

立法會
Legislative Council

LC Paper No. LS59/07-08

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

At the subcommittee's meeting on 29 February 2008, the Legal Service Division was requested to advise on the question of whether the Government can, before the passing of the Appropriation Bill, expend the sum charged on the general revenue against the heads of expenditure as shown in the Estimates of Expenditure 2008-09 (the Estimates) in accordance with the resolution passed under section 7(1) of the Public Finance Ordinance (Cap. 2) (the Ordinance) without seeking the approval of the Finance Committee. Provisions referred to in this paper are those of the Ordinance. They are annexed for members' easy reference.

2. Section 7(1) provides, "[t]he Legislative Council may, in advance of an Appropriation Ordinance, by resolution authorize expenditure for the services of the Government in respect of a financial year to be charged on the general revenue, in accordance with this Ordinance and subject to such limitations and conditions as may be specified in the resolution."

3. Under section 7(2), "expenditure charged on the general revenue pursuant to a resolution under this section shall be arranged in accordance with the heads and subheads shown in the estimates of expenditure laid under section 5". The subsection also provides that the provisions of the Ordinance shall, for the purposes of this subsection and subject to such conditions and limitations as may be specified in the resolution, apply to such estimates as though they were the approved estimates of expenditure.

4. The Estimates were laid before the Legislative Council pursuant to section 5(1) on 27 February 2008, the same date when the Appropriation Bill 2008 was introduced into the Legislative Council. It is being examined by the Finance Committee before Second Reading debate on the Appropriation Bill 2008 is resumed. According to section 6(2), it shall be deemed to be approved by the Council upon the enactment of the Appropriation Ordinance 2008 and shall have effect from the first day of the financial year 2008-09, i.e. 1 April 2008.

5. Section 7(2) treats the Estimates as though they were the approved estimates of expenditure so that other provisions of the Ordinance apply to them for the purposes of that subsection. At the meeting, the Administration expressed the view that since section 7(2) has the effect of turning the

Estimates into the approved estimates of expenditure, no changes shall be made to the Estimates except with the approval of the Finance Committee given in accordance with section 8(1). As an example, the Administration explained that the approval of the Finance Committee would be required under section 8(1) before a sum under Head 106 (Miscellaneous Services) is to be expended under another head or subhead under the authority of the resolution passed under section 7(1) because such change would be a change to the approved estimates of expenditure.

6. The Finance Committee is given the power to change the approved estimates of expenditure upon a proposal of the Financial Secretary under section 8(1). As section 7(2) treats the Estimates as though they were the approved estimates of expenditure, it appears that no changes shall be made to the Estimates except with the approval of the Finance Committee.

7. The Finance Committee's role in approving changes to the Estimates both before and after the enactment of the Appropriation Ordinance 2008 may be illustrated by an analysis of how the amounts of money charged to Subheads 251 and 789 of Head 106 (Miscellaneous Services) may be expended. According to paragraph 1 of the Controlling Officers' Report for Head 106, "expenditure under this Head is for items which cannot properly be charged to other heads of expenditure". These items include Subheads 251 and 789 which are identified as 'Additional commitments'. These two subheads do not, as they stand, define clearly the purpose or scope of the expenditure. However, paragraphs 2 and 4 of the Details of Expenditure by Subhead provide details of these additional commitments as, among other things, "to meet funding for initiatives under planning". It seems clear from such formulation in the Estimates that the amounts of money put under Subheads 251 and 789 could only be used for the purpose of reallocating them to other subheads under specific policy areas as and when expenditure under these other subheads are approved by the Finance Committee in the course of the 2008-09 financial year.

8. To conclude, the Legal Service Division is of the view that there is no requirement under the Ordinance for the Administration to seek the approval of the Finance Committee for expending the respective sums of money charged to General Revenue in accordance with the resolution passed under section 7(1). However, the Finance Committee's approval will have to be sought if a sum under a certain head of expenditure to be expended is to be charged to a different head of expenditure.

Encl.
Prepared by
Legal Service Division
Legislative Council Secretariat
3 March 2008


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	Section: 5	Heading: Annual estimates	Version Date: 30/06/1997

PART II

THE ESTIMATES OF REVENUE AND EXPENDITURE, AND APPROPRIATION

(1) The Financial Secretary shall cause to be prepared in each financial year estimates of the revenue and expenditure of the Government for the next following financial year, and shall cause such estimates to be laid before the Legislative Council before or as soon as practicable after the commencement of the financial year to which they relate.

(2) Subject to subsection (3), the estimates of revenue and expenditure shall be in such form as the Financial Secretary may from time to time direct.

(3) The estimates of expenditure shall-

- (a) classify expenditure under heads and subheads with the ambit of each head described;
- (b) in respect of each head show the estimated total expenditure, the provision sought in respect of each subhead, the establishment of posts (if any), and the limit (if any) to the commitments which may be entered into in respect of expenditure which is not annually recurrent; and
- (c) specify the controlling officer designated in respect of each head and subhead under section 12.

(4) Where there is a requirement under any enactment that expenditure be met from the general revenue, provision for such expenditure shall be included in the estimates of expenditure for the purposes of this Part, but without prejudice to the validity or effect of any such requirement.

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Section:	6	Heading:	Approval of estimates of expenditure and appropriation	Version Date:	30/06/1997

- (1) The heads contained in the estimates of expenditure for a financial year shall be included in an Appropriation Bill which shall be introduced into the Legislative Council at the same time as the estimates.
- (2) Upon the enactment of the Appropriation Ordinance the estimates of expenditure for the financial year to which the Ordinance relates shall be deemed to be approved to the extent that they are provided for in the Ordinance and shall have effect from the first day of such financial year.
- (3) Expenditure for the financial year on the services of the Government shall, subject to this Ordinance, be arranged in accordance with the heads and subheads and be limited by the provision in each subhead shown in the estimates of expenditure as approved or as may subsequently be changed from time to time in accordance with section 8.

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Chapter:	2	Title:	PUBLIC FINANCE ORDINANCE	Gazette Number:	
Section:	7	Heading:	Authorization of expenditure in advance of appropriation	Version Date:	30/06/1997

- (1) The Legislative Council may, in advance of an Appropriation Ordinance, by resolution authorize expenditure for the services of the Government in respect of a financial year to be charged on the general revenue, in accordance with this Ordinance and subject to such limitations and conditions as may be specified in the resolution.
- (2) Expenditure charged on the general revenue pursuant to a resolution under this section shall be arranged in accordance with the heads and subheads shown in the estimates of expenditure laid under section 5 and the provisions of this Ordinance shall, for the purposes of this subsection and subject to such conditions and limitations as may be specified in the resolution, apply to such estimates as though they were the approved estimates of expenditure.
- (3) Expenditure charged on the general revenue pursuant to a resolution under this section shall be set off against the amounts respectively provided in the Appropriation Ordinance upon the same coming into operation.

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Chapter:	2	Title:	PUBLIC FINANCE ORDINANCE	Gazette Number:	68 of 1999
Section:	8	Heading:	Changes to the approved estimates of expenditure	Version Date:	01/07/1997

Remarks:

Adaptation amendments retroactively made - see 68 of 1999 s. 3

(1) Subject to this section, no changes shall be made to the approved estimates of expenditure except with the approval of the Finance Committee upon a proposal of the Financial Secretary.

(2) Without limiting the generality of subsection (1) such changes may provide for all or any of the following matters-

- (a) the creation of new heads or subheads;
- (b) supplementary provision in approved or new subheads;
- (c) variations in the establishments of posts;
- (d) increases in the limit to the commitments which may be entered into in respect of expenditure which is not annually recurrent.

(3) The Finance Committee may delegate to the Financial Secretary the power to approve changes subject to such conditions, exceptions and limitations as are specified in the delegation.

(4) The Financial Secretary, where a delegation by the Finance Committee under subsection (3) so provides, and subject to such conditions, exceptions and limitations as are specified in the delegation, may further delegate his power to approve changes to any public officer.

(5) A delegation to any public officer under subsection (4) shall be subject to such further conditions, exceptions and limitations as the Financial Secretary may specify.

(6) Nothing in subsection (1) shall be construed as limiting or affecting-

- (a) the power of the Chief Executive to make any proposal, or allow or direct any proposal to be made, to the Legislative Council, the object or effect of which is to require a change to the approved estimates of expenditure; or (Amended 68 of 1999 s. 3)
- (b) a requirement under any enactment that expenditure be met from the general revenue.

(7) The Financial Secretary shall cause such changes to be made to the approved estimates of expenditure as are necessary in respect of any-

- (a) approval given under subsection (1), (3) or (4);
- (b) expenditure pursuant to a proposal referred to in subsection (6)(a); or
- (c) requirement referred to in subsection (6)(b) not otherwise provided for by approval under this

section.

(8) The Financial Secretary shall at the end of each quarter of the financial year or as soon as practicable thereafter-

(a) report to the Finance Committee changes made to the approved estimates of expenditure in that quarter upon approval by him or by any public officer pursuant to a delegation under subsection (3) or (4), as the case may be; and

(b) table in the Legislative Council a summary of all changes made to the approved estimates of expenditure in that quarter under this section.

(9) Without prejudice to section 9, expenditure in respect of which a change to the approved estimates is made under this section shall be charged on the general revenue notwithstanding that there has been no appropriation in respect thereof by an Appropriation Ordinance.

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Head 106 — MISCELLANEOUS SERVICES

Controlling officers: expenditure under this Head will be accounted for as follows—

Permanent Secretary for Financial Services and the Treasury (Treasury) (Subheads 251, 284, 689 and 789)

Chief Executive, Hong Kong Monetary Authority (Subhead 821)

Estimate 2008-09	\$40,888.0m
Commitment balance	\$109.3m

Controlling Officers' Report

Aim

Expenditure under this Head is for items which cannot properly be charged to other heads of expenditure. It covers compensation for settlement of claims against the Government and certain ex-gratia payments, and contribution to the Asian Development Fund.

2 Provision is also made for additional commitments to meet unavoidable expenditure that may arise during the year in excess of the amounts provided under other heads of expenditure, but which cannot at present be determined and allocated with precision.

3 These subheads contribute to the following Policy Areas—

<i>Subhead</i>	<i>Policy Area</i>	<i>Responsible Officers</i>
251, 284, 689 and 789	25: Revenue Collection and Financial Control	Secretary for Financial Services and the Treasury
821	1: Financial Services	Chief Executive, Hong Kong Monetary Authority

Head 106 — MISCELLANEOUS SERVICES

Sub-head (Code)	Actual expenditure 2006-07	Approved estimate 2007-08	Revised estimate 2007-08	Estimate 2008-09
	\$'000	\$'000	\$'000	\$'000
Operating Account				
Recurrent				
251	Additional commitments	—	4,199,873	—
284	Compensation	60,176	70,000	65,000
	Write-offs#	114	1,200	360
	Difference in exchange#	—	10,000	6,000
	Other miscellaneous items#	54	500	120
	Refunds of revenue#	15,115	30,500	22,500
	Total, Recurrent	75,459	4,312,073	93,980
				4,028,181
Non-Recurrent				
789	Additional commitments	—	5,196,905	—
821	Contribution to the eighth replenishment of the Asian Development Fund	11,670	17,815	17,815
	Contribution to the sixth replenishment of the Asian Development Fund	5,134	1,561	1,561
	Contribution to the seventh replenishment of the Asian Development Fund	23,893	11,116	11,299
	Total, Non-Recurrent	40,697	5,227,397	30,675
	Total, Operating Account	116,156	9,539,470	124,655
				40,878,360
Capital Account				
Plant, Equipment and Works				
689	Additional commitments	—	85,972	—
	Total, Plant, Equipment and Works	—	85,972	—
	Total, Capital Account	—	85,972	—
				9,594
	Total Expenditure	116,156	9,625,442	124,655
				40,887,954

For greater financial accountability and to streamline the accounting arrangement, the provisions for these subheads under Head 106—Miscellaneous Services will be re-distributed to individual heads of expenditure with effect from 2008-09. The actual expenditure in 2006-07 and revised estimate for 2007-08 are shown here for completeness.

Head 106 — MISCELLANEOUS SERVICES

Details of Expenditure by Subhead

The estimate of the amount required in 2008-09 for miscellaneous expenditure which cannot properly be charged to other heads of expenditure is \$40,887,954,000.

Operating Account

Recurrent

2 Provision of \$3,958,181,000 under *Subhead 251 Additional commitments* is to meet funding for initiatives under planning, which may include extraordinary payments under the Comprehensive Social Security Assistance Scheme and the Social Security Allowance Scheme, and transport supplement for eligible persons with disabilities. The provision is also for meeting any unavoidable recurrent expenditure that may arise during the year in excess of the amounts provided under other heads and subheads of the Estimates, but which cannot at present be determined and allocated with precision. When, from time to time during the year, additional provision chargeable to other heads of expenditure is approved, an equivalent amount will be deducted/drawn from this subhead unless savings can be identified elsewhere. Provision for additional commitments in respect of non-recurrent and capital expenditure is shown under *Subhead 789* and *Subhead 689* respectively.

3 Provision of \$70,000,000 under *Subhead 284 Compensation* is for settlement of claims (other than compensation connected with land, public works and mail, and for civil servants under the Employees' Compensation Ordinance) and for certain ex-gratia payments.

Non-Recurrent

4 Provision of \$36,829,923,000 under *Subhead 789 Additional commitments* is to meet funding for initiatives under planning, which may include setting up a research endowment fund for financing research of the University Grants Committee-funded institutions, one-off grant to eligible accounts maintained under the Mandatory Provident Fund Schemes Ordinance and the Occupational Retirement Schemes Ordinance, extraordinary payments for subsidising household electricity expenditure, waiver of public housing rental, injection to the Samaritan Fund, financial assistance to elderly for carrying out repairs and maintenance to their buildings and improving their home safety, health care vouchers for elderly, child development and contingent health prevention or relief measures. The provision is also for meeting any unavoidable non-recurrent expenditure that may arise during the year in excess of the amounts provided under other heads and subheads of the Estimates.

Capital Account

Plant, Equipment and Works

5 Provision of \$9,594,000 under *Subhead 689 Additional commitments* is to meet forecast capital expenditure, subvention payments, and any unavoidable capital expenditure that may arise during the year in excess of the amounts provided under other heads and subheads of the Estimates.

Head 106 — MISCELLANEOUS SERVICES

Commitments

Sub-head (Code)	Item (Code)	Ambit	Approved commitment	Accumulated expenditure to 31.3.2007	Revised estimated expenditure for 2007-08	Balance
			\$'000	\$'000	\$'000	\$'000
<i>Operating Account</i>						
821	471	Contribution to the eighth replenishment of the Asian Development Fund.....	149,700	22,601	17,815	109,284
		Total.....	<u>149,700</u>	<u>22,601</u>	<u>17,815</u>	<u>109,284</u>