

# 立法會

## *Legislative Council*

LC Paper No. CROP 18/20-21

Ref: CB(4)/CROP/3/96

### **Paper for the House Committee meeting on 8 January 2021**

### **Use of videoconferencing platform for holding formal meetings of Panels, Bills Committees and subcommittees**

#### **Purpose**

This paper invites the House Committee ("HC") to consider a draft motion on the use of a videoconferencing platform for holding formal meetings of Panels, Bills Committees and subcommittees ("the relevant committees").

#### **Background**

2. In view of the COVID-19 pandemic situation in Hong Kong, the Secretariat issued a circular<sup>1</sup> on 10 December 2020 to all Members inviting them to consider using Zoom, a cloud-based software platform for video conferencing, for conducting informal meetings of Panels of the Legislative Council ("LegCo") for briefings by public officers on the policy initiatives announced in the 2020 Policy Address ("virtual policy briefings"). As a result, eight Panels have conducted virtual policy briefings.<sup>2</sup> With Members' support and the Administration's cooperation, the virtual policy briefings have so far been effectively conducted without significant technical and operational problems. Members and other participants joining these virtual policy briefings have been able to communicate with each other regardless of their physical locations.

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<sup>1</sup> LC Paper No. CB(1) 372/20-21.

<sup>2</sup> As at 5 January 2021, virtual policy briefings by using Zoom were conducted by the Panel on Housing, Panel on Transport, Panel on Public Service, Panel on Environmental Affairs, Panel on Welfare Services, Panel on Economic Development, Panel on Administration of Justice and Legal Services as well as Panel on Constitutional Affairs.

3. As mentioned in the above circular, the President of LegCo has directed the Secretariat to study the relevant legal and procedural issues arising from the conduct of formal meetings of committees virtually, having regard to the powers, privileges and immunities provided by the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), and procedures and practices prescribed by the Rules of Procedure and House Rules. The Secretariat has completed the study. Members may refer to the paper prepared by the Legal Service Division on the relevant legal and procedural issues relating to the proposal to conduct formal meetings of committees virtually in **Appendix I**. The Secretariat considers that to uphold the rights, immunities and privileges of LegCo and its members under Cap. 382, in particular ensuring that committee meetings conducted virtually and the members participating therein would be covered by the privileges and immunities under sections 3 and 4 of Cap. 382, it would be advisable for the Council to pass a motion under Article 75 of the Basic Law<sup>3</sup> to introduce a procedure for the conduct of committee meetings virtually during the COVID-19 pandemic.

### **Proposal**

4. Taking into account the findings of its study and the experience in conducting virtual policy briefings, the Secretariat considers it feasible to conduct formal committee meetings virtually. It is therefore proposed that the virtual meeting arrangement be applied to formal meetings of the relevant committees. Meetings of the Council, HC, Finance Committee and its subcommittees, Committee on Rules of Procedure ("CRoP"), Committee on Members' Interest and Public Accounts Committee will continue to meet in person.

5. With the experience in holding virtual policy briefings, it is proposed to extend the use of Zoom for holding virtual formal meetings of the relevant committees. Zoom is one of the most widely used video conferencing tools in the market today. It is deployed by a number of overseas parliaments, including the United Kingdom, Scotland, Wales and Canada, among others. Importantly, it supports the provision of simultaneous interpretation ("SI") and webcasting services which are essential for conducting formal meetings of the relevant committees.<sup>4</sup>

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<sup>3</sup> Under Article 75(2) of the Basic Law, the rules of procedure of LegCo shall be made by the Council on its own, provided that they do not contravene the Basic Law.

<sup>4</sup> These services enable members of the press and of the public to observe the proceedings of the virtual meetings so as to meet the requirement under the Rules of Procedure that meetings of the relevant committees must be held in public.

6. To give effect to the proposals referred to in paragraph 4 above, a draft of the motion to be moved by the HC Chairman at the Council meeting of 13 January 2021 is in **Appendix II**. Subject to HC's approval pursuant to the motion, if passed by the Council, Zoom will be used as the platform for conducting virtual meetings of the relevant committees as proposed in paragraph 5 above. The draft guidelines on the use of Zoom for conducting formal committee meetings are set out in **Appendix III** for Members' consideration.

7. The draft motion and guidelines were considered and agreed by CROp at its meeting on 6 January 2021. In response to some members' queries, the Secretariat confirms that members participating in an on-line meeting may raise a point of order by calling a dedicated number or using the "Chat" messaging function in Zoom to attract the chairman's attention as needed. On the suggestion that standard background pictures for Zoom should be provided for members participating in virtual meetings, members note that the Secretariat would provide a choice of photos taken in the LegCo Complex for members' use as needed.

#### **Advice sought**

8. Members are invited to consider and endorse:

- (a) the draft motion and guidelines in **Appendices II and III**; and
- (b) the use of Zoom for conducting formal meetings of the relevant committees virtually.

9. Subject to Members' views, the draft motion will be moved by the HC Chairman at the Council meeting of 13 January 2021 for approval. Members' agreement is sought for HC to make a recommendation for the President to waive the required notice for moving the motion.

**立法會**  
**Legislative Council**

LC Paper No. LS 25/20-21

Ref : LS/A/04

**Relevant legal and procedural issues relating to the  
proposal to conduct virtual meetings of committees  
in response to COVID-19 and other related matters**

**Purpose**

This paper sets out certain legal and procedural issues relating to the proposal to hold formal meetings of committees of the Legislative Council ("LegCo") virtually to enable committees to continue operation during the COVID-19 pandemic and other related matters.

**Relevant legal and procedural issues**

Privilege of legislative body to regulate internal proceedings

2. It is well established that like other colonial legislatures, the privileges and immunities attached to the pre-1997 LegCo were derived from the common law doctrine of inherent necessity.<sup>1</sup> Under that doctrine, colonial legislatures are deemed to possess such privileges and immunities that are necessarily incidental to their capacity to function as legislative bodies.<sup>2</sup> One of these privileges and immunities recognized in Westminster-modelled parliamentary jurisdictions is the House's right to regulate its own internal affairs. In Hong Kong, this right is provided and recognized in Article 75 of the Basic Law ("BL"), which confers power on LegCo to make its rules of procedure, provided that they do not contravene BL.

3. In considering the legislature's privilege to regulate its own affairs under the relevant common law principles, the Hong Kong Court

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<sup>1</sup> *Rediffusion (Hong Kong) Ltd v Attorney General of Hong Kong* [1970] AC 1136, per Lord Diplock at p. 1157E, applied by the Court of Appeal in *Secretary for Justice v Leung Kwok Hung*, Magistracy Appeal No. 520 of 2018 (HCMA 520/2018) at para. 20.

<sup>2</sup> HCMA 520/2018, para. 20.

of Final Appeal ("CFA") prefers to regard the privilege as an issue concerning the established relationship between the legislature and the courts.<sup>3</sup> Under that relationship, the courts will recognize the exclusive authority of the legislature in managing its own internal processes in the conduct of its business. This means that the courts will not intervene to rule on the regularity or irregularity of the internal processes of the legislature but will leave it to determine exclusively for itself matters of this kind. This is referred to as the non-intervention principle.<sup>4</sup> In CFA's view, the important responsibilities of LegCo require that it should be left to manage and resolve its own internal affairs, free from intervention by the courts and from the possible disruptions, delays and uncertainties which could result from such intervention. Freedom from these problems is both desirable and necessary in the interests of the orderly, efficient and fair disposition of LegCo's business.<sup>5</sup> The non-intervention principle is subject to constitutional requirements.<sup>6</sup>

4. It is clear that the manner in which committees conduct meetings is a matter falling within the internal procedures of LegCo. Based on BL 75 and decided cases, LegCo would have the power to modify the committee procedures in response to COVID-19 to ensure that committees could continue their work, provided that the modified procedures would not contravene BL.

Upholding the rights, immunities and privileges of LegCo and its members under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382)

5. If LegCo decides to take forward the proposal to hold formal committee meetings remotely and virtually, it is essential that any modifications to the procedures and practice of LegCo made in response to COVID-19 fully respect the powers and privileges of LegCo and its members under Cap. 382.

6. Under sections 3 and 4 of Cap. 382, there shall be freedom of speech and debate in the Council or proceedings before a committee, and no civil or criminal proceedings shall be instituted against any member for words spoken before, or written in a report to, the Council or a committee, or by reason of any matter brought by him therein by petition,

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<sup>3</sup> *Leung Kwok Hung v President of the Legislative Council (No. 1)* (2014) 17 HKCFAR 689, CFA, at [27]

<sup>4</sup> Ibid, at [28].

<sup>5</sup> Ibid, at [30].

<sup>6</sup> Ibid, at [32].

Bill, resolution, motion or otherwise. To avoid any doubt as to whether committee meetings conducted virtually constitute formal proceedings of a committee of the Council to which the privileges and immunities under sections 3 and 4 of Cap. 382 apply, it would be advisable for the Council to pass a resolution to introduce a procedure for the conduct of committee meetings virtually during the COVID-19 pandemic.

7. As to where proceedings of the Council and its committees take place, the definitions of "Chamber"<sup>7</sup> and "precincts of the Chamber"<sup>8</sup> in section 2(1) of Cap. 382 suggest that proceedings of the Council and committees are conducted in the Chamber and the building in which the Chamber is situated respectively. The area of the precincts of the Chamber or the building in which the Chamber is situated is shown in a plan marked and signed by the Clerk to LegCo. It would therefore be prudent to devise a set of procedures which would on the one hand facilitate the remote participation of Members and on the other hand ensure that committee meetings are held in compliance with Cap. 382 in order that Members participating in committee proceedings virtually will be covered by the privilege provided under Cap. 382. For example, arrangements may be made for the committee chairman and the relevant Secretariat staff (e.g. committee clerk) to be present in a venue in the LegCo Complex while allowing committee members to join the meeting remotely.

8. Further, to protect the right of Members to full and equal participation in virtual committee proceedings, attention should be given to ensuring that all members have access to the telecommunications infrastructure, including a consistent standard for hardware, software, and internet connectivity, necessary to attend virtual meetings.

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<sup>7</sup> "Chamber" is defined in section 2(1) of Cap. 382 to mean 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, television and radio, and includes any lobbies, offices or precincts used exclusively in connexion with the proceedings of the Council.

<sup>8</sup> Under section 2(1) of Cap. 382, "precincts of the Chamber" 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, television and radio, and subject to any exceptions made by the President under subsection (2) includes, during the whole of any day the Council or a committee is sitting, the entire building in which the Chamber is situated and any forecourt, yard, garden, enclosure or open space adjoining or appertaining to such building and used or provided for the purposes of the Council.

### Quorum of committees

9. While the quorum for LegCo meetings is provided in BL, there is no BL provision on the quorum of committees. The quorum of committees is a matter determined by LegCo in the Rules of Procedure ("RoP") made pursuant to BL 75. Accordingly, as far as committees are concerned, no BL issues are involved in relation to quorum. It would therefore be open to LegCo to modify the rules relating to the quorum of committees in the exercise of the legislature's privilege to regulate its internal affairs to enable committees to continue to operate by holding virtual meetings during the COVID-19 pandemic.

### Voting at committee meetings

10. While the procedures for voting on bills and motions in LegCo are prescribed in Annex II to BL, matters relating to voting at committee meetings are provided in RoP. For example, RoP 76 and RoP 77 (applicable to Bills Committees and Panels respectively) provide that all matters for the decision of a Bills Committee ("BC") or Panel shall be decided by a majority of the members voting. Since no BL issues are involved relating to voting at committee meetings and given the legislature's privilege to regulate its internal affairs, LegCo may decide how voting is to be conducted at committee meetings during the COVID-19 pandemic.

11. The current RoP provisions do not prescribe the way Members cast their votes at committee meetings. If it is decided that virtual committee meetings are conducted, it is necessary to consider how Members can cast their votes at virtual meetings, for example, whether voting is to be done electronically, and if so, how the relevant security issues should be addressed.

### Requirement to hold meetings in public

12. Insofar as BC and Panel meetings are concerned, RoP 76(6) and RoP 77(12) respectively require such meetings to be held "in public unless the chairman otherwise orders in accordance with any decision of the committee". The Secretariat would have to consider how the general public (e.g. deputations) may participate in or observe BC or Panel meetings held virtually.

### Language rights at committee meetings

13. Under BL 9, both Chinese and English may be used as an official language by the legislature of the Hong Kong Special Administrative Region. Under RoP 2, a Member may address the Council in either Putonghua, Cantonese or the English language. As a matter of practice, RoP 2 has been applied to committee proceedings. To give due recognition to Members' right to carry out their LegCo duties in these languages if formal committee meetings are held virtually, it is necessary to consider whether the videoconferencing ("VCF") tools to be used can facilitate the transmission of simultaneous interpretation.<sup>9</sup>

### **Overseas experience**

14. Members may also note the approaches adopted by parliaments of other jurisdictions in response to COVID-19. A summary of these approaches is provided in paragraphs 15 and 16 below.

15. According to the Inter-Parliamentary Union (April 2020):<sup>10</sup>

- (a) Parliament continues to meet virtually using remote working methods that are widely available through commercial providers. Many parliaments are exploring options for remote working tools. This raises a number of issues, including the legal basis for remote working, security and authentication. Another factor is the capacity of parliamentary staff to put in place new solutions while being subject to social distancing measures themselves;
- (b) In terms of legal and procedural issues, some parliaments are modifying laws and procedures to allow remote working. For example, Spain and Brazil have amended their respective procedures to allow chambers to sit virtually. Other parliaments are relaxing their rules to allow virtual committee sittings, including Estonia, Israel and the United Kingdom. Some parliaments are also adapting quorum rules for voting remotely or looking at how they can interpret

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<sup>9</sup> For example, the Welsh Parliament selected Zoom as its platform for its virtual proceedings given that it has multiple speaking channels for simultaneous interpretation.

<sup>10</sup> <https://www.ipu.org/news/news-in-brief/2020-04/how-run-parliament-during-pandemic-q-and> [Accessed on 8.12.2020].



the rules. For example, the Australian Constitution requires MPs to be "present", which has been interpreted to mean "in person". The Parliaments of Estonia, Finland and Norway have similar rules which may need to be revised; and

- (c) Online VCF tools such as Zoom, Microsoft Teams (which works with Skype), Cisco Web Meetings and Google Hangouts are popular choices to support virtual parliamentary meetings. VCF tools must offer stability, be able to host a large number of participants simultaneously, and enable a moderator to control them.<sup>11</sup>

16. In April 2020, the Library & Research Service of the Irish *Oireachtas* studied how 12 parliaments/assemblies<sup>12</sup> had adapted their procedures and practices in view of the restrictions imposed on physical meetings due to COVID-19.<sup>13</sup> It is noted that among these parliaments/assemblies, virtual committee meetings are more common than virtual plenary meetings.<sup>14</sup> Different methods have been adopted by these parliaments/assemblies to provide for the option of holding committee meetings virtually. These include amending the relevant Standing Orders, suspending and varying the relevant Standing Orders and making a temporary order by passing a motion in parliament to allow committees to meet virtually. As far as parliamentary sessions are concerned, there is a trend towards hybrid parliamentary sessions with some members attending physically and some virtually, or some business items taken virtually and other items with members in the chamber.

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<sup>11</sup> For example, the moderator should be able to "switch off" any Member ordered by the Chairman of a BC under RoP 45(2) to withdraw immediately from the BC for the remainder of that meeting by reason of his or her grossly disorderly conduct.

<sup>12</sup> Australia, Canada, Israel, New Zealand, the United Kingdom, Northern Ireland, Scotland, Wales, Austria, Denmark, Finland and Germany.

<sup>13</sup> [https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2020/2020-05-01\\_1-rs-note-how-parliaments-are-working-during-the-covid-19-pandemic\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2020/2020-05-01_1-rs-note-how-parliaments-are-working-during-the-covid-19-pandemic_en.pdf) [Accessed on 8.12.2020].

<sup>14</sup> In Denmark, for example, the chairman, clerk and a technician are physically in the meeting room with other members participating by VCF. In Canada and New Zealand, special COVID-19 committees, meeting virtually by VCF, have been established to scrutinize government activities.

## **Way forward**

17. Should Members decide that formal meetings of committees be held virtually as a temporary measure during the COVID-19 pandemic, consideration may be given to moving a motion in the Council under BL 75 to permit this to be done for a period specified in the motion and to provide for the relevant procedure. Subject to Members' views, the virtual meeting arrangement would apply to Panels (or their subcommittees), Bills Committees and subcommittees appointed by the House Committee. The Secretariat will prepare a draft motion to be moved under BL 75 and the related implementation details for Members' consideration.

Legal Service Division  
Legislative Council Secretariat  
December 2020

# *Draft*

**Motion to be moved by Hon Starry LEE  
under Article 75 of the Basic Law of the Hong Kong  
Special Administrative Region of the  
People's Republic of China  
at the Council meeting of 13 January 2021**

## **Wording of the Motion**

That with immediate effect until 30 September 2021 or until an earlier date as the Council may by resolution determine, the procedure set out in the Schedule be adopted to enable Panels (or their subcommittees), Bills Committees and subcommittees appointed by the House Committee to continue to meet during the COVID-19 pandemic in the performance of their functions under the Rules of Procedure and the House Rules of the Legislative Council of the Hong Kong Special Administrative Region while ensuring social distancing.

**Procedure for committee meetings conducted  
by video conference hosted on a platform approved by the House Committee**

- (1) Any Panel (or its subcommittee), Bills Committee or subcommittee appointed by the House Committee ("relevant committee") may, as its chairman determines, meet remotely by video conference hosted on a platform approved by the House Committee ("virtual meeting") during the COVID-19 pandemic.
- (2) Where a virtual meeting is held:
  - (a) the chairman of a relevant committee or any other member presiding shall chair the virtual meeting in a venue within the Legislative Council ("LegCo") Complex, while other members and persons invited or summoned to attend the meeting may participate in the meeting remotely pursuant to paragraph (1) above;
  - (b) members of a relevant committee attending a virtual meeting shall be counted as present for the purpose of constituting the quorum for the meeting;
  - (c) voting at a virtual meeting will be conducted by a show of hands via the approved video conferencing platform referred to in paragraph (1) above. Before a matter is voted upon, if the Chairman orders or upon request of a member, members will be notified of the impending voting by a message through the Short Messaging Service subscribed by the LegCo Secretariat. The voting shall be held five minutes after the message has been issued; and
  - (d) virtual meetings of a relevant committee are deemed to be held in public if records of their proceedings are made available to members of the press and of the public by webcast via the LegCo website or a publicly accessible social media platform.
- (3) Members of the press and of the public may observe the proceedings of a relevant committee in a virtual meeting via either the LegCo website or a publicly accessible social media platform.
- (4) Save as otherwise provided above, the existing provisions of the Rules of Procedure and the House Rules applicable to meetings of a relevant committee shall also apply to virtual meetings of that committee where appropriate.

**Guidelines on holding meetings of  
Panels, Bills Committees and subcommittees by videoconferencing**

**Technical tool**

1. The Legislative Council ("LegCo") Secretariat has deployed Zoom for holding meetings of Panels, Bills Committees and subcommittees by videoconferencing ("virtual meetings").
2. Members are required to install the Zoom software to the relevant device (e.g. notebook computer/mobile phone) for participating in these virtual meetings. Members can access <http://zoom.us/download> to install Zoom.

**Meeting arrangement**

Joining the meeting

3. For each virtual meeting, the Secretariat will issue a circular to inform Members of the meeting ID and access link by a Restricted Email before the meeting.
4. To ensure that all technical issues are tackled before the meeting, Members may enter the "Waiting Room" of Zoom virtual meeting environment to stand by within 30 minutes before the scheduled starting time of each virtual meeting.
5. Members should use their Chinese names to log into the meeting to enable the Chairman to identify them during the meeting.
6. The Chairman will chair the meeting in a Conference Room in the LegCo Complex. Relevant staff of the LegCo Secretariat staff including the Clerk will be present with the Chairman. Due to technical constraints and to maintain social distancing, other Members, government officials and other attendees are advised to join the meeting remotely by using Zoom.
7. All members of the relevant committees shall turn on the video function and show their face to facilitate counting of members by the Chairman and the Clerk to ascertain the presence of a quorum.
8. Members, government officials and other attendees are advised to find a suitably quiet and stationary position to participate in the meeting. They shall turn on the video function and show their face when speaking at the

meeting. The mic function will be controlled by the Secretariat's technicians. Members should use the "raise hand" function in Zoom to indicate their intention to speak. Their mic will only be turned on at the Chairman's instruction.

9. Members may use the "Chat" messaging function in Zoom to communicate with the Chairman or the Clerk during the meeting. All messages in "Chat" will be deleted after the meeting.
10. For each virtual meeting, the Secretariat will designate an email account for Members to submit documents (e.g. motions) to the Chairman and the Clerk.

### Voting

11. For any voting, including voting with a division ordered, held during a virtual meeting, members of the relevant committee shall cast their votes by a show of hands. Members casting a vote shall show their face and raise hand through Zoom to facilitate counting by the Chairman and the Clerk.
12. Upon the Chairman's putting a question to vote, a member may claim a division by indicating such wish to the Chairman through a means as determined by the Chairman.
13. Before a matter is voted upon, if the Chairman orders or upon request of a member, members will be notified of the impending voting by a message through the Short Messaging Service ("SMS") subscribed by the LegCo Secretariat. The voting shall be held five minutes after the message has been issued.
14. When a division is ordered, it is advisable for the Chairman to instruct the Clerk to issue an SMS message to notify members of the impending division if no prior SMS message under paragraph 13 above has been issued. After a matter has been voted on, subject to members' agreement, further questions under the same agenda item may be voted on successively at the same virtual meeting without prior SMS messages issued, even if divisions are ordered in respect of these further questions.

### Privilege

15. As virtual meetings are meetings or proceedings operating under the procedure made by passage of a motion in the Council, these meetings or proceedings, and the Members and designated public officers

participating, will be covered by the privileges and immunities under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

16. Members should be aware that if they join a virtual meeting from outside Hong Kong, while they will still be deemed to be covered by the privileges and immunities in Hong Kong under Cap. 382, there is no guarantee that the legal system of the country/place from which they are speaking would take this view.

#### Other related issues

17. Simultaneous interpretation services for Cantonese, Putonghua and English will be provided for all virtual meetings.
18. Minutes of meetings will be kept for all virtual meetings, but the minutes of meetings of Bills Committee and subcommittees will be kept in a condensed form.
19. The Secretariat will arrange live broadcast of open virtual meetings via the LegCo Webcast. Archives of all open virtual meetings will also be available for public access via the LegCo Webcast.

Legislative Council Secretariat

7 January 2021