

立法會
Legislative Council

LC Paper No. CB(1)60/00-01
(These minutes have been
seen by the Administration)

Ref : CB1/F/1/2

Finance Committee of the Legislative Council

Minutes of the 5th meeting
held at the Legislative Council Chamber
on Friday, 5 January 2001, at 2:30 pm

Members present:

Dr Hon Philip WONG Yu-hong (Chairman)
Hon NG Leung-sing (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, JP
Hon David CHU Yu-lin
Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Eric LI Ka-cheung, JP
Dr Hon David LI Kwok-po, JP
Hon Fred LI Wah-ming, JP
Dr Hon LUI Ming-wah, JP
Prof Hon NG Ching-fai
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching
Hon CHAN Kwok-keung
Hon CHAN Yuen-han
Hon Bernard CHAN
Hon CHAN Kam-lam
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP

Hon WONG Yung-kan
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung
Hon LAU Kong-wah
Hon Mrs Miriam LAU Kin-yee, JP
Hon Ambrose LAU Hon-chuen, JP
Hon CHOY So-yuk
Hon SZETO Wah
Hon Timothy FOK Tsun-ting, SBS, JP
Hon LAW Chi-kwong, JP
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, JP
Hon Henry WU King-cheong, BBS
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon Albert CHAN Wai-yip
Hon LEUNG Fu-wah, MH, JP
Dr Hon LO Wing-lok
Hon WONG Sing-chi
Hon Frederick FUNG Kin-kee
Hon IP Kwok-him, JP
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP

Members absent:

Hon LAU Chin-shek, JP
Hon LAU Wong-fat, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo

Public officers attending:

Mr Stanley YING, JP
Mr K K LAM

Miss Angela LUK, JP

Dr LAM Ping-yan, JP

Deputy Secretary for the Treasury
Principal Executive Officer (General),
Finance Bureau
Principal Assistant Secretary for Health
and Welfare
Deputy Director of Health

Dr L Y TSE, JP	Consultant (Community Medicine) of Department of Health
Mr Alex MA	Assistant Director of Information Technology Services
Mr Kim SALKELD, JP	Deputy Secretary for the Environment and Food
Mr Donald TONG	Principal Assistant Secretary for the Environment and Food

Clerk in attendance:

Ms Pauline NG	Assistant Secretary General 1
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Staff in attendance:

Miss Polly YEUNG	Chief Assistant Secretary (1)3
Ms Sarah YUEN	Senior Assistant Secretary (1)4

Item No. 1 - FCR(2000-01)60

**CAPITAL WORKS RESERVE FUND
HEAD 710 - COMPUTERISATION
Department of Health**

♦ **New Subhead "Public Health Information System"**

Members noted that the Panel on Health Services had discussed the present proposal on 13 November 2000.

2. The Committee approved the proposal.

Item No. 2 - FCR(2000-01)61

**HEAD 154 - GOVERNMENT SECRETARIAT : ENVIRONMENT AND FOOD
BUREAU**

♦ **Subhead 149 General departmental expenses**

3. Members noted that the Panel on Environmental Affairs had discussed the present proposal on 2 January 2001.

4. On whether other members of the Environmental Impact Assessment (EIA) Appeal Board panel could serve as Chairman of the EIA Appeal Board (the Appeal Board) for the Spur Line case, the Deputy Secretary for the Environment and Food (DS(EF)) advised that only the Chairman or Deputy Chairman of the Appeal Board

panel, who were persons qualified for appointment as a District Court Judge, would be eligible for appointment as Chairman of the Appeal Board. However, the Chairman of the Appeal Board panel had declared that he had expressed a personal opinion on the subject before the appeal was lodged, and that he would disqualify himself from sitting as the Chairman of the Appeal Board on this case. The Deputy Chairman of the Appeal Board panel subsequently also disengaged himself on grounds of potential conflict of interests. Hence, it was necessary to appoint another qualified person to chair the Appeal Board.

5. As regards the financial implications of the present proposal, DS(EF) pointed out that the estimated cost was for illustrative purpose only. The actual amount of the remuneration payable would depend on the actual duration of the appeal proceedings. Members' approval in principle was being sought for the proposed remuneration package for the Chairman of the Appeal Board. In this connection, Miss Audrey EU sought clarification on whether the costs payable by the party which lost the appeal would also include the costs for constituting the Appeal Board.

Admin

6. In reply to the Chairman's enquiry about the remuneration of the Chairmen of other environmental appeal boards as stated in Footnote 3 of the discussion paper, DS(EF) clarified that the remuneration package therein applied to the Chairman of the appeal boards appointed under other environment-related ordinances. At present, there was no authorized remuneration package for the Chairman of an appeal board appointed under the EIA Ordinance.

7. Miss Margaret NG queried the appropriateness of appointing a non-permanent Hong Kong Judge of the Court of Final Appeal (CFA) as Chairman of the Appeal Board, given that appeals against the decision of the Appeal Board on points of law would be heard by the Court of Appeal which was a lower court than the CFA. Notwithstanding her comment that engaging the service of a CFA Judge on the proposed remuneration was good value for money, Miss NG pointed out that there should be plenty of qualified and interested candidates locally, given that persons qualified for appointment as a District Court Judge were already eligible to serve as Chairman of the Appeal Board.

8. In response, DS(EF) explained that the Administration considered it necessary to appoint a person of extensive judicial experience and with no affiliation to any stakeholders. In identifying candidates, the Administration had been advised by the Department of Justice to approach the Judiciary to see if any serving judge would be available. Given the weight of the case, the Judiciary's advice was that the appointed person should be at the level of High Court Judge or above. However, having regard to its present workload, the Judiciary confirmed that it would not be in a position to release a serving judge at the level of District Court Judge or above. DS(EF) supplemented that since the Chairman to be appointed was not a permanent Judge of the CFA, he would not necessarily hear appeals, if any, against the decision of the Appeal Board chaired by him.

Admin

9. Responding to some members' query about the urgency of appointing the Chairman of the Appeal Board, DS(EF) advised that submissions from both parties, i.e. the Kowloon-Canton Railway Corporation and the Director of Environmental Protection had been received in November 2000. Both parties had also requested for extension of the deadline for making submissions and a direction from the Chairman of the Appeal Board was required urgently. As the incumbent Chairman and Deputy Chairman of the Appeal Board panel had both declined to issue some direction, the appointment of an Appeal Board Chairman should be made without delay in order that the appeal proceedings would not be held in abeyance. He agreed to provide more detailed information on the various statutory time limits after the meeting. Given the considerable importance of the Spur Line project, it would be in the interest of the public for the appeal to be heard early. DS(EF) also highlighted the uncertainty over whether other suitably qualified persons would be available and willing to act as Chairman.

10. Noting that expenses for hotel accommodation and airfare would be incurred under the present proposal, Mr IP Kwok-him was concerned whether qualified persons who resided in Hong Kong had been considered for appointment. As to the additional time required if the Administration was to consider qualified candidates outside the Judiciary, DS(EF) said that he was not in a position to advise as the recommendations given to the Bureau by the Judiciary and the Department of Justice had not included outside practitioners.

11. Miss Audrey EU recapitulated her concerns raised at the Environmental Affairs Panel meeting that as a matter of principle, the Administration should also have explored the availability of local, qualified practitioners apart from considering only serving judges. The proposed appointment might be acceptable if no local qualified candidates were available and willing to chair the Appeal Board. Miss EU also pointed out that there should be plenty of local practitioners who would be prepared to accept the appointment as a form of public service in receipt of only a nominal fee. She did not concur with the urgency of the appointment as despite the availability of the Chairman of the Appeal Board, the dates of the hearing would also have to be agreed by the counsel of both parties. She held the view that the Administration had erred in its procedures of making the present appointment. However, in order to avoid further delay and in recognition that there was no guarantee of securing a suitable local candidate for the chairmanship, she would support the present proposal as a very exceptional case. She nevertheless urged the Administration to review and improve the relevant arrangements in future.

12. Mr Albert HO considered it totally inappropriate to appoint a non-permanent Judge of the CFA to serve as Chairman of the Appeal Board. To elaborate, he recalled that when studying the Town Planning (Amendment) Bill 1995, Members had shared the view that in appointing a judge to serve as Chairman/Deputy Chairman of the Appeal Board, the Administration should appoint a judge from the High Court or below instead of a Justice of Appeal because it might cause embarrassment if a High Court Judge was asked to quash the decision of the Appeal Board chaired by a

Justice of Appeal.

13. Mr Martin LEE considered it very strange that the Judiciary had advised the Bureau to consider non-permanent Judges of the CFA for appointment, given that a District Court Judge would suffice for the chairmanship of the Appeal Board. Mr Albert HO stated his view that the Administration should not indicate to the Judiciary its preference on the level of judge. In reply, DS(EF) pointed out that the Administration's preference was a serving judge and it had not made any indication to the Judiciary on the level of the judge.

14. Miss Margaret NG reiterated her view that the Administration had made a wrong start by approaching the Judiciary only for serving judges as the Judiciary was not in a position to recommend outside candidates. She said that if the Administration could convince her of the utter urgency of the appointment, she would support the case on a one-off basis in consideration that there was no absolute conflict of interests as the non-permanent CFA Judge serving as Chairman of the Appeal Board would give his ruling in his capacity as Chairman, and this should not affect the independence of the Court of Appeal if being asked to review the Board's decision.

15. Noting the Administration's remark that the weight of an appeal case such as the Spur Line case might necessitate the appointment of an Appeal Board Chairman well above the minimum requirement, Miss Margaret NG asked whether the Administration would consider amending the relevant legislation to reflect such an arrangement. She registered her protest against the arrangement in the present case as it seemed to reflect that qualified professionals below the level of CFA Judge might not be competent for the chairmanship. She also sought the Administration's undertaking that for similar appointments in future, it would be obliged to first consider qualified candidates from the local Bar Association and Law Society.

16. In response, DS(EF) elaborated that in appointing members of appeal panels where ample time was usually available, the Administration would be in a position to conduct a more extensive search for local qualified persons. In this regard, members noted that the serving Chairman and Deputy Chairman of the Appeal Board panel were local practitioners. DS(EF) assured members that in the light of the experience gained in the Spur Line case, the Administration would review the composition of the Appeal Board panel. If as a result of the review, there was a need to amend the relevant legislation, the Administration would take action accordingly. He considered the present case one-off in nature as it involved a specific appeal case requiring timely directions from the Chairman of the Appeal Board.

17. Mr IP Kwok-him noted that the Administration had not approached the local legal profession before resorting to the appointment of a non-permanent CFA Judge. He considered this arrangement unsatisfactory and stated that Members of the Democratic Alliance for Betterment of Hong Kong would not support the present proposal.

18. Mr Martin LEE considered that as either party would likely appeal against the decision of the Appeal Board and such an appeal would lie with the Court of Appeal, it would be very difficult for the Court of Appeal to review and if necessary, to quash the decision of the Appeal Board chaired by a CFA Judge. He also shared the view that there was a large pool of qualified local practitioners eligible for appointment. Mr LEE commented that the Administration had not taken the proper course of action in making the appointment. He said that Members of the Democratic Party were not prepared to support the present proposal.

19. On account of the importance of the case, Mrs Miriam LAU saw no problem with appointing a Chairman above the minimum qualification as this would enhance the credibility of his ruling on the case. She expressed support for the present proposal in order that the appeal case in question be dealt with expeditiously. She nevertheless agreed that the composition of the Appeal Board panel should be reviewed to avoid recurrence of the present difficulties.

20. Regarding the urgency for a decision on the remuneration package, DS(EF) explained that the person appointed had already been supplied with relevant documents pending Finance Committee (FC)'s approval of the remuneration package, so that he could give the direction within the statutory time-frame. Mr CHEUNG Man-kwong and Mr LEUNG Yiu-chung queried the appropriateness of appointing the CFA Judge prior to obtaining formal funding approval by the FC. They considered that in doing so, the Administration was seeking to pre-empt FC's decision on the proposal. They also enquired on the consequence if the present proposal was not approved.

21. In response, DS(EF) advised that under section 20 of the EIA Ordinance, the Chief Executive might appoint a qualified person to act as Chairman of the Appeal Board. However, the remuneration package of the Chairman so appointed would require FC's approval. This had been made clear to the appointed person. Nevertheless, given the large volume of materials in connection with the appeal case and with the person's agreement, the Administration had made available such materials for his advance perusal. DS(EF) affirmed that the Administration had not made any presumption on FC's approval. If the present proposal was not approved and the appointed person was not prepared to render his service without remuneration, the Administration would have to look for another person and the appeal proceedings could not commence.

22. Mr CHAN Kam-lam suggested that the Administration should withdraw the paper and seek to identify other local qualified candidates and revert to this Committee again.

23. Miss Margaret NG saw no great problem with withdrawing the paper as the Administration should be able to ascertain whether local qualified persons were available to take up the chairmanship in about a week's time. She considered that whilst approval of the remuneration package was pending, the current appointment by

the Chief Executive was still valid. She suggested that if necessary, a special meeting be convened to enable the Administration to re-submit its proposal early.

24. Mr Andrew WONG on the other hand considered that the present proposal should not be withdrawn, lest members' objection might be mis-interpreted as disagreement with the appointment made by the Chief Executive. He commented that if the Administration had devised a remuneration package for appointing an Appeal Board Chairman in the event that both the panel Chairman and Deputy Chairman could not act as Chairman, the current difficulties would not arise.

25. In this connection, the Deputy Secretary for the Treasury (DS(Tsy)) remarked that although the qualification of the person to be appointed as Chairman of the Appeal Board was above the basic requirement, such an appointment was legally in order. He stressed that the present case was an exceptional one arising from the inability of the serving panel Chairman and Deputy Chairman to act as Chairman of the Appeal Board. However, in view of members' concerns, DS(Tsy) agreed to withdraw the proposal.

26. The proposal was withdrawn by the Administration.

27. The Committee was adjourned at 3:35 pm.

Legislative Council Secretariat

March 2001