohibitions or obligations arising from statute law or under common law.

### **Information and records available routinely for public access**

8. A list of information and records available routinely for public access is published on the LegCo Website. The list will be updated periodically. Such information and records are also available at the LegCo Library or the LegCo Archives. Some of the official publications of LegCo are available for sale at the LegCo's Souvenir Shop in the LegCo Complex. Video footages of open meetings and official media briefings of LegCo and its committees are also available for reproduction at a dubbing fee.

### **Information and records which may be provided on request**

9. Unclassified or classified information and records relating to LegCo and its committees held by the Secretariat may be provided on request. A list of such information and records is published on the LegCo Website. The list is also updated periodically.

10. Anyone who wishes to request access to the unclassified or classified information and records may contact the Access to Information Officer in person or by:

- (a) phone at 3919 3627;
- (b) mail to Public Information Division, Legislative Council Secretariat, Legislative Council Complex, 1 Legislative Council Road, Central, Hong Kong;
- (c) fax at 2537 1851; or
- (d) email at [infoaccess@legco.gov.hk](mailto:infoaccess@legco.gov.hk).

11. An Application Form for Access to Information can be downloaded from the LegCo Website and may be used to make an access request. In processing an access request, consideration will be given to the purpose of the request, the age of the requested information or records in affecting the possible impact of their disclosure and the relevant donor agreement or contract if the information or records are donated or acquired from private sources.

## **Response time to request for access to information**

12. Upon receipt of a request for access to information:
- (a) an interim reply will be sent to the applicant within seven working days;
  - (b) a detailed reply will normally be provided within 21 working days; and
  - (c) where the information or record requested cannot be provided within 21 working days because it is not readily available or further details need to be obtained from the applicant to facilitate the processing of his or her request, or for other reasons, the applicant will be so informed within 21 working days and be advised of the estimated time required for answering his or her request.
13. Where a request cannot be adequately met by an oral answer or published materials on the LegCo Website, the applicant may be invited to consult the requested records at the LegCo Library or the LegCo Archives or the Secretariat may provide a paid copy of the record if requested by the applicant. Details of the relevant charges are set out in paragraphs 18 to 20 below.

## **Information or records which may be refused**

14. The Secretariat may refuse to disclose information or records, or to confirm or deny the existence of information or records which fall under the exempted categories of information and records given below. References made to "harm" and "prejudice" include both actual harm and prejudice and the risk or reasonable expectation of harm and prejudice.
- (a) Information or records the disclosure of which is prohibited by statute law or common law that applies to Hong Kong;
  - (b) information or records relating to law enforcement, legal proceedings and legal professional privilege the disclosure of which would harm or prejudice the enforcement of law, the administration of justice, any legal proceedings being conducted or likely to be conducted or the parties concerned;

- (c) information or records held for or provided by any party under an explicit understanding that it would not be disclosed without the consent of that party;
- (d) information or records relating to individual complaint cases;
- (e) information or records relating to LegCo and its committees authorized by LegCo to exercise the powers under Section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and investigation committees that is subject to declassification the premature disclosure of which would cause harm or damage to the parties concerned or impede the operation of such committees or later committees;
- (f) information or records relating to the on-going work of LegCo and its committees, commercially sensitive information, research, statistics, data and planned publications the premature disclosure of which would be misleading, unfair or lead to improper gain or advantage;
- (g) information or records obtained or transferred in confidence between Members and the Secretariat;
- (h) information or records relating to the business and operation of the Commission and the Secretariat the disclosure of which would harm or prejudice such business and operation; and
- (i) information or records the access to which would be detrimental to their preservation.

15. If an access to information request is refused, the applicant will be informed in writing of the reasons for refusal within the time-frame set out in paragraph 12 above.

16. A full list of access refusal cases will be published on the LegCo Website and the list will be updated on a regular basis.

## Partial disclosure

17. Where disclosure of information in part of a record is refused if it falls under one or more of the exempted categories above, access may be granted to the remaining part of the record to which the exempted categories do not apply. Disclosure may take the form of extract, summary or redaction as practicable, provided it will not distort the meaning of the record as understood by the Access to Information Officer.

## Fees and charges

18. As processing requests for access to information involves resources, other than those publications issued free of charge or at a cost already specified, the fees and charges set out below are applicable to copies made of the information or records requested by the applicant and are subject to revision from time to time. The format of the copy will be determined by the Secretariat.

Black and white photocopy on A4 size paper (single-sided)	\$1 per page
Black and white photocopy on A3 size paper (single-sided)	\$1.5 per page
Coloured photocopy on A4 size paper (single-sided)	\$4 per page
Coloured photocopy on A3 size paper (single-sided)	\$6 per page
Audio/video record (per meeting)	\$50 per CD-ROM \$67 per DVD-ROM

19. Postage will be added if the applicant requests to have the copy delivered by post. The applicant will be notified of the charges, and the copy will be provided after the requisite payment is made.

20. Where no suitable equipment or technology is available in the Secretariat to process, view or copy the requested records, applicants may be charged the expenses incurred in providing access to or copy of these records which are otherwise unavailable.

### **Review and complaints mechanism**

21. Any applicant who does not accept the decision to his or her request for access to information may write to the Secretary General of the Secretariat for a review.

22. Any applicant who is not satisfied with the review decision and believes that the provisions of this Policy have not been properly applied to his or her request for access to information may lodge a written appeal to the Commission.

### **Policy review**

23. This policy will be subject to review to ensure its usefulness and to meet new needs and requirements.

### **Enquiries**

24. Any enquiries on this Policy should be directed to the Access to Information Officer either by phone at 3919 3627, by fax at 2537 1851, or by email at <infoaccess@legco.gov.hk>.

**Committee on Access to the Legislature's Documents and Records**

**Practice and Procedure**

Committee on Access to the Legislature's Documents and Records

The Committee on Access to the Legislature's Documents and Records ("CoA") is set up under Rule 74A(1) of the Rules of Procedure ("RoP") to:

- (a) determine that a document or record of the Legislature (or its committee) should be made available for access earlier than the expiry of the closure period prescribed by the Legislature (or its committee) or 50 years since the existence of such a document or record, whichever is shorter;
- (b) set guidelines for implementing the Policy;
- (c) consider any objection against the denial of access to such a document or record by the Clerk to the Legislative Council ("the Clerk") under Rule 6(5A)(b) of RoP; and
- (d) consider any other matter relating to or arising from the Policy.

Membership, term of office, chairmanship and quorum

2. Under Rule 74A(2) of RoP, CoA shall consist of the President of the Legislative Council ("LegCo") (as the Chairman of CoA), the Chairman of the House Committee ("HC") (as Deputy Chairman of CoA), the Deputy Chairman of HC, and not more than 10 other members elected in a manner determined by HC. The election procedure determined by HC is in **Annex I**. In accordance with Rule 74A(3) of RoP, the term of office of the elected members shall be one year or until the next HC meeting held for the election of members, whichever is the earlier.

3. All meetings of CoA are chaired by the Chairman or, in his absence, by the Deputy Chairman. In accordance with Rule 74A(5) of RoP, in the event of the temporary absence of the Chairman and Deputy Chairman, CoA may elect from among its members a chairman to act during such absence.

4. In accordance with Rule 74A(4) of RoP, the Chairman and three other members shall constitute a quorum of CoA.

### Voting

5. Under Rule 74A(6) of RoP, all matters before CoA shall be decided by a majority of the members voting. Neither the Chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided, in which case he shall give a casting vote. In accordance with Rule 79A of RoP, the Chairman or member presiding, in exercising his casting vote on a matter before CoA, shall not exercise the vote in such a way as to produce a majority vote in favour of the question put.

### Conduct of meetings and circulation of papers

6. In accordance with Rule 74A(7) of RoP, CoA shall meet at the time and the place determined by the Chairman. Written notice of every meeting shall be given to the members at least three days before the day of the meeting but shorter notice may be given if the Chairman so directs.

7. As the main function of CoA is to determine that a document or record of the Legislature (or its committees) should be made available for access earlier than the expiry of the closure period specified in Schedule 2 to RoP and to consider any objection against a denial of access by the Clerk (paragraph 13 below) or committees which are in operation (paragraph 15 below), all meetings of CoA are closed meetings to ensure that all information contained in such documents or records and all papers for the closed meetings held to consider such access request will not be disclosed until CoA has determined that the documents or records may be made available for access.

8. In accordance with Rule 74A(9) of RoP, where the Chairman so orders, any matter for the decision of CoA may be considered by circulation of papers to members and each member may signify his approval in writing submitted to the Chairman. The matter shall be deemed to be approved by CoA if a majority of the members so signify before the expiry of the period specified by the Chairman for the purpose and no member has in writing submitted to the Chairman before the specified period signified disapproval of the matter or requested that the matter be decided at a meeting of CoA. For the purpose of this rule, the period to be specified by the Chairman would normally be not less than three days.

9. If a CoA member requests to decide a matter at a meeting of CoA, the Chairman will convene a meeting to consider the matter. The member



concerned should submit the reason(s) for holding such meeting in writing for the CoA's consideration.

Granting of access prior to expiry of closure periods under Rule 74A(1)(a) of RoP

*Documents and records of the Legislature (excluding its committees)*

10. For the handling of request for access to the documents or records of the Legislature of the current and previous term prior to the expiry of the applicable closure period under Rule 74A(1)(a) of RoP (paragraph 1(a) above), the Clerk shall conduct a review to determine whether such documents or records fall within any of the exemptions set out in **Annex II** and, if appropriate, conduct a review as contemplated under paragraph (b) of Schedule 2 to RoP. If the Clerk considers that the access request should be granted or granted with conditions, CoA's approval should be sought under Rule 74A(1) of RoP as to whether such documents and records should be made available for access before the expiry of the closure period specified in paragraph (a) of Schedule 2 to RoP.

11. For the purpose of seeking CoA's approval as to whether documents and records should be made available for access before the expiry of the closure period as mentioned in paragraph 10 above, the Clerk should submit a review report to CoA. Information including the name(s) of applicant(s), information requested by applicant(s), nature of documents and records (i.e. classified or unclassified, years of existence and other relevant information), and the Clerk's recommendations with justifications on the access request should be provided in the review report.

12. Unless the Chairman orders otherwise, CoA's approval will be sought by circulation of the Clerk's review report in accordance with the procedures set out in paragraph 8 above. The documents or records concerned should also be made available for inspection by CoA members in the LegCo Archives once the Clerk's report is issued to CoA members. The inspection period will normally be not less than three days.

13. The Clerk to LegCo may deny access to a document or record of the Legislature after having conducted a review of it on the ground of its falling within any of the exempted categories (**Annex II**), or in accordance with any guidelines set by CoA under Rule 6(5A)(b) of RoP. CoA's determination is not necessary.

*Documents and records of a committee which is not in operation*

14. For the handling of a request for access to the documents or records of a committee which has been dissolved within the term of the Legislature or is a defunct committee, the procedures set out in paragraphs 10 to 13 of above will apply.

*Documents and records of a committee which is in operation*

15. Access request for the documents or records of a committee which is in operation will be referred to the committee concerned for consideration. The committee concerned will decide whether such documents or records can be made available for access. To facilitate the committee to consider the access request, the Clerk to the committee concerned shall conduct a review to determine whether such documents or records fall within any of the exemptions set out in **Annex II** and submit a review report to the committee. Information including the name(s) of applicant(s), information requested by applicant(s), nature of documents and records (i.e. classified or unclassified, years of existence and other relevant information), and the Clerk's recommendations with justifications on the access request should be provided in the review report. The committee concerned may also deny access to its documents or records if any of them falls within any of the exempted categories set out in **Annex II**<sup>1</sup>. CoA's determination is not necessary.

Granting of access upon expiry of closure periods under Rule 74A(1)(a) of RoP

16. In accordance with paragraph (a) of Schedule 2 to RoP, upon the expiry of the relevant closure period of a document or record, access may be granted so long as it is not prohibited by law and the Clerk has conducted a review to confirm as such. CoA's determination is not necessary.

Provision of access

17. Once a document and record is made available for access, the same set of information, and the same conditions of use, if any, will apply to future access requests for such information to the extent that they are applicable.

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<sup>1</sup> CoA will issue guidelines to assist committees in handling access requests.

### Partial disclosure

18. In the event that part of the information in the document or record requested falls under one or more of the exempted categories and is denied public access, access to the remaining part of the document or record may be granted. Partial disclosure may take the form of extract, summary or redaction as practicable, provided that it will not distort the meaning of the document or record made available for access.

### Handling of objection against a denial of access to a document or record under Rule 74A(1)(c) of RoP

19. If access to a document or record is denied by the Clerk (paragraph 13 above) or any committee of the Legislature which is still in operation (paragraph 15 above), the applicant will be informed of the denial with reasons in writing ("decision notice"). CoA will also be informed of cases of denial of access periodically.

20. Should the applicant wish to object to the decision of the Clerk or committee, he may raise an objection and make a submission in writing to the Clerk to CoA within 14 days of the date shown on the decision notice. CoA will not consider the objection if the applicant has not submitted the objection in writing within the above time limit.

21. CoA will consider the objection together with submission in writing and may affirm, vary or overturn the decision of the Clerk. To facilitate the consideration by CoA of the objection, the Clerk or committee concerned is required to submit a report setting out the reasons of denial for CoA's consideration. The report prepared by the Clerk or committee concerned will be circulated to CoA for consideration in accordance with the procedures set out in paragraph 8 above. The documents or records concerned should also be made available for inspection by CoA members in the LegCo Archives for normally not less than three days. If CoA considers it necessary, it may in writing invite the applicant to make further written submission within the period specified in such invitation. If the applicant makes such further written submission within the specified time, CoA shall consider such further written submission before deciding whether it would affirm, vary or overturn the decision of the Clerk that is being objected to.

22. The decision of CoA is final. The applicant who raises objection will be informed of CoA's decision in writing.

### Confidentiality undertaking

23. In determining whether a document or record should be allowed access, members of CoA may peruse the document or record but may not disclose any information contained therein unless and until CoA has determined that the document or record may be made available for access. On the commencement of a term of office, Members of CoA are required to sign a confidential undertaking that they shall not divulge such information and any information relating to the deliberations at meetings of CoA held in camera without CoA's consent.

### Access requests and objections from members of CoA

24. No member of CoA (including Chairman and Deputy Chairman) shall participate as a member of CoA in the handling of a request or an objection made by himself/herself or in the meetings of CoA to deliberate on such a request or objection.

### Report of CoA

25. Under Rule 74A(10) of RoP, CoA may make such reports on its work as it considers appropriate to the Council. CoA would normally submit a report to the Council on its work and may make other reports on matters relating to or arising from the Policy on Access to the Legislature's Documents and Records (Schedule 2 to RoP) to the Council as it considers necessary.

### Publishing lists of approved and denied requests on LegCo Website

26. The following information should be published on the LegCo Website periodically –

- (a) a list of access requests approved by CoA or acceded to by the Clerk to LegCo pursuant to paragraph (c) of the Policy on Access to the Legislature's Documents and Records in Schedule 2 to RoP; and
- (b) a list of access requests denied by the Clerk to LegCo with the reason(s) for denial.

### Updating of practice and procedure

27. Subject to RoP, CoA may amend, add to and supplement this practice and procedure from time to time.

## Interpretation

28. In this Practice and Procedure, unless the context otherwise requires:
- (a) "The Legislature" means the Legislative Council under Article 66 of the Basic Law as well as the colonial Legislative Council before the Reunification in 1997 and the Provisional Legislative Council;
  - (b) "Documents and records of the Legislature" means those documents and records produced in connection with, or arising from the Legislature's discharging of its constitutional functions. In case of doubt, CoA shall decide on the issue whether a document or record is part of documents or records of the Legislature;
  - (c) "Closure period" means the period specified by the Legislature (or its committee) for which a document or record should not be made available for access, or, where the Legislature (or its committee) considers a document or record should not be available for access, 50 years since the existence of the document or record; and
  - (d) "In existence" means the documents and records were created, received or accumulated by the Legislature or its committee in the course of discharging its functions. For administration purpose, the closure period of a document and record shall run from the first day of January in the year following the year in which the records were created, received or accumulated<sup>2</sup>. Where documents and records are bound into, sewn or attached to a bound volume, file or other compilation, the year of existence of the chronologically latest document or record therein that can be identified with the available means and reasonable effort should apply to all the other documents and records. Where the year of existence of a record or document or a bound volume, file or compilation cannot be identified practicably, the earliest year when it was known to be with the LegCo Secretariat should be taken as its year of existence.

Legislative Council Secretariat  
November 2014

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<sup>2</sup> For example, if a record subject to a 20-year closure period was created on 18 August 1994, the closure period shall run from 1 January 1995 and expire on 1 January 2015.

**Procedure for the nomination and election of members of  
Committee on Access to the Legislature's Documents and Records**

1. An election of members of the Committee on Access to the Legislature's Documents and Records ("CoA") shall be conducted at a meeting of the House Committee, the date of which ("election date") shall be appointed by the House Committee.
2. The Legislative Council Secretariat ("the Secretariat") shall issue a circular and a nomination form to the Members of the Legislative Council at least seven clear days before the election date, inviting nominations to be made.
3. Each nomination form shall be for the nomination of one Member and shall be signed by one Member as the proposer, one Member as the seconder, and by the nominee Member to signify his consent to the nomination.
4. Duly completed nomination forms shall be delivered to the Secretariat at least three clear days before the election date.
5. In case where the number of nominations received by the Secretariat by the deadline for nomination is less than the number referred to in Rule 74A(2)(d) of the Rules of Procedure ("RoP"), further nominations may be proposed, at the House Committee meeting at which the election is conducted, by any Member and seconded by another, with the proposed nominee signifying his consent to the nomination.
6. In case where the number of nominations received under paragraphs 4 and 5 is less than or equal to the number referred to in Rule 74A(2)(d) of RoP, the Chairman of the House Committee shall declare the nominees duly elected.
7. In cases where the number of nominations received under paragraphs 4 and 5 is more than the number referred to in Rule 74A(2)(d) of RoP, a poll shall be taken at the House Committee meeting at which the election is conducted; voting at which shall be by secret ballot and counted in accordance with the simple or relative majority system of election (otherwise known as "first-past-the-post" system of election), whereby a Member may vote for as many nominees as the number of vacancies and no more and the nominees who get the highest numbers of votes will be declared elected.

8. In cases where a nominee would have been elected but for there being one or more other nominees having been given the same number of votes, a separate poll shall be taken in respect of that nominee and such other nominee(s) in accordance with the system of election mentioned in paragraph 7 above until all the remaining vacancy or vacancies are filled.

### **Exempted categories of the Legislature's documents and records**

Access to documents and records of the Legislature and its committees may be refused if the requested documents and records fall under the following exempted categories.

- (a) documents or records the disclosure of which is prohibited by statute law or common law that applies to Hong Kong;
- (b) documents or records relating to law enforcement, legal proceedings and legal professional privilege the disclosure of which would harm or prejudice the enforcement of law, the administration of justice, any legal proceedings being conducted or likely to be conducted or the parties concerned;
- (c) documents or records held for or provided by any party under an explicit understanding that it would not be disclosed without the consent of that party;
- (d) documents or records relating to individual complaint cases;
- (e) documents or records relating to the Legislature and its committees authorized by the Legislature to exercise the powers under section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and investigation committees that are subject to review the premature disclosure of which would cause harm or damage to the parties concerned or impede the operation of such committees or later committees;
- (f) documents or records relating to the on-going work of the Legislature and its committees, commercially sensitive information, research, statistics, data and planned publications the premature disclosure of which would be misleading, unfair or lead to improper gain or disadvantage;
- (g) documents or records obtained or transferred in confidence between Members and the Secretariat; and
- (h) documents or records the access to which would be detrimental to their preservation.



**Schedule 2**

[Rules 6 & 74A]

**Policy on Access to the Legislature's Documents and Records**

The documents and records of the Legislature (and its committees) in the custody of the Legislative Council Secretariat may be made available for access subject to the following —

- (a) if the Legislature (or its committee) considers that any of its documents or records should not be made available for access or prescribes a period for which it should not be made so available, access to the document or record may not be made available until the prescribed period has expired or it has been in existence for 50 years, whichever is shorter;
- (b) any such document or record may be made available for access before expiry of the closure period specified in paragraph (a) consequent to a review;
- (c) any other document or record of the Legislature (or its committee) may be made available for access at any time but must be made so available when it has been in existence for 20 years; and
- (d) access to any document or record or any part of it shall not be made available if such access is prohibited by law.

*(L.N. 42 of 2014)*

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