

立法會
Legislative Council

LC Paper No. CB(1)1126/07-08
(These minutes have been seen
by the Administration)

Ref : CB1/SS/6/07/1

**Subcommittee on Proposed Resolution under Section 7(1) of the
Public Finance Ordinance (Cap.2)**

**Minutes of the first meeting
held on Friday, 29 February 2008, at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)
Hon CHAN Kam-lam, SBS, JP
Hon SIN Chung-kai, SBS, JP
Hon Emily LAU Wai-hing, JP
- Public officers attending** : Financial Services and the Treasury Bureau

Miss Amy TSE
Deputy Secretary for Financial Services and the
Treasury

Ms Rhoda CHAN
Principal Assistant Secretary for Financial Services and
the Treasury

Department of Justice

Mr Michael LAM
Senior Assistant Law Draftsman
- Clerk in attendance** : Miss Polly YEUNG
Chief Council Secretary (1)5
- Staff in attendance** : Mr Jimmy MA
Legal Adviser

Ms Pauline NG
Assistant Secretary General 1

Mr Timothy TSO
Assistant Legal Adviser 2

Ms Elyssa WONG
Deputy Head (Research and Library)

Mr Michael YU
Research Officer

Ms Rosalind MA
Senior Council Secretary (1)8

Ms Sharon CHAN
Legislative Assistant (1)8

I Election of Chairman

Mr James TO was nominated by Mr SIN Chung-kai and the nomination was seconded by Ms Emily LAU. Mr TO accepted the nomination. There being no other nominations, Mr James TO was elected the Chairman of the Subcommittee.

II Meeting with the Administration

(LC Paper No. CB(1)925/07-08(01) —Paper provided by the Administration

LC Paper No. LS52/07-08 —The Legal Service Division Report on the Subsidiary Legislation

LC Paper No. CB(3)387/07-08 —Proposed resolution under section 7(1) of the Public Finance Ordinance (Cap.2)

LC Paper No. CB(3)387/07-08 —Draft speech by the Secretary for Financial Services and the Treasury moving the vote on account resolution in the Legislative Council on 5 March 2008

LC Paper No. CB(1)925/07-08(02) —Footnote to the draft speech by the Secretary for Financial Services and the Treasury moving the vote on

account resolution in the Legislative Council on 5 March 2008

LC Paper No. CB(1)926/07-08 —Background brief on proposed resolution under section 7(1) of the Public Finance Ordinance (Cap.2) prepared by the Legislative Council Secretariat

LC Paper No. CB(1)950/07-08 (01) —Administration's letter dated 28 February 2008 providing supplementary information to its paper for the Subcommittee

2. The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

3. Arising from the substantial amount of funds on account to be sought under the proposed resolution calculated with reference to the existing formula, the Administration was requested to:

- (a) consider whether the existing benchmarks (i.e. 20% and 100% respectively in respect of an Operating Account Recurrent subhead and an Operating Account Non-recurrent subhead or Capital Account subhead) for determination of the amount of funds on account to be sought should continue to be applied invariably; and in this connection, to consider the feasibility of a member's suggestion that in respect of non-recurrent expenditure subheads, the Administration should only seek funds on account for those essential or urgent items but not all non-recurrent/ capital expenditure items; and
- (b) confirm in writing the legal basis for the Financial Secretary to seek approval of the Finance Committee (FC) for expenditure of the funds on account (for example, funds held under Head 106 subhead 789 Non-recurrent Additional commitments) in accordance with the Public Finance Ordinance (PFO) (Cap. 2) after the passing of the resolution by the Legislative Council (LegCo) and before the enactment of the Appropriation Ordinance.

4. To address members' concerns about the tight timeframe for the LegCo to scrutinize the proposed resolution, the Administration was requested to:

- (a) examine the feasibility of giving notice to move the proposed resolution after the Estimates of Expenditure for the coming financial year has been laid before the Council; and

- (b) review the existing arrangement of calculating the amount of funds on account on the basis of the Estimates for the coming financial year but not the approved Estimates of the current financial year.

(Post-meeting note: The Administration's written response to paragraphs 3 and 4 above was issued to members vide LC Paper No. CB(1)959/07-08(01) on 3 March 2008.)

5. In connection with paragraph 3(b), the Subcommittee also requested the Legal Service Division (LSD) of the Secretariat to advise whether the Government could, before the enactment of the Appropriation Ordinance, expend the respective sums of money charged on the General Revenue in accordance with the resolution passed under section 7(1) of PFO without seeking the approval of FC.

(Post-meeting note: The paper prepared by LSD in response to the request in paragraph 5 above was issued to members vide LC Paper No. LS59/07-08 on 3 March 2008.)

III Any other business

The way forward and meeting arrangement

6. In principle, the Subcommittee did not object to providing funds on account to enable the Government to carry on existing services prior to the enactment of the Appropriation Ordinance 2008. Members had no objection to the moving of the proposed resolution on 5 March 2008 as notified by the Secretary for Financial Services and the Treasury. Nevertheless, the Subcommittee considered it necessary to follow up with the Administration the policy and legal issues arising from the proposed resolution in relation to the arrangement of seeking funds on account. Members agreed that another meeting be scheduled for Monday, 3 March 2008 to discuss further the relevant issues having regard to the Administration's written response and the advice provided by LSD.

(Post-meeting note: The notice of meeting to be held on 3 March 2008 was issued to members vide LC Paper No. CB(1)959/07-08 on 29 February 2008.)

7. Members also agreed that the Subcommittee should make a verbal report to the House Committee (HC) at the meeting to be held in the afternoon of the same day, i.e. 29 February 2008. As the Chairman would be out of town, he could not report on behalf of the Subcommittee. Members agreed that Ms Emily LAU would make the verbal report on behalf of the Chairman. To facilitate non-Subcommittee Members' consideration of the proposed resolution at the Council meeting on 5 March 2008, the Secretariat would prepare the Subcommittee's written report urgently for circulation to HC members before 5 March 2008.

Action

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(Post-meeting note: The Subcommittee's report for HC was issued to members vide LC Paper No. CB(1)981/07-08 on 4 March 2008.)

8. There being no other business, the meeting ended at 9:42 am.

Council Business Division 1
Legislative Council Secretariat
26 March 2008

**Subcommittee on Proposed Resolution under Section 7(1) of the
Public Finance Ordinance (Cap.2)
First meeting on Friday, 29 February 2008, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000211	Mr James TO Mr SIN Chung-kai Ms Emily LAU	Election of Chairman	
000212 – 001208	Chairman Administration	Briefing by the Administration (<i>LC Paper Nos.</i> <i>CB(1)925/07-08(01) and</i> <i>CB(1)950/07-08(01)</i>)	
01209 – 001758	Mr SIN Chung-kai Administration Chairman	<p>(a) Concern shared by Mr SIN Chung-kai and the Chairman on :</p> <p>(i) the substantial amount of funds on account being sought under the proposed resolution;</p> <p>(ii) the application of the 100% funding formula on all non-recurrent expenditure subheads; and</p> <p>(iii) whether the use of the funds on account, on being approved by LegCo by resolution, would be subject to approval of the Finance Committee (FC) (for example, the use of the provision under Head 106 for new initiatives announced in the 2008-09 Budget).</p> <p>(b) The Administration's response that the actual expenditure for non-recurrent items would not be charged to the Additional Commitments Subhead 789 under Head 106 direct. Instead, the Administration would seek FC's approval to transfer the required funding</p>	

Time Marker	Speaker	Subject(s)	Action Required
		from Head 106 to the appropriate heads and subheads.	
001759 – 001914	Mr CHAN Kam-lam	Mr CHAN Kam-lam's view that it was necessary to provide funds on account to enable the Government to carry on existing services prior to the enactment of the Appropriation Ordinance 2008.	
001915 – 003125	Ms Emily LAU Administration Chairman	<p>(a) Ms Emily LAU's concern about the tight timeframe for the Legislative Council (LegCo) to scrutinize the proposed resolution. Referring to the interim budgetary arrangements of overseas jurisdictions, Ms LAU noted with concern that the approach adopted in Hong Kong differed from those practised by other jurisdictions.</p> <p>(b) The Administration's explanation that-</p> <p>(i) Under the existing budgetary timetable, the Estimates of Expenditure for the coming financial year were unlikely to be finalized before early February. Due to the confidentiality of the Appropriation Bill which reflected the spending initiatives to be announced in the Budget, the Administration could only release the details of the amount sought under each head of expenditure on the Budget Day. The Administration would normally move the motion on the Vote on Account not later than the last but one LegCo meeting before the close of the current financial year to ensure that funds were voted before the start of the following financial year.</p>	The Administration to take actions as required in paragraph 4 of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
		<p>(ii) There was a statutory requirement under section 7(2) of the Public Finance Ordinance (PFO) (Cap. 2) for expenditure charged on the General Revenue pursuant to the resolution to be arranged in accordance with the heads and subheads shown in the Estimates of Expenditure for the next following financial year, not the current financial year. Moreover, there might be reorganization in the Government resulting in changes in heads and subheads from time to time. Hence, working out the funding on the basis of the Estimates of the current financial year might not truly reflect the funding requirements in the following financial year.</p>	
003126 – 005155	<p>Mr SIN Chung-kai Administration Chairman Ms Emily LAU Legal Adviser (LA)</p>	<p>(a) Mr SIN Chung-kai's further query about whether the Administration would be required to seek FC's approval for expending the funding under Head 106 for new initiatives such as the Electricity Charge Subsidy and one-off injection into employees' Mandatory Provident Fund schemes etc.</p> <p>(b) The Administration's reassurance that the actual expenditure for the new initiatives would not be charged to Head 106 direct. Approval of FC would be required for the Administration to transfer the required funding from Head 106 to the respective heads and subheads. According to the financial authority delegated by FC, the Administration would need to seek the approval of FC</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>for creating any commitment in excess of \$10 million.</p> <p>(c) Noting that pursuant to section 8 of PFO, FC could only approve changes to the "approved" estimates of expenditure upon a proposal of the Financial Secretary (FS), LA questioned the legal basis for FC to approve the aforesaid transfer of funds after the passing of the resolution but before the enactment of the Appropriation Ordinance (i.e. before the Estimates of Expenditure were "approved").</p> <p>(d) The Chairman's view that it was possible that the Administration could directly charge the expenditure for new initiatives to Head 106 after the resolution was passed, thereby undermining the scrutiny role of LegCo.</p> <p>(e) The Administration's advice that by virtue of section 7(2) of PFO, estimates approved under a resolution were regarded as though they were the approved estimates of expenditure. Hence, section 8 of PFO was applicable.</p> <p>(f) LA's advice that section 5 of PFO did not prevent the Administration from tabling the Estimates of Expenditure prior to giving notice to move the motion on the Vote on Account resolution, thereby providing Members with the necessary detailed information on the funds on account being sought.</p> <p>(g) The Administration's response that :</p> <p>(i) Under the existing budgetary</p>	<p>The Administration to take actions as required in paragraph 3(b) of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>timetable, the Estimates of Expenditure were unlikely to be finalized before early February. Due to the confidentiality of the spending initiatives to be announced in the Budget, the Administration could only release the details of the amount sought under each head of expenditure on the Budget Day.</p> <p>(ii) the Vote on Account resolution had to be moved in a timely manner in order that funds were voted before the start of the new financial year on 1 April.</p> <p>(iii) the Administration would normally move the motion on the Vote on Account resolution not later than the last but one LegCo meeting before the close of the current financial year. The actual date would hinge on the schedule of LegCo meetings for that legislative session. For example, for the 2007-2008 session, there were only two Council meetings in March 2008. The Administration had therefore given notice to move the motion on 5 March 2008.</p>	
005156 – 005830	Mr SIN Chung-kai Administration Chairman	(a) Mr SIN Chung-kai's concern about the substantial amount of funds sought under the proposed resolution. His view that the Administration should only seek funds on account for those essential or urgent items instead of applying the 100% funding formula invariably on all Operating Account Non-recurrent subheads and Capital Account subheads.	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) The Administration's response that due to the irregular nature of the expenditure under Non-recurrent and Capital Account subheads, 100% of their provision as shown in the Estimates was sought. This percentage had long been adopted and had in the past appropriately met the interim funding requirements.</p> <p>(c) The Chairman's view that the Administration should consider Mr SIN Chung-kai's suggestion and whether the existing benchmarks for computing the amount of funds on account should continue to be adopted.</p>	<p>The Administration to take actions as required in paragraph 3(a) of the minutes.</p>
005831 – 010006	Ms Emily LAU	Ms Emily LAU invited LA to provide his comments on the legal basis for FS to seek approval of FC for expenditure of the funds on account in accordance with PFO.	The Legal Service Division to take actions as required in paragraph 5 of the minutes.
010007 – 011240	Mr SIN Chung-kai Chairman Ms Emily LAU Clerk Administration Mr CHAN Kam-lam	The legislative timetable, way forward and meeting arrangement.	