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From : Clerk to Committee on Rules of Procedure
To : All Members of the Legislative Council

Committee on Rules of Procedure

**Consultation on proposed sanction against grossly disorderly conduct
of Members in Council and selected committees**

The Committee on Rules of Procedure ("CRoP") would like to invite Members' views on its proposal to impose a sanction which will be triggered if the President considers the existing sanction under Rule 45(2) of the Rules of Procedure ("RoP") inadequate in dealing with grossly disorderly conduct of Members at the meetings of the Council, a committee of the whole council ("CoWC"), the Finance Committee ("FC") or the House Committee ("HC").

Background

2. Members were consulted in September 2018 on various issues relevant to the proposed mechanisms to deal with Members' misconduct, including the need to introduce new sanctions against grossly disorderly conduct of Members in Council and CoWC meetings and the proposed framework of sanctions against Members for committing grossly disorderly conduct in Council or CoWC meetings under RoP 45(2). At its meeting on 20 November 2018, CRoP considered the outcome of the consultation with Members. Noting that more than half of the respondents to the consultation (LC Paper No. CROP 4/18-19) supported in principle the introduction of new sanctions against grossly disorderly conduct of Members at the meetings of the Council and CoWC, CRoP agreed that further consideration should be given to the related issues including the role of the President of the Legislative Council ("the President") in maintaining order

at Council and CoWC meetings, the duration of suspending the Members concerned from attending such meetings, and the related financial penalty. CRoP also noted the views that if new sanctions against Members' grossly disorderly conduct were to be introduced, reference should be made to the sanction mechanisms in overseas legislatures including the House of Commons of the United Kingdom Parliament ("UKHC") and the Bundestag of Germany ("Bundestag").¹

3. At its meeting on 12 January 2021, CRoP further studied the procedures for imposing the relevant sanctions in UKHC² and in the Bundestag³ as well as the legal issues related to imposing a financial penalty⁴. After deliberations, CRoP agreed that the existing sanction under RoP 45(2) was inadequate in dealing with grossly disorderly conduct of Members at the meetings of the Council, CoWC, FC or HC, and the Legislative Council ("LegCo") should therefore put in place another sanction under which Members who have committed grossly disorderly conduct at the meetings of the Council, CoWC, FC or HC shall be named and suspended from the service of LegCo ("the Proposed Sanction"), and that a framework of the procedure for imposing the Proposed Sanction should be drawn up for consultation with all Members.

Existing sanction

4. Under RoP 45(2), a Member whose conduct at a meeting of the Council, CoWC or any committee is grossly disorderly shall be ordered by the President, the Chairman of CoWC or the chairman of any committee to withdraw immediately from the Council or the committee for the remainder of that meeting. The relevant provisions are reproduced in **Appendix IV**.

¹ The details of sanctions against disorderly conduct of Members during parliamentary proceedings in the legislatures of seven places (i.e. United Kingdom, Australia, Germany, India, South Africa, South Korea and Taiwan) previously considered by CRoP were included in the consultation conducted in September 2018 (Appendix IV to LC Paper No. CROP 93/17-18).

² A summary of the sanctions against grossly disorderly conduct of Members committed during parliamentary sittings in UKHC is set out in **Appendix I** to this circular.

³ The relevant provisions of the Rules of Procedure of the Bundestag ("the Bundestag RoP") are reproduced in **Appendix II**.

⁴ A detailed analysis of the relevant legal issues is set out in **Appendix III** to this circular.

Proposed Sanction

5. CRoP has proposed that LegCo should also put in place the Proposed Sanction, similar to that in UKHC, which will be triggered in accordance with the procedure as outlined below (a flowchart showing the procedure is in **Appendix V**):

Procedure for imposing the Proposed Sanction

6. The procedure for imposing the Proposed Sanction will be triggered if the President considers the sanction under RoP 45(2) inadequate in dealing with the grossly disorderly conduct committed by a Member in Council, CoWC, FC or HC in a single instance or multiple instances. The President may then name the Member for such instance(s) of misconduct, taking into account relevant factors including the gravity of the conduct involved, the nature and extent of the interruption, damage and/or injury caused or threatened, and/or frequency at which the Member has committed similar conduct during the term and whether the Member disregarded the authority of the Chair, and/or persistently or wilfully obstructed the business of the Council or the committee concerned by abusing the rules of LegCo in that/those instances.⁵ A motion will then be moved by the President's deputy for the Council to decide, without debate or amendment, whether to suspend that Member from the service of LegCo for the period of time specified in that motion ("Suspension Motion"). Details of the consequences of suspension of service are set out in paragraphs 9 and 10 below.

Scope of application

7. CRoP considers that apart from the grossly disorderly conduct committed by Members at the meetings of the Council and CoWC, the procedure as set out in paragraph 6 above should also cover such behaviour committed at meetings of FC and HC as they perform pivotal functions and their membership resembles that of the Council and CoWC. On the other hand, as other committees of LegCo mainly serve as deliberative forums for Members to discuss policy matters, past experience suggests that it is not frequent for Members to commit grossly disorderly conduct at such

⁵ For examples, the procedure for imposing the Proposed Sanction could be triggered against a Member repetitively committing grossly disorderly conduct in Council, CoWC, FC or HC, or against a Member committing grossly disorderly conduct that is particularly serious in nature (such as causing injury to others, resulting in adjournment of a Council meeting(s) or cancellation of a committee meeting(s) etc.).

committee meetings, and the existing sanction should be adequate in that regard. It is therefore proposed that in considering whether to name a Member, the President should take into account the grossly disorderly conduct committed by the Member concerned at the meetings of the Council, CoWC, FC and HC.

Duration of suspension

8. In UKHC, the duration of suspension from the service of the House is on an escalating scale having regard to the number of occasions on which a Suspension Motion in respect of the Member concerned has been passed. It is proposed that the Proposed Sanction should adopt an escalating scale of severity as follows:

<u>Occasion of Suspension</u> <u>Motion passed in respect of</u> <u>the Member concerned</u> <u>during the same term</u>	→	<u>Duration of suspension (week(s))</u>
First	→	1
Second	→	2
Third	→	4
Fourth	→	8

For any subsequent occasion(s) on which a Suspension Motion in respect of the Member concerned is passed, the duration of suspension is twice of the previous level, provided that such duration shall not extend beyond the end date of the legislative term concerned.

Consequences of suspension from service

Prohibition from participation in all Council business

9. The Member suspended is prohibited from participation in all business of the Council, including, among others, meetings of Council and all its committees as well as handling of complaints under the LegCo Redress System during the period of suspension.

Suspension of remuneration, allowances, gratuity and suspension of reimbursement of operating expenses

10. In UKHC, the salary of a Member suspended from the service of the House shall be withheld (i.e. forfeited) for the duration of his or her suspension. For LegCo to impose a similar financial penalty on Members,

express statutory authority through making new legislation or amending relevant existing legislation is required. Members' views are therefore sought on whether or not a financial penalty should be imposed on a Member for the duration of his/her suspension. If Members agree that a financial penalty should be imposed, their views are also sought as to whether only the remuneration (including allowances and end-of-service gratuity) should be withheld on a pro-rata basis, or both the remuneration and reimbursement of his/her operating expenses should be withheld on such basis.

11. If Members support the imposition of the aforesaid financial penalty, the Secretariat will follow up with the Administration for putting forward the relevant legislative proposal.

Appeal against or objection to suspension

12. It is noted that there is no appeal mechanism against the decision of UKHC to suspend a Member from the service of the House. However, objection to suspension is allowed in the Bundestag where the power to suspend a Member is conferred on its Speaker. The Member concerned may, by the next sitting day after the sitting at which a suspension of him/her from a sitting was issued, lodge a reasoned objection in writing to his or her suspension. The objection shall be placed on the agenda of that sitting. The Bundestag shall decide thereon without debate. The objection shall not have a delaying effect.⁶ As outlined in paragraph 6 above, under the procedure to impose the Proposed Sanction, the Suspension Motion would be moved and voted upon in Council without debate, which means that the Member subject to suspension would not be afforded an opportunity to make representations to the Council before the motion is passed to suspend him or her.⁷

13. In the light of the above, Members' views are sought on whether or not an appeal or objection procedure should be provided for a suspended Member. If Members support providing such a procedure, their views are also sought as to whether a procedure should be provided for to afford a

⁶ See Rules 38 and 39 of the Bundestag RoP which are reproduced in **Appendix II**.

⁷ Under the existing procedure for the suspension of a Member under RoP 85 which is preceded by an investigation by the Committee on Members' Interests ("CMI") where the Member under investigation is afforded an opportunity to make written or oral representations to CMI and to be accompanied by, among others, legal advisor(s) while attending oral hearings before CMI. Please refer to paragraphs 10 and 15 of the Procedure of CMI for Handling Complaints (issued on 9 December 2014).

suspended Member an opportunity to make representations to the Council by way of appeal against or objection to the suspension, or whether steps should be taken by the President before naming a Member and before the Council deals with a Suspension Motion to ensure that the Member is fully aware of the precise allegations against him/her and that he/she be given a reasonable opportunity to be heard.

Questionnaire

14. Members are invited to give their views on the Proposed Sanction by completing and returning the questionnaire in **Appendix VI** by **Wednesday, 10 February 2021**.

(Lilian MOK)
Clerk to
Committee on Rules of Procedure

Encls.

c.c. Hon Andrew LEUNG Kwan-yuen, GBM, GBS, JP (President of the
Legislative Council)
Hon Paul TSE Wai-chun, JP (Chairman)
SG, LA, DSG, ASG1, ASG2, ASG3, ASG4, SALA3, H(PI), ALA2

Sanctions against grossly disorderly conduct of Members committed during parliamentary sittings in the United Kingdom Parliament

Sanctions against grossly disorderly conduct of Members committed during parliamentary sittings in the United Kingdom ("UK") Parliament are summarized below:

- (a) withdrawal from a sitting of the House of Commons ("the House") for the remainder of that sitting under Standing Order ("SO") No. 43.¹ This sanction is similar to that provided in Rule 45(2) of the Rules of Procedure applicable to a Council meeting, under which the President of the Legislative Council or chairman of a committee of the whole Council may order a Member whose conduct is grossly disorderly to withdraw immediately from the Council or the committee for the remainder of that meeting;
- (b) naming and suspension from the service of the House.² Under this sanction, the Speaker may name a Member for committing grossly disorderly conduct, or for disregarding the authority of the Chair, or for persistently or wilfully obstructing the business of the House by abusing the rules of the House, or otherwise. A motion will then be moved for the House to decide, without debate or amendment, whether to suspend that Member from the service of the House for (a) five sittings on the first occasion; (b) twenty sittings for the second occasion; and (c) on any subsequent occasion, until the House orders that the suspension shall terminate or, in default of such order, for the remainder of the session;³
- (c) suspension from the service of the House during the remainder of the session arising from refusal to obey the Speaker's direction to withdraw after the Member concerned has been suspended by a resolution of the House and recourse to force is necessary to compel obedience to the Speaker's direction;⁴

¹ SO No. 43. The term "that day's sitting" used in this SO is equivalent to one sitting, as each sitting in the House lasts for a day.

² SO Nos. 43 and 44(1) to (3).

³ SO No. 44(2) and Erskine May *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 25th Edition, para. 21.50.

⁴ SO No. 44(4) and Erskine May, para. 21.50. That SO was introduced in 1901 in response to an incident where Irish Nationalist Members had to be forcefully ejected from the chamber by the Serjeant-at-Arms (with assistance of police officers) for obstructing the conduct of a division during a sitting. Before the introduction of SO No. 44(4), a Member whose conduct is grossly disorderly could be ordered by the Speaker to withdraw from the House for the remainder of the sitting, or in addition be named by the Speaker and suspended from the service of the House for specific periods on the passage of a motion to that effect. The reason for introducing SO No. 44(4), which in effect extends the duration of suspension of the Member to the end of the session, was to be a remedy for a gap in that SO since at that time it imposed no additional penalty for cases where physical force was required to ensure compliance of a Member with the order of the Speaker or the House.

- (d) the salary of a Member suspended shall be withheld for the duration of his suspension;⁵ and
- (e) although suspended, the Member may continue to serve only on a committee for the consideration of a private bill to which he has been appointed before the suspension.⁶ Other than for this purpose, the Member may not enter the Parliamentary Estate for the duration of the suspension.⁷

The provisions of the relevant UK SOs and a flow chart showing the process of imposing the relevant sanctions are set out in **Annexes I and II** respectively.

⁵ SO No. 45A

⁶ SO No. 45(2) and House of Commons Background Paper: Disciplinary and Penal Powers of the House of Commons ("Background Paper"), 27 November 2012, p.4.

⁷ Background Paper, p.4.

**Relevant Standing Orders of the House of Commons of the
Parliament of the United Kingdom**

43. Disorderly conduct

The Speaker, or the chair, shall order any Member or Members whose conduct is grossly disorderly to withdraw immediately from the House during the remainder of that day's sitting; and the Serjeant at Arms shall act on such orders as he may receive from the chair in pursuance of this order. But if on any occasion the Speaker, or the chair, deems that his powers under the previous provisions of this order are inadequate, he may name such Member or Members, in which event the same procedure shall be followed as is prescribed by Standing Order No. 44 (Order in debate).

44. Order in debate

- (1) Whenever a Member shall have been named by the Speaker, or by the chair, immediately after the commission of the offence of disregarding the authority of the chair, or of persistently and wilfully obstructing the business of the House by abusing the rules of the House or otherwise, then if the offence has been committed by such Member in the House, the Speaker shall forthwith put the question, on a motion being made, 'That such Member be suspended from the service of the House'; and if the offence has been committed in a committee of the whole House, the chair shall forthwith suspend the proceedings of the committee and report the circumstances to the House; and the Speaker shall on a motion being made forthwith put the same question as if the offence had been committed in the House itself.

Proceedings in pursuance of this paragraph, though opposed, may be decided after the expiration of the time for opposed business.

- (2) If any Member be suspended under paragraph (1) of this order, his suspension on the first occasion shall continue for five sitting days, and on the second occasion for twenty sitting days, including in either case the day on which he was suspended, but, on any subsequent occasion, until the House shall resolve that the suspension of such Member do terminate.

- (3) Not more than one Member shall be named at the same time, unless two or more Members, present together, have jointly disregarded the authority of the chair.
- (4) If a Member, or two or more Members acting jointly, who have been suspended under this order from the service of the House, shall refuse to obey the direction of the Speaker, when severally summoned under the Speaker's orders by the Serjeant at Arms to obey such direction, the Speaker shall call the attention of the House to the fact that recourse to force is necessary in order to compel obedience to his direction, and the Member or Members named by him as having refused to obey his direction shall thereupon and without any further question being put be suspended from the service of the House during the remainder of the session.¹
- (5) Nothing in this order shall be taken to deprive the House of the power of proceeding against any Member according to ancient usages.

45. Members suspended, etc., to withdraw from precincts

- (1) Members who are ordered to withdraw under Standing Order No. 43 (Disorderly conduct) or who are suspended from the service of the House shall forthwith withdraw from the precincts of the House.
- (2) Suspension from the service of the House shall not exempt the Member so suspended from serving on any committee for the consideration of a private bill to which he may have been appointed before the suspension.

45A. Suspension of salary of Members suspended

The salary of a Member suspended from the service of the House shall be withheld for the duration of his suspension.

46. Power of the Speaker to adjourn House or suspend sitting

In case of grave disorder arising in the House the Speaker may, if he thinks it necessary to do so, adjourn the House without putting any question, or suspend the sitting for a time to be named by him.

¹ The procedural steps the Speaker, the Serjeant-at-arms and staff of the House should take when Standing Order No. 44(4) is invoked are set out in a "Quick Reference Note" issued by the House of Commons, which are reproduced in the **Attachment**.

**Quick Reference Note, House of Commons
of the Parliament of the United Kingdom**

Naming of a Member – Quick Reference

Speaker	<i>I name [name of Member]</i> <i>[If necessary: I call the Minister to move a suspension motion.]</i>
Minister:	I beg to move that [name of the Member] be suspended from the service of the House. <i>[The Question must be put forthwith. It is exempted business]</i>
Speaker	The Question is, That [name of Member] be suspended from the service of the House. As many as are of that opinion... <i>[if the Motion to suspend the Member is agreed to]</i>
Speaker	I have to direct the honourable Member for... to withdraw in compliance with the order which the House has just made <i>[if the Member then declines to withdraw]</i>
Speaker	I must now warn the honourable Member that if recourse to force is needed to compel obedience to my direction, he/she will be suspended for the remainder of this Session under Standing Order No.44. The Serjeant at Arms will ensure that the honourable Member complies with my direction to withdraw.

The Serjeant then approaches the Member, and standing at the nearest point to him on him on the floor of the House, informs him of the Chair's direction:

Serjeant: **I must ask the honourable Member if he or she intends to comply with the direction of the Chair to withdraw**

Should the Member still refuse to obey the Chair's direction, the Serjeant should report: "Mr Speaker, I have to report that the hon. Member has indicated that he does not intend to comply with the Order of the House."

Speaker: **I suspend the sitting for ten minutes while the honourable Member leaves the House.**

If the Serjeant has to use force to remove the Member, the Serjeant reports this fact to the Chair.

If so, when the House resumes:

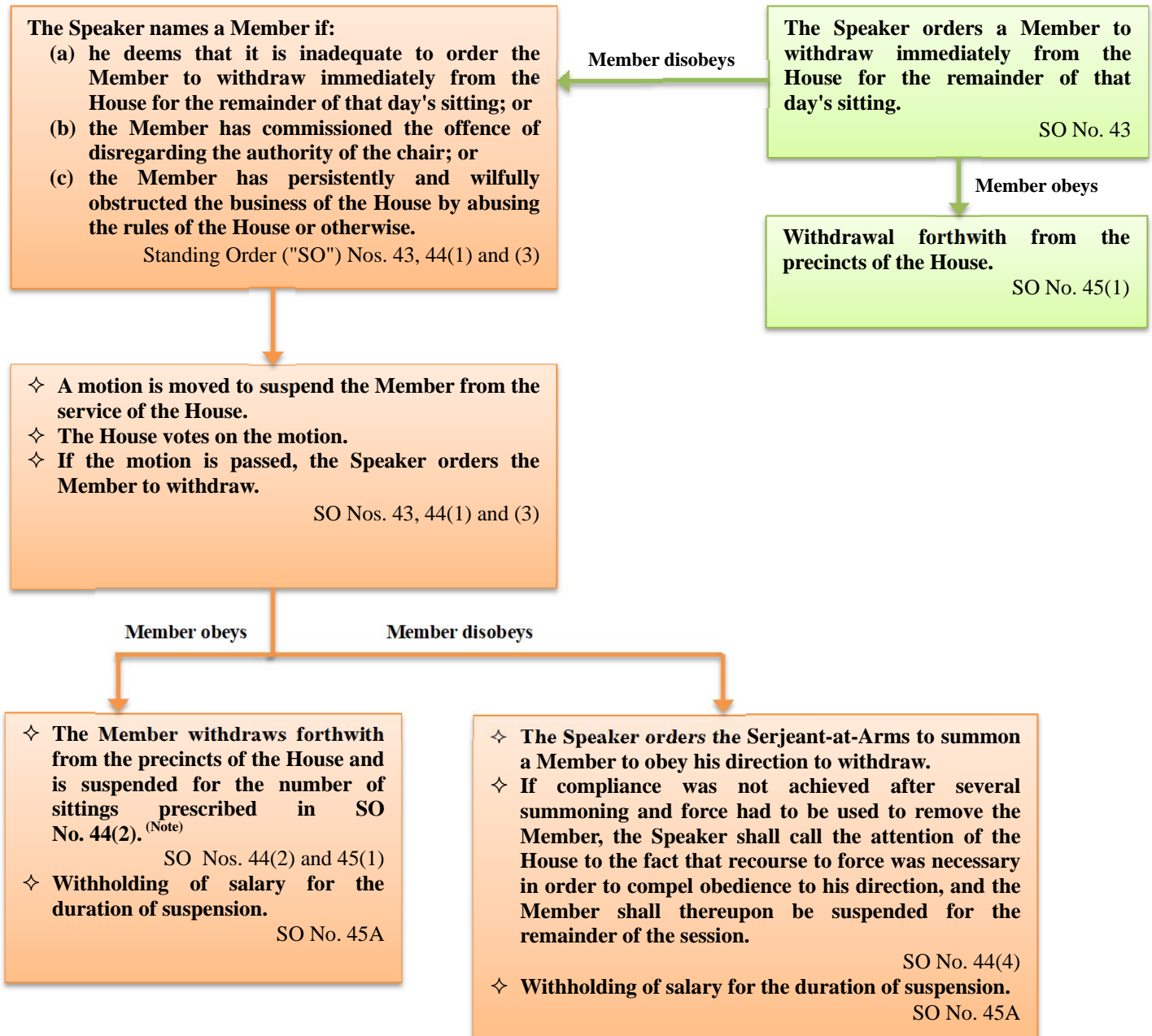
Speaker: **I have to call the attention of the House to the fact that resources to force has been necessary to compel obedience to my direction to withdraw.**

Accordingly, under Standing Order No. 44, the honourable Member is suspended From the service of the House during the remainder of this Session.

S.O. No. 44; Erskine May, p 452-4

Note: When a Member is ordered to withdraw or is suspended, the Clerk at the Table sends the Serjeant a note giving details. The Serjeant escorts the Member off the Parliamentary Estate (unless a suspended Member is serving on an Opposed Private Bill Committee).

Flow chart showing the process of imposing sanctions against grossly disorderly conduct of Members in the House of Commons of the Parliament of the United Kingdom

**Legend:**

- Green box : Sanction (1) – Order to withdraw.
Orange box : Sanction (2) – Naming for suspension.

Note:

According to SO No. 44(2) and Erskine May's *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 25th Edition, para. 21.50, the duration of suspension from the service of the House under that SO is on an escalating scale, ranging from five sittings (equivalent to five sitting days which is the wording used in SO No. 44(2)) on the first occasion, 20 sittings on the second occasion, and on any subsequent occasion until the House orders that the Member's suspension shall terminate or, in default such order, for the remainder of the session.

Relevant provisions of the Rules of Procedure of the Bundestag

Rule 38

Suspension of Members of the Bundestag

- (1) The President may order a Member of the Bundestag who has committed a serious breach of order or failed to respect the dignity of the Bundestag to leave the Chamber for the remainder of the sitting even if he or she has not been called to order or no fine has been imposed. Before the sitting is closed the President shall announce for how many sitting days the Member in question will be suspended. A Member of the Bundestag may be suspended for up to thirty sitting days.
- (2) A suspension of a Member from a sitting may be issued retrospectively, no later than the sitting subsequent to that in which the serious breach of order or failure to respect the dignity of the Bundestag took place, provided the President explicitly declares a breach of order or failure to respect the dignity of the Bundestag during the sitting in question and reserves the right to issue a suspension at a later point. The second and third sentences of paragraph (1) shall apply, *mutatis mutandis*. The fact that a call to order has already been made shall not preclude the possibility of a suspension from a sitting being issued retrospectively.
- (3) The Member concerned shall immediately leave the Chamber. If he or she refuses to obey the order, the President shall indicate to the Member that this behaviour will result in a prolongation of the suspension.
- (4) The Member concerned shall also be excluded from committee meetings for the duration of his or her suspension.
- (5) If the Member concerned attempts unlawfully to take part in sittings of the Bundestag or meetings of its committees, the second sentence of paragraph (3) shall apply, *mutatis mutandis*.
- (6) The Member concerned shall not be deemed to be on leave of absence. The Member may not enter his or her name in the attendance register.

Rule 39

Objection to measures for the maintenance of order

The Member concerned may, by the next sitting day, lodge a reasoned objection in writing to the call to order (Rule 36), to the fine (Rule 37) or to his or her suspension (Rule 38). The objection shall be placed on the agenda of that sitting. The Bundestag shall decide thereon without debate. The objection shall not have a delaying effect.

Legal issues related to imposing financial penalty in the Legislative Council

A detailed analysis of the legal issues relating to the power of the Legislative Council ("LegCo") (if any) to fine Members or withhold their remuneration is set out as follows:

- (a) At common law, a colonial legislature such as the pre-1997 LegCo did not possess inherent penal jurisdiction akin to that possessed by the Houses of the Westminster Parliament, although it had powers to take protective or non-punitive action to enable it to carry out its functions as a legislative body. In this regard, legislation has been enacted in jurisdictions such as New Zealand and some Australian states to confer on the relevant legislatures the power to impose penalties for contempt of Parliament. These penalties include fine and/or imprisonment. In Hong Kong, the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) was enacted in 1985 to codify "certain powers, privileges and immunities of [LegCo] and of the members and officers thereof". Certain acts which are recognized as contempt of Parliament in other jurisdictions are offences under Cap. 382 for which the courts are vested the power to impose a fine and/or imprisonment. These acts include interrupting the proceedings of the Council or a committee, assaulting or obstructing a member or officer of the Council and failure to attend before the Council or a committee after being summoned to do so.¹
- (b) The courts have held that the power to suspend members from the service of the House for a defined period of time for wilfully obstructing the proceedings of the House is a necessary power for legislatures, that legislative bodies have the power to suspend members from service of the House under the basis of necessity, and that Parliament could only use the suspension of a member as a means of self-defence and not a punitive measure.

On this basis, the courts held that while necessity dictates that Houses of Parliament are able to suspend members from the service of the House as a measure of protection or self-defence, this necessity does not confer a power for unconditional suspension.

¹ See sections 17 to 19 of Cap. 382.

Other powers of legislatures which have been held by the courts to be necessary, protective and non-punitive include expelling a member in order to ensure that its proceedings are conducted without disturbance and removing visitors for disturbing the proceedings in Parliament.

- (c) While the principle of reasonable necessity allows a colonial assembly or its presiding officer to take action necessary for its self-protection and the effective discharge of its functions as a legislative body, it has been held by the courts that punishment by fine or committal is beyond the competence of such assembly under common law.² In most Commonwealth legislatures, the power to fine for contempt is conferred by legislation.³
- (d) As regards whether a legislature has the power to suspend Members without pay, it is noted that the United Kingdom ("UK") House of Commons has the power to withhold suspended members' salaries under its standing orders.⁴ However, whether the same approach can be adopted by LegCo would require careful consideration having regard to the following:
 - (i) The courts have regarded the deprivation of a member of a legislature of his salary during the period of his suspension as punitive and falling within the same category of a monetary fine.⁵ Given its origin as a colonial legislature, LegCo had no inherent penal jurisdiction akin to that possessed by the UK Parliament.
 - (ii) Commonwealth jurisdictions such as New Zealand and South Africa have enacted legislation to confer on their respective legislatures the power to suspend members without pay or

² *Kielly v Carson* (1842) 4 Moo. PC. 63; *Fenton v Hampton* (1858) 11 Moo. P.C. 347.

³ See, for example, section 7 of the Parliamentary Privileges Act 1987 of Australia, and the *House of Representatives Practice* (7th edn.), pp. 765-766. Contrast the German Bundestag where RoP 37 empowers the President to impose a fine of €1000 (to be increased to €2000 on repetition) on a Member for a non-minor breach of order or failure to respect the dignity of the Bundestag.

⁴ The salary of a suspended Member is "withheld" under Standing Order 45A in the sense that the Member forfeits his salary during the period of his suspension: see *Erskine May* (24th edn., p. 54).

⁵ *R v Dickson; Ex parte Barnes* (1947) S.R.Qd. 133 at 137, Queensland Supreme Court.

remuneration.⁶ A similar approach is adopted in Taiwan and South Korea.⁷

- (iii) In jurisdictions where the remuneration of members of their legislatures is provided in statute, which, however, contains no provision for non-payment of remuneration during suspension, the courts have held that in the absence of an express enabling power to do so, the legislature concerned cannot withhold a suspended member's remuneration or deprive him of the allowances and benefits available to members of the legislature.⁸

Given the above matters and the principle of reasonable necessity mentioned in (b) and (c) above, it may not be safe for LegCo to rely on the practice of the UK House of Commons to forfeit a Member's remuneration without statutory authority. To avoid legal challenge, it is advisable to obtain legislative authority for depriving suspended LegCo Members of their remuneration,⁹ allowances and/or benefits as in the case of imposition of a fine on members of legislatures.

- (e) Given that a Suspension Motion against a Member, if passed by LegCo, would result in the suspension of the Member from the service of the Council and his remuneration and/or reimbursement of operating expenses being withheld, Members may consider whether and how procedural fairness should be afforded to the Member subject to the Suspension Motion having regard to the principles of natural justice and due process to avoid possible legal challenge.

2. If Members wish to impose financial penalties against grossly disorderly conduct, they may wish to consider:

⁶ See section 14 of New Zealand's Members of Parliament (Remuneration and Services) Act 2013; section 12(5) of South Africa's Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004.

⁷ See Article 28 of Taiwan's Legislator Demeanor Law; Article 163 of South Korea's National Assembly Act.

⁸ *R v Dickson; Ex parte Barnes* (1947), *ibid*; *Yang Dipertua, Dewan Rakyat & Ors v Gobind Singh Deo* [2014] 6 MLJ 812, Federal Court of Malaysia.

⁹ According to the report issued by the Independent Commission on Remuneration for Members in 1994, the work of LegCo Members is not a job but should be viewed as a service to the public for which some level of remuneration is necessary. The monthly payment for LegCo members should not be described as a salary.

- (a) whether new legislation or legislative amendments to Cap. 382 should be made to specifically empower LegCo to impose the proposed financial penalties;
- (b) whether remuneration as well as reimbursement of operating expenses should be withheld during the period of suspension; and
- (c) the procedure and practice for the purpose of affording procedural fairness to a Member facing potential suspension and financial penalty if the Suspension Motion against him/her is passed – for example, whether an appeal or objection procedure similar to that in the German Bundestag should be provided for to afford a suspended Member an opportunity to make representations to the Council by way of appeal against or objection to the suspension, or whether steps should be taken by the President before naming a Member and before the Council deals with a Suspension Motion to ensure that the Member is fully aware of the precise allegations against him and that he be given a reasonable opportunity to be heard.

Extract from Rules of Procedure regarding Members' misconduct

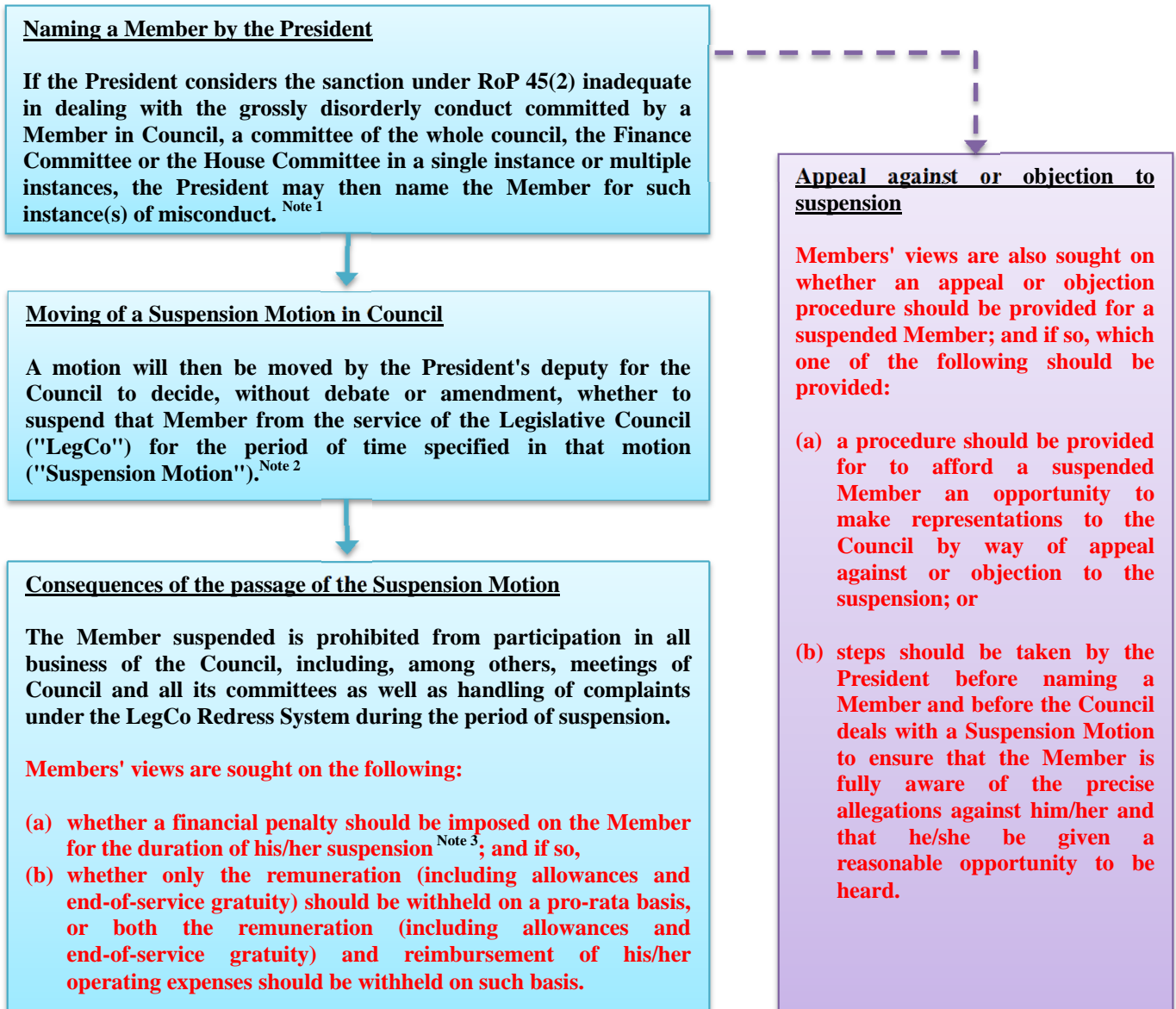
Rules of Procedure

45. Order in Council and Committee

- (1) The President, the Chairman of a committee of the whole Council or the chairman of any committee, after having called the attention of the Council or the committee to the conduct of a Member who persists in irrelevance or tedious repetition of his own or other Members' arguments in the debate, may direct him to discontinue his speech. *(L.N. 187 of 2017)*

- (2) The President, the Chairman of a committee of the whole Council or the chairman of any committee shall order a Member whose conduct is grossly disorderly to withdraw immediately from the Council or the committee for the remainder of that meeting; and the Clerk or clerk of any committee shall act on orders received by him from the Chair to ensure compliance with this order. *(L.N. 87 of 2011)*

Flow chart showing the procedure for imposing the proposed sanction if the President considers the sanction under Rule 45(2) of the Rules of Procedure inadequate in dealing with the grossly disorderly conduct of Members in Council, a committee of the whole council, the Finance Committee or the House Committee



Note 1: In determining whether to name the Member concerned, the President may take into account relevant factors set out in paragraph 6 of the circular.

Note 2: It is proposed that the proposed sanction should adopt an escalating scale of severity as follows:

Occasion of Suspension Motion passed in respect of the Member concerned during the same term	→	<u>Duration of suspension (week(s))</u>
First	→	1
Second	→	2
Third	→	4
Fourth	→	8

For any subsequent occasion(s) on which a Suspension Motion in respect of the Member concerned is passed, the duration of suspension is twice of the previous level, provided that such duration shall not extend beyond the end date of the legislative term concerned.

Note 3: For LegCo to impose a financial penalty on Members, express statutory authority through making new legislation or amending relevant existing legislation is required.

Questionnaire

(to be returned by Wednesday, 10 February 2021)

Fax No. : 2509 9055

To : Miss Lilian MOK
Clerk to Committee on Rules of Procedure
Legislative Council

Committee on Rules of Procedure

Consultation with all Members

My views on the proposed sanction under which Members who commit grossly disorderly conduct at the meetings of the Council, committee of the whole Council ("CoWC"), Finance Committee ("FC") or House Committee ("HC") shall be named and suspended from the service of the Legislative Council ("LegCo") ("the Proposed Sanction") (as set out in LC Paper No. CROP 41/20-21) are as follows:

(Please tick as appropriate. If the space for comments is insufficient, please provide your comments in separate sheets.)

I. Procedure for imposing the Proposed Sanction *(paragraph 6 of the paper)*

1. The procedure for imposing the Proposed Sanction will be triggered if the President of the Legislative Council ("the President") considers the withdrawal sanction under Rule 45(2) of the Rules of Procedure ("RoP") inadequate in dealing with the grossly disorderly conduct committed by a Member in Council, CoWC, FC or HC in a single instance or multiple instances. The President may then name the Member for such instance(s) of misconduct, taking into account relevant factors including the gravity of the conduct involved, the nature and extent of the interruption, damage and/or injury caused or threatened, and/or frequency at which the Member has committed similar conduct during the term and whether the Member disregarded the authority of the Chair, and/or persistently or wilfully obstructed the business of the Council or the committee concerned by abusing the rules of LegCo in that/those instances. A motion will then be moved by the President's deputy for the Council to decide, without debate or amendment, whether to suspend that Member from the service of LegCo for the period of time specified in that motion ("Suspension Motion").

<input type="checkbox"/> Support	<input type="checkbox"/> Not support	<input type="checkbox"/> No comment
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Other views/proposals, if any:

2. **Scope of application** (*paragraph 7 of the paper*)

- The Proposed Sanction shall apply to deal with grossly disorderly conduct committed by Members at the meetings of the Council, CoWC, FC and HC.

<input type="checkbox"/> Support	<input type="checkbox"/> Not support	<input type="checkbox"/> No comment
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Other views/proposals, if any:

3. **Duration of suspension** (*paragraph 8 of the paper*)

- The Proposed Sanction should adopt an escalating scale of severity as follows:

<u>Occasion of Suspension Motion passed in respect of the Member concerned during a term</u>	→	<u>Duration of suspension (week(s))</u>
1	→	1
2	→	2
3	→	4
4	→	8

For any subsequent occasion(s) on which a Suspension Motion in respect of the Member concerned is passed, the duration of suspension is twice of the previous level, provided that such duration shall not extend beyond the end date of the legislative term concerned.

<input type="checkbox"/> Support	<input type="checkbox"/> Not support	<input type="checkbox"/> No comment
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Other views/proposals, if any:

4. **Consequences of suspension from service**

(a) Prohibition from participation in all Council business
(paragraph 9 of the paper)

The Member suspended is prohibited from participation in all business of the Council, including, among others, meetings of Council and all its committees as well as handling of complaints under the LegCo Redress System held during the period of suspension.

<input type="checkbox"/> Support	<input type="checkbox"/> Not support	<input type="checkbox"/> No comment
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Other views/proposals, if any:

(b) Suspension of remuneration, allowances, gratuity and suspension of reimbursement of operating expenses (paragraphs 10 and 11 of the paper)

(i) Financial penalty should be imposed on a Member for the duration of his/her suspension.

<input type="checkbox"/> Support	<input type="checkbox"/> Not support	<input type="checkbox"/> No comment
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(ii) If you support (b)(i) above, please indicate which one of the following financial penalties should be imposed:

only the remuneration (including allowances and end-of-service gratuity) should be withheld on a pro-rata basis; or

both the remuneration (including allowances and gratuity) and reimbursement of his/her operating expenses should be withheld on a pro-rata basis.

Other views/proposals, if any:

5. **Appeal against or objection to suspension** (paragraphs 12 and 13 of the paper)

(a) an appeal or objection procedure should be provided for a suspended Member.

<input type="checkbox"/> Support	<input type="checkbox"/> Not support	<input type="checkbox"/> No comment
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(b) If you support 5(a) above, please indicate which one of the following should be provided:

- a procedure should be provided for to afford a suspended Member an opportunity to make representations to the Council by way of appeal against or objection to the suspension; or
- steps should be taken by the President before naming a Member and before the Council deals with a Suspension Motion to ensure that the Member is fully aware of the precise allegations against him/her and that he/she be given a reasonable opportunity to be heard.

Other views/proposals, if any:

II. Additional comments

Signature : _____

Name of Member : _____

Date : _____