

Extract from the minutes of the Finance Committee meeting on 2.11.2007

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Item No. 3 - FCR(2007-08)33

Discussion paper on the review of the procedures of the Finance Committee and its subcommittees

26. The Chairman said that members were invited to endorse amendments to the Procedures of the Finance Committee and its two subcommittees, namely the Establishment Subcommittee and the Public Works Subcommittee, as set out in the discussion paper.

27. In response to Ms Emily LAU's question on the procedure for dealing with motions moved for deciding on matters under the Public Finance Ordinance (Cap 2), the Clerk explained that paragraph 37 of the FC Procedure dealt with motions that were moved by a member and were qualified as an agenda item for discussion at a meeting. These motions were substantive motions on matters that were within the powers of FC to decide. They included motions amending procedures, and motions imposing conditions, exceptions or limitations on the Financial Secretary's power delegated to him. For those motions which were dependent on other agenda items of the same meeting, e.g. a motion to impose conditions in respect of a Capital Works Reserve Fund (CWRF) item on the agenda of a FC meeting, it was not likely that a notice of six clear days for the motion could be given, as the notice requirement for a CWRF item was only six clear days. The current Procedure had provided that shorter notice might be given if the Chairman so directed. In order that members and the Administration had adequate time before the meeting to consider the proposed conditions, exceptions or limitations specified in a motion, it was proposed that the shorter notice for these circumstances be set at not less than two clear days. The Legal Adviser said that the motions moved under the Ordinance (Cap. 2) would have legal effect once they were passed.

28. The Chairman put the item to vote. The Committee approved the proposal.

ITEM FOR FINANCE COMMITTEE

Review of the Procedures of the Finance Committee and its subcommittees

Purpose

This paper outlines the outcome of a review conducted by the Legislative Council Secretariat (LegCo Secretariat) on the Procedures of the Finance Committee and its two subcommittees, namely the Establishment Subcommittee (ESC) and the Public Works Subcommittee (PWSC). Members are invited to approve the proposed amendments to the Procedures of FC, ESC and PWSC which are based on the recommendations made as a result of the review.

Background

2. The Procedures of PWSC, ESC and FC (the Procedures) were endorsed by FC at its meetings on 11 March, 13 May and 8 July 1994 respectively in connection with the taking-over of the clerkship duties from the Government by the LegCo Secretariat which was established in April 1994. The Procedures were drafted by the LegCo Secretariat based on the Government's User's Guide to the workings of FC for use by Branch Secretaries, Heads of Departments and officers in the Finance Branch. The Administration was consulted throughout the drafting process. One of the major changes in the new Procedures was the inclusion of arrangements for electing non-official Members of the Legislative Council to be the chairmen and deputy chairmen of FC and its two subcommittees.

3. Since 1994, changes were made to the Procedures from time to time to formalize practices adopted over time or to bring in improvements to existing practice and procedures. These included election arrangements for the FC Chairman and Deputy Chairman, duration of division bell, duration of FC meetings, invitation of public officers to respond to questions on ESC/PWSC items at FC meetings, etc.

4. Towards the end of the 2006-2007 session, a number of financial

proposals involving controversial issues were considered and had led to extensive discussions with the Administration during meetings on matters which caused wide public concern. As a result, some procedural issues over the conduct of meetings were raised, e.g. the chairman's discretion to decide on speaking time, duration of ESC/PWSC meetings, motions to adjourn discussion of agenda items, motions to express a view, etc. A review of the Procedures in the light of the latest developments has recently been conducted by the Clerks and the Legal Adviser to FC, ESC and PWSC. The outcome of the review is set out below.

Review of the Procedures and recommendations

Subcommittees' authority to determine practice and procedure for dealing with motions moved without notice

5. At ESC's meeting held on 13 June 2007, the chairman of ESC made reference to the procedures adopted by other LegCo committees in dealing with motions moved without notice at meetings upon a member's indication that he intended to move a motion without notice in the course of ESC's consideration of an agenda item. The motion was to express a certain request to be made of the Administration. It was not intended to have any substantive effect on the recommendation in the ESC agenda item. The chairman considered that the proposed motion was relevant to the agenda item and asked members to indicate whether it should be proceeded with at the meeting. Following an indication of support by a majority of members present for the motion to be dealt with immediately, the chairman allowed the motion to be moved. Thereupon the motion was proposed, debated and put to a vote at the meeting. The motion was passed and was incorporated as part of ESC's recommendations to the FC. The issue for consideration is whether it is in order for ESC to determine its own practice and procedure for dealing with a motion sought to be moved without notice at a meeting during ESC's consideration of a submission from the Administration.

6. Paragraph 25 of the ESC Procedure provides: "Subject to the Rules of Procedure of the Legislative Council and the procedure endorsed by the FC, the ESC determines its own practice and procedure [Rule 71(13)].". Rule 71(13) of the Rules of Procedure of the Legislative Council (RoP) is included in Paragraph 25 to indicate that it is that subrule on which the paragraph is based. That subrule provides: "Subject to these Rules of Procedure, the practice and procedure of the committee (i.e. FC) and its subcommittees (i.e. ESC and PWSC) shall be determined by the committee".

7. It is clear that RoP contemplate that FC and its subcommittees will have to decide how to deal with matters not provided for in RoP in the course of transacting business. In the Legal Adviser's view, there is nothing in RoP

to suggest that it was the intention of the Legislative Council to impose a procedural restriction on subcommittees to the extent that the only procedures available to them for transacting business are those that had been pre-determined for them by their parent committees. Had there been such intention, it would give rise to the absurd situation that proceedings in a subcommittee would have to be brought to a grinding halt if the pre-determined procedures do not contain provisions to deal with a matter before it. That cannot be the intention underlying Rule 71(13). In other words, Rule 71(13) does not have the effect of giving the power to determine practice and procedure of ESC and PWSC exclusively to FC.

8. Paragraph 25 of the ESC Procedure makes it clear that ESC has the authority to determine its own practice and procedure as a power which is reasonably incidental to the performance of its functions, but subject to the limitation that such power can only be exercised where the practice and procedure so determined by ESC have not already been provided in RoP or determined by FC.

9. In relation to the procedure adopted by ESC at its meeting on 13 June 2007, ESC was faced with a procedural situation for which no provision was made in RoP or the ESC Procedure has made provision for. There is nothing to suggest that the procedure it determined at the meeting was not in order.

10. On 6 July 2007, FC similarly adopted the same procedure in dealing with two motions moved without notice in respect of two agenda items for its consideration. As it appears that there may be more moving of motions without notice in future, it is proposed that a procedure be included in the FC, ESC and PWSC Procedures to ensure procedural consistency. The proposed amendment to put in place the procedure is in **Appendix I**.

Procedure for dealing with motions moved for deciding on matters under the Public Finance Ordinance (Cap. 2)

11. The procedure for dealing with motions in the current Procedures, e.g. Paragraph 37 of the FC Procedure, aims to deal with motions that are moved by a member and are qualified as an agenda item for discussion at a meeting. These motions are substantive motions on matters that are within the powers of FC to decide. They include motions amending procedures, and motions imposing conditions, exceptions or limitations on the Financial Secretary's power delegated to him under section 8(3) of Cap. 2 or under the Capital Works Reserve Fund Resolution (Cap. 2 sub. leg. A) or the Capital Investment Fund Resolution (Cap. 2 sub. leg. B). For those motions which are dependent on other agenda items of the same meeting, e.g. a motion to impose conditions in respect of a Capital Works Reserve Fund (CWRF) item on the agenda of an FC meeting, it is not likely that a notice of six clear days for the motion can be given, as the notice requirement for a CWRF item is only six clear days. The

current Procedure has provided that shorter notice may be given if the Chairman so directs. In order that members and the Administration have adequate time before the meeting to consider proposed conditions, exceptions or limitations specified in a motion, it is proposed that the shorter notice for these circumstances be set at not less than two clear days. The proposed amendment is in **Appendix II**.

Record of proceedings

12. The records of the proceedings of FC, ESC and PWSC are kept in the form of minutes. However, where considered necessary, the Committee/Subcommittees may consider keeping a verbatim record of the whole or any part of a meeting. It is proposed that Paragraph 7 of the FC Procedure be amended as in **Appendix III**. If considered appropriate, similar amendments may also be made to the ESC and PWSC Procedures.

Notice to require attendance of public officers at FC meetings

13. Under the current practice, all items endorsed by ESC/PWSC are usually included under one composite paper and submitted to FC for approval. Members are entitled to speak on and request separate voting on any of the items in the paper. If members consider it necessary for Government officials in charge of a specific item to attend a FC meeting to answer questions on it, they are requested to inform the Clerk to FC one day before the date of the relevant FC meeting so that arrangements can be made. To formalize this practice, it is recommended that Paragraph 17 of the FC Procedure be amended as proposed in **Appendix IV**.

Motion to adjourn discussion on an item or further proceedings

14. Paragraph 39 of FC Procedure provides for a member to move without notice that discussion on an item or further proceedings be adjourned. The same procedure has also been provided in the ESC and PWSC Procedures. This procedure is adapted from Rule 40 of RoP, but the procedure for moving, debating and voting on the motion has not been set out in Paragraph 39. It is proposed that for clarity and consistency, Paragraph 39 of FC Procedure, as well as relevant paragraphs in the ESC and PWSC Procedures, be amended as in **Appendix V**.

Extension of meeting time

15. At present, agenda items not dealt with at a meeting of FC, ESC and PWSC are carried over to the next meeting or, if the Chairman so decides, to a special meeting. For ESC and PWSC, the present practice of providing a two-hour meeting slot for their meetings is to keep it in line with a decision of FC on 24 March 2006 to limit its meetings to two hours for each meeting. As

there is a growing need to extend the meeting time of ESC/PWSC so that items on the agenda can be concluded and its recommendations can be put forward to FC as scheduled, it is proposed that flexibility be provided in the ESC and PWSC Procedures to allow the Subcommittees to extend their meeting time when necessary. As the meetings of ESC and PWSC are usually held on Wednesdays before a Council meeting, one of the preconditions to be satisfied should be that such extended meeting time should not clash with the meeting time of the Council. Another precondition should be that the meeting venue is available. It is proposed that a meeting may be extended by not more than 15 minutes by an announcement made by the Chairman before the appointed ending time, unless the Subcommittee decides otherwise. The Subcommittee may further extend a meeting for a specified period of time subject to no dissenting voice. No new motion should be proposed during the period of extension decided by the Subcommittee unless the motion is in relation to an item on the agenda which is raised for discussion during the extension period. The proposed amendments to the Procedures are in **Appendix VI**.

Advice Sought

16. Members are invited to consider the recommendations set out in paragraphs 5 to 15 above and to endorse the proposed amendments to the Procedures as set out in Appendices I to VI.

Council Business Division 1
Legislative Council Secretariat
26 October 2007

Proposed amendments in relation to practice and procedures for dealing with motions moved without notice

Finance Committee Procedure

Motions

37. Subject to the decisions of the Committee made from time to time, Rules 29 to 35 of the Rules of Procedure shall apply, with necessary modifications, to the proceedings of the Committee in dealing with motions.

37A. During the deliberation of an agenda item, prior to the question on it being put to vote, a member may move a motion without notice to express a view on the agenda item if the motion is considered by the Chairman as directly related to the agenda item and agreed by a majority of members that it should be proceeded forthwith. Any proposed motion or amendment to the motion should be presented in written form. Members may speak on the motion and amendment to the motion, if any, in a joint debate.

Establishment Subcommittee Procedure

Motions

31A. During the deliberation of an agenda item, prior to the question on it being put to vote, a member may move a motion without notice to express a view on the agenda item if the motion is considered by the Chairman as directly related to the agenda item and agreed by a majority of members that it should be proceeded forthwith. Any proposed motion or amendment to the motion should be presented in written form. Members may speak on the motion and amendment to the motion, if any, in a joint debate.

Public Works Subcommittee Procedure

Motions

32A. During the deliberation of an agenda item, prior to the question on it being put to vote, a member may move a motion without notice to express a view on the agenda item if the motion is considered by the Chairman as directly related to the agenda item and agreed by a majority of members that it should be proceeded forthwith. Any proposed motion or amendment to the motion should be presented in written form. Members may speak on the motion and amendment to the motion, if any, in a joint debate.

Appendix II

Proposed amendments in relation to procedure for dealing with motions moved for deciding on matters under the Public Finance Ordinance (Cap. 2)

Finance Committee Procedure

Agenda Item

21. The Financial Secretary, the Secretary for Financial Services and the Treasury, the Permanent Secretary for Financial Services and the Treasury (Treasury) or a Deputy Secretary for Financial Services and the Treasury (Treasury), each being a public officer designated by the Government of the Hong Kong Special Administrative Region under Article 62(6) of the Basic Law, or any member may give notice to the Clerk of the items of business to be included in the agenda of the Finance Committee [Rule 9(2)]. The notice of agenda items should reach the Clerk at least six clear days before the meeting concerned, but shorter notice may be given if the Chairman so directs, provided that it shall not be shorter than two clear days for motions moved by members for deciding on matters under the Public Finance Ordinance (Cap. 2). The proposed motions should be presented in written form.

Appendix III

Proposed amendment in relation to record of proceedings

Finance Committee Procedure

Clerk to the Finance Committee

7. The Clerk shall attend the meetings of the Committee, keep a record of the proceedings of the Committee, and distribute a copy thereof to each member. The record is kept in the form of minutes, recording the members attending, the gist of proceedings and the decisions taken. Where the Chairman, with the agreement of the Committee, determines that a verbatim record is necessary for the whole or any part of a meeting, the Clerk shall make arrangements for the production of such a record. The Clerk will not normally clear the records of proceedings with the Administration or other persons except in respect of such part of a record which relates to statements made by the Administration or such other persons.

Appendix IV

Proposed amendments in relation to notice to require attendance of public officers and other persons at Finance Committee meetings

Finance Committee Procedure

Attendance of Public Officers and Other Persons

17. The Chairman or the Committee may invite any public officer, or, in the case of a head of the Estimates relating to a non-government body or organization, any member or employee of that body or organization to give information or any explanation or to produce any records or documents which the Committee may require in the performance of its duties; and the Committee may also invite any other person to assist the Committee in relation to any such information, explanation, records or documents [Rule 71(12)]. Should a member wish to request that a public officer or other person be invited to attend a meeting of the Committee, such request should reach the Clerk by 5:00 pm on the working day before the meeting concerned. The Clerk will state in the agenda the office of the public officers and other persons invited for discussion of the particular items.

Proposed amendment in relation to motion to adjourn discussion on an item or further proceedings

Finance Committee Procedure

Rules of Speaking

39. A member when speaking on a proposal in the Committee may move without notice that discussion on an item or further proceedings of the Committee be now adjourned. Thereupon the Chairman shall propose the question on the motion to adjourn [Rule 40]. A member, when speaking on the question, may not speak more than once [Rule 38] and shall not make a speech for longer than any time period as decided by the Committee, or where no such decision has been made, for more than three minutes. When no or no more member indicates his intention to speak on the question, the Chairman shall forthwith put the question on the motion to the Committee for its decision. No member may speak on the question after it has been put [Rule 33].

Establishment Subcommittee Procedure

Adjournment of Proceedings

32 A member when speaking on a proposal in the Subcommittee may move without notice that discussion on an item or further proceedings of the Subcommittee be now adjourned. Thereupon the Chairman shall propose the question on the motion to adjourn [Rule 40]. A member, when speaking on the question, may not speak more than once [Rule 38] and shall not make a speech for longer than any time period as decided by the Subcommittee, or where no such decision has been made, for more than three minutes. When no or no more member indicates his intention to speak on the question, the Chairman shall forthwith put the question on the motion to the Subcommittee for its decision. No member may speak on the question after it has been put [Rule 33].

Public Works Subcommittee Procedure

Adjournment of Proceedings

33. A member when speaking on a proposal in the Subcommittee may move without notice that discussion on an item or further proceedings of the Subcommittee be now adjourned. Thereupon the Chairman shall propose the question on the motion to adjourn [Rule 40]. A member, when speaking on the question, may not speak more than once [Rule 38] and shall not make a speech for longer than any time period as decided by the Subcommittee, or where no such decision has been made, for more than three minutes. When no or no more member indicates his intention to speak on the question, the Chairman shall forthwith put the question on the motion to the Subcommittee for its decision. No member may speak on the question after it has been put [Rule 33].

Proposed amendments in relation to extension of meeting time

Establishment Subcommittee Procedure

Meetings

10A. The Subcommittee may extend a meeting beyond the appointed ending time where (a) the meeting venue is available during a proposed extension of meeting time; and (b) the meeting time so extended does not clash with the meeting time of the Council if that Council's meeting is going to be held on the same day (preconditions). Unless the Subcommittee decides otherwise, the Chairman may announce during the appointed time that the meeting is extended for not more than 15 minutes beyond the appointed ending time of the meeting. The Subcommittee may further extend a meeting for a specified period of time where the same preconditions as set out above are satisfied, and where there is no dissenting voice when deciding such a further extension. No new motion should be proposed during the period of extension decided by the Subcommittee unless the motion is in relation to an item on the agenda which is raised for discussion during the extension period.

Public Works Subcommittee Procedure

Meetings

11A. The Subcommittee may extend a meeting beyond the appointed ending time where (a) the meeting venue is available during a proposed extension of meeting time; and (b) the meeting time so extended does not clash with the meeting time of the Council if that Council's meeting is going to be held on the same day (preconditions). Unless the Subcommittee decides otherwise, the Chairman may announce during the appointed time that the meeting is extended for not more than 15 minutes beyond the appointed ending time of the meeting. The Subcommittee may further extend a meeting for a specified period of time where the same preconditions as set out above are satisfied, and where there is no dissenting voice when deciding such a further extension. No new motion should be proposed during the period of extension decided by the Subcommittee unless the motion is in relation to an item on the agenda which is raised for discussion during the extension period.