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20 June 2014

Hon Dennis KWOK
Room 813
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr KWOK,

I note the concern expressed in your letter of 17 June regarding my decision made at the meeting of the Finance Committee ("FC") on 13 June to stop dealing with motions proposed by members under paragraph 37A of the Finance Committee Procedure ("FCP") to express views on the agenda item "Advance site formation and engineering infrastructure works at Kwu Tung North new development area and Fanling North new development area" ("advance works").

The Chairman and Deputy Chairman of FC are elected by and from among its members under Rule 71(2) of the Rules of Procedure ("RoP") and paragraph 4 of the FCP. The Chairman of FC ("FC Chairman") shall have the power to determine the date, time and place of meetings, and shall chair FC meetings in accordance with paragraph 13 of the FCP. Although the RoP or the FCP does not expressly provide for the ancillary powers that the FC Chairman may exercise in chairing meetings, the Legal Adviser points out to me that, from a legal perspective and in accordance with general legal principles, a person chairing a meeting as a chairman of a committee would, by necessary implication or for any purpose reasonably incidental to or consequential upon his functions, have such powers as are reasonably necessary for the performance of such functions.

As FC Chairman, I have the responsibility to ensure that the business on the agenda is transacted in a proper and efficient manner, and that members have adequate opportunities to take part in the deliberations of the committee. This responsibility is essentially the same as that of the President of the Legislative Council and chairmen of other committees in

presiding over or chairing meetings, which include ensuring the orderly, fair and proper conduct of meetings. I am satisfied that there is a sufficient legal basis for my decision.

You mentioned in your letter the legal principle of statutory interpretation that words and expressions in the singular include the plural, and section 7(2) of the Interpretation and General Clauses Ordinance (Cap. 1) was quoted in this respect. The Legal Adviser points out that provisions in the Interpretation and General Clauses Ordinance apply only to interpreting Ordinances or subsidiary legislation within the meaning of section 3 of that Ordinance. As the FCP is not one of these types of legal instruments, the Legal Adviser does not see any necessary correlation between the FCP and Cap. 1.

With regard to the interpretation and application of paragraph 37A of the FCP, I have consulted the Legal Adviser, who advises me that paragraph 37A of the FCP is a procedural provision prescribing a procedure for expressing views on an agenda item. Having considered the purpose of formulating the above procedure, the Chinese and English texts of paragraph 37A of the FCP and the practice that has been established by FC since 2007, the Legal Adviser is of the view that the number of motions that a member may propose should not be restricted to one, just because the phrase "一項議案" is used in the Chinese text of the provision. However, as the Legal Adviser also points out this does not mean that the provision should be construed as giving members the right of putting forward an unlimited number of proposed motions that are directly related to the item.

As pointed out by the Legal Adviser during the meeting on 13 June, there was no reason for the institution that promulgated paragraph 37A of the FCP (i.e. the FC) to formulate procedures in such a way as to paralyze or give rise to the risk of paralyzing its own operation, or make such procedures impracticable, thereby rendering the Committee unable to properly discharge the functions conferred upon it by the Public Finance Ordinance (Cap. 2).

Irrespective of my personal viewpoint on the interpretation of paragraph 37A of the FCP, as there are substantial discrepancies among members regarding the interpretation of the number of motions a member may propose in respect of an agenda item under that paragraph during a meeting, I agree that it is necessary to further consider the relevant views and arguments of members, the Clerk and the Legal Adviser to FC before arriving at a final decision. In this connection, I have directed the Secretariat to conduct a review and prepare papers for

members' discussion. In the meantime, I have made reference to past practices and would for the time being allow each member to propose more than one motion in respect of an agenda item to express his views. In fact, at the previous meetings, I have allowed members to each propose more than one motion that is directly related to the agenda item in respect of the aforesaid advance works and referred such motions to the Committee for deciding whether they should be proceeded forthwith. In considering whether the proposed motions are directly related to the agenda item, I have also made reference to the practice of former FC Chairmen.

With regard to the agenda item on the advance works, nine members presented a total of 2 005 motions to me in accordance with paragraph 37A of the FCP. Staff of the Secretariat, the Legal Adviser and I have tried our best to scrutinize these proposed motions during and outside the meetings. Before the 13 June meeting was held, I made rulings on 939 motions, and during the meeting of 13 June, I referred the motions which I considered to be in order to the Committee for determining whether they should be proceeded forthwith. However, before the conclusion of the second meeting of that day, seven members further presented to me a total of 694 proposed motions, of which 645 were submitted by Dr Fernando CHEUNG. At that juncture, I asked members to confirm whether they would propose other new motions, and if they would, such motions should be presented and dealt with together. But no members made such indication to me.

As I had to scrutinize the newly presented motions, I adjourned the second meeting earlier and invited the members who indicated their intention to move motions to go to Conference Room 4 during the break to discuss with me how these proposed motions should be dealt with. At the end, only Dr Fernando CHEUNG turned up. Ms Emily LAU, Deputy Chairman of FC, also attended that working meeting. At the meeting, I suggested that Dr CHEUNG should consolidate the 645 motions into 20 motions to enable the Committee to efficiently and properly deal with his proposed motions. However, Dr CHEUNG indicated that he would not accept this suggestion.

During the break, I reviewed 49 motions presented by the other six members, and during the third meeting of that day, I referred the proposed motions that were in order one by one to the Committee for voting to decide whether they should be dealt with. After the third meeting had started, four members presented to me another batch of 169 motions. While the third meeting was in progress, Dr Fernando CHEUNG said that he was still in the process of drafting motions. At the

meeting, Mr WONG Yuk-man also indicated his intention to present several hundred motions. On 16 and 17 June, a member submitted another 203 motions to me.

I respect members' right to use procedural tactics to exert political pressure on the Administration in pursuit of their demands. However, when such behaviour has obviously affected the normal operation of the FC, I, as FC Chairman, have the responsibility to safeguard the interests of the FC. I pointed out at the meeting of 13 June that if members continued to present motions without notice under paragraph 37A of the FCP while a meeting was in progress, it would not be possible for such motions to be dealt with immediately. In the past, when dealing with paragraph 37A of the FCP, the issue of the quantity of motions had not been considered or discussed. However, allowing members to propose motions without restrictions will have the effect of obstructing the FC from exercising and discharging its functions under the Rules of Procedure and the Public Finance Ordinance (Cap. 2) This, in my opinion, could not have been the original intention of paragraph 37A of the FCP. In order to safeguard the operation of the FC, it is necessary for me to properly control the progress of meetings by reasonable means, so as to ensure the efficient use of meeting time, thereby enabling the Committee to exercise and discharge its functions properly. Therefore, I decided not to further deal with proposed motions presented to me by members under paragraph 37A of the FCP.

I firmly believe that in making the relevant decision at the meeting of 13 June, I struck a proper balance between respecting the rights of individual members to propose motions and express their views and ensuring the orderly and efficient conduct of FC meetings. Some members expressed grave concern when I announced my decision not to further deal with proposed motions presented under paragraph 37A of the FCP. Before implementing the decision, I agreed to allow each member to speak once for three minutes. Then I shall make a final decision on the matter.

Yours sincerely,

(NG Leung-sing)
Chairman of the Finance Committee