

立法會

Legislative Council

LC Paper No. FC98/17-18

Finance Committee

**Information note prepared by the Legislative Council Secretariat
on the effects of the amendments to the Rules of Procedure passed by
the Legislative Council on 15 December 2017
on the proceedings of the Finance Committee and its subcommittees**

Purpose

This note aims to inform members of the effects of the amendments to the Rules of Procedure ("RoP") passed by the Legislative Council ("LegCo") on 15 December 2017 on the proceedings of the Finance Committee ("FC") and its subcommittees, namely the Establishment Subcommittee ("ESC") and the Public Works Subcommittee ("PWSC").

Background

2. On 15 December 2017, LegCo passed two resolutions to amend RoP, one moved by Hon Paul TSE Wai-chun and the other moved by Hon Martin LIAO Cheung-kong to amend various provisions in RoP.¹ The relevant amendments have come into operation upon gazettal of the resolutions on 22 December 2017.

3. Under RoP 71(13) and paragraph 30 of the Finance Committee Procedure ("FCP"), subject to RoP, FC shall determine its own practice

¹ The two resolutions were passed at the Council meeting of 13 December 2017, which continued on 14 and 15 December 2017. The proposed resolution moved by Hon Paul TSE Wai-chun sought to amend the Chinese character "舉" to "舉" wherever it appeared in RoP, while the proposed resolution moved by Hon Martin LIAO sought to amend a number of provisions involving a total of 24 proposals.

and procedure. Paragraph 25 of the ESC Procedure ("ESCP") and paragraph 26 of the PWSC Procedure ("PWSCP") also provide that subject to RoP and the procedure endorsed by FC, ESC and PWSC determine their own practice and procedure. In the light of the above amendments to RoP, the Secretariat has conducted a review on their effect, if any, on the proceedings of FC, ESC and PWSC. Among those amendments, the following amendments may have implications on the proceedings of FC and/or its subcommittees:

Rule involved	Gist of amendment
30	RoP 30 has been amended to the effect that a notice of a motion or an amendment will be returned to the Member concerned as it has not been selected or has been combined with another motion or amendment. Before a direction is given under RoP 30(3)(d), the President may request any Member who has given notice of a motion or an amendment to give such explanation of the subject matter of the motion or amendment as may enable him to form his judgement on the matter.
40	RoP 40(4) has been amended to provide that where the Chairman of a committee of the whole Council is of the opinion that the moving of the adjournment of proceedings is an abuse of procedure, he may decide not to propose the question or to put the question forthwith without debate.
45	RoP 45(1) has been amended to extend the power of the chairman of a standing committee or a select committee to direct a Member who persists in irrelevance or tedious repetition of his own or other Members' arguments in the debate to discontinue his speech to the chairman of any committee.
49	RoP 49(4) and (6) has been amended to provide that the question on the motion to shorten the ringing of the division bell shall be put without debate.

Rule involved	Gist of amendment
57	RoP 57(4)(d) has been amended to provide an additional restriction that a Member shall not move a series of two or more amendments to a bill which is in the opinion of the Chairman of the committee of the whole Council frivolous or meaningless.
79C	RoP 79C has been added to provide that the agenda of a meeting of any committee shall be determined by its chairman, except where its deputy chairman has made a determination in accordance with RoP 79B.
88	RoP 88(1) has been amended to provide that the motion that members of the press and of the public do withdraw may only be moved with the consent of the President, the Chairman of a committee of the whole Council or the chairman of a committee or a subcommittee.

Effect of the amendments made to RoP 30 and RoP 57

4. FCP 37 provides that subject to the decisions of FC made from time to time, RoP 29 to RoP 35 shall apply, with necessary modifications, to the proceedings of FC in dealing with motions. With the amendments made to RoP 30, pursuant to FCP 37, in dealing with motions proposed to be moved at a FC meeting, unless FC decides otherwise, it would be open to the FC Chairman to make a direction relating to the selection of motions or amendments or combination of motions or amendments.

5. Currently, there is no provision in ESCP and PWSCP regarding the application of RoP 29 to RoP 35 to the proceedings of ESC/PWSC. As such, pursuant to ESCP 25 and PWSCP 26, the procedure in the amended RoP 30 would not apply to the proceedings of the two subcommittees unless it is endorsed by FC or ESC/PWSC determines that the procedure should apply to its proceedings.

6. RoP 57 provides for the requirements regarding the notice period, manner of giving notice and restrictions to which amendments proposed to be moved to a bill are subject. The amendment to RoP 57(4)(d) passed by LegCo on 15 December 2017 adds a new restriction under which a Member shall not move a series of two or more amendments which is in the opinion of the Chairman of the committee of the whole Council frivolous or meaningless.

7. Although there is no express provision in RoP regarding the application of the restrictions on amendments to a bill in RoP 57 to motions and amendments to motions which are governed by RoP 29 to RoP 35, it has all along been the practice of the President of LegCo to apply the principles laid down in RoP 57 in considering the admissibility of motions and amendments to motions.² Likewise, the same practice has been adopted by the FC Chairman in handling motions proposed to be moved with notice such as those under FCP 21.³ Following the amendment to RoP 57(4)(d) and in line with the past practice, the FC Chairman may continue to make reference to the restrictions provided under RoP 57, including the new restriction under RoP 57(4)(d), in considering the admissibility of motions and amendments to motions, as well as the relevant rulings of the President of LegCo and the Chairman of the committee of the whole Council.

8. Regarding the handling of motions proposed to be moved without notice under FCP 37A, ESCP 31A and PWSCP 32A to express views on an agenda item, where two or more than two motions relate to

² For instance, in the President's ruling dated 24 March 2015 on the amendments proposed by Hon SIN Chung-kai and Dr Hon Helena WONG to the Dutiable Commodities (Liquor) (Amendment) Regulation 2015, the President ruled that the amendments proposed by Dr WONG were outside the scope of the Amendment Regulation and out of order. They were returned to Dr WONG under RoP 30(3)(c).

³ For instance, in the FC Chairman's ruling dated 18 March 2017 (LC Paper No. FC67/16-17(01)) on five motions proposed to be moved by two members pursuant to FCP 21, the FC Chairman ruled that one of the motions was inadmissible because the motion was unintelligible. In another ruling dated 19 December 2017 (LC Paper No. FC86/17-18) on the amending motions to motions on the procedure for FC to deal with members' motions to amend FCP, ESCP and PWSCP, the FC Chairman ruled that four proposed amendments were inadmissible, two on grounds of unintelligibility and two on grounds of the discrepancies between the Chinese and English versions.

the same theme, it has been the practice for the Chairmen of FC, ESC and PWSC to return the proposed motions to the members concerned for consolidation or selection of the representative ones for re-submission. Given this established practice in FC and its subcommittees, it is submitted that the amendment to RoP 57(4)(d) should not affect the Chairmen's handling of such motions, although it is open to the Chairmen to also take into account the principles laid down in RoP 57, including the amended RoP 57(4)(d), in making their rulings on such motions where appropriate.

Effect of the amendment made to RoP 40

9. Under FCP 39, a member when speaking on a proposal in FC may move without notice that discussion on an item or further proceedings of FC be now adjourned. Thereupon the Chairman shall propose the question on the motion to adjourn.⁴ As indicated in FCP 39, the provisions therein were adapted from RoP 40. The same provisions are provided in ESCP 32 and PWSCP 33.

10. By virtue of RoP 43, RoP 40, as amended, shall apply to the proceedings of FC, ESC and PWSC, unless the respective Chairmen order otherwise. This means that where a member moves a motion to adjourn further proceedings of FC/ESC/PWSC, the Chairman may decide not to propose the question on the motion or to put the question forthwith without debate if the Chairman is of the opinion that the moving of the motion is an abuse of procedure.

⁴ FCP 39 reads as follows:

"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]."

Effect of the amendment made to RoP 45

11. Previously, RoP 45(1) applied to FC directly as provided in the Rule, while for ESC and PWSC, by virtue of ESCP 27 and PWSCP 28,⁵ their Chairmen also had the power to direct a member who persists in irrelevance or tedious repetition of his own or other members' arguments in a discussion to discontinue his speech. The amendment under RoP 45(1) has the effect that apart from the FC Chairman, the Chairmen of ESC and PWSC may directly invoke Rule 45(1) in regulating members' speeches during the discussions as well as the debates of the subcommittees.

Effect of the amendment made to RoP 49

12. Under FCP 46, when the FC Chairman puts a question to FC for its decision and a division is claimed by a member, the Chairman shall order FC to proceed to a division and the division shall be held forthwith immediately after a division bell has been rung for five minutes. FCP 47 provides that –

"When a division has been ordered, Rules 48 and 49 of the Rules of Procedure shall apply to the proceedings of the Committee. Immediately after the Chairman has declared the result of a division under an agenda item, a member may move without notice that in the event of further divisions being claimed in respect of any motions or questions under the same agenda item, the Committee do proceed to each of such divisions immediately after the division bell has been rung for one minute. Thereupon the Chairman shall propose the question on that motion. In the event that the division bell does not function ..."

⁵ ESCP 27 and PWSCP 28 respectively provide that the Chairman, after having called the attention of the subcommittee 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.

The same provisions are provided in ESCP 39 and ESCP 39A and PWSCP 40 and PWSCP 40A. The above procedure for the shortening of the division bell duration, which was based on the then RoP 49(4) and RoP 49(6), was adopted by FC at its meeting on 9 July 2010.⁶

13. Following the amendments to RoP 49(4) and RoP 49(6) and given that FCP 47, ESCP 39A and PWSCP 40A respectively provide for the application of RoP 48 and RoP 49 to the proceedings of FC, ESC and PWSC when a division has been ordered, it is necessary for the procedure of FC and those of its subcommittees for the shortening of the division bell duration to accord with that provided under the amended RoP 49. In other words, upon the moving of a motion by a member without notice to shorten the division bell duration to one minute, the Chairman of FC/ESC/PWSC shall put the question on that motion without debate.

14. In this regard, it is necessary to make consequential amendments to FCP 47, ESCP 39A and PWSCP 40A to make these provisions consistent with the amended RoP 49(4) and RoP 49(6), and FC will be invited to approve relevant amendments in due course.

Effect of the new RoP 79C

15. The new RoP 79C provides that the agenda of a meeting of any committee shall be determined by its chairman, except where its deputy chairman has made a determination in accordance with RoP 79B.

16. Although there was no express provision in RoP and FCP/ESCP/PWSCP on the power of the Chairman of FC/ESC/PWSC to determine the agenda of a meeting, the practice has been that the Chairman's approval is sought on the inclusion of agenda items proposed by the Administration or individual members into the agenda of a meeting. As advised by the then Legal Adviser to the then PWSC Chairman in October 2014,⁷ despite the lack of specific provisions in RoP and PWSCP on the PWSC Chairman's power of agenda setting, this power should come within those reasonably incidental to the Chairman's powers

⁶ For details, please refer to the consultation paper LC Paper No. FC110/09-10(01), FCR(2010-11)39 and paragraphs 30 to 32 of the minutes of FC meeting on 9 July 2010.

⁷ Please refer to the Note for Chairman of PWSC (LC Paper No. LS 9/14-15).

provided in various provisions of PWSCP. However, such power should be exercised subject to the constitutional principle in public finance that it is for the government to make the demand and for the legislature to grant as reflected in Articles 62(4), 73(2) and 73(3) of the Basic Law and section 8(1) of the Public Finance Ordinance (Cap. 2).⁸

17. By virtue of the new RoP 79C, the Chairmen of FC, ESC and PWSC, are given the express power to determine the agenda of a meeting of FC, ESC and PWSC respectively. It is however submitted that the constitutional principle in public finance mentioned in paragraph 16 above should continue to apply in the Chairman's exercise of his agenda setting power under the new RoP 79C.

Effect of the amendment made to RoP 88

18. RoP 88 provides for the procedure on withdrawal of members of the press and of the public from the meeting venue during a meeting of the Council, a committee of the whole Council, a committee or a subcommittee.

19. With the amendment made to RoP 88(1), the moving of a motion at a meeting of FC, ESC or PWSC that members of the press and of the public do withdraw may only be moved with the consent of the Chairman concerned.

Advice sought

20. Members are invited to note the information set out in this note.

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⁸ Ibid, paragraphs 11 and 16.