

Inclusion of new commitment items into the 2015-16 Estimates

1. A few members of the Finance Committee (FC) have questioned the propriety of the Government including new commitment items into the 2015-16 draft Estimates and inviting the approval of the Legislative Council (LegCo) for these in the context of the Appropriation Bill 2015. This note sets out the Government's response.

Requirements under the Public Finance Ordinance (PFO)

2. To include funding proposals for commitments under the General Revenue Account (GRA) into the draft Estimates for consideration by LegCo in the context of the Appropriation Bill is consistent with the provisions of PFO. The Government's position is set out in the attached Note on "Management of Finance Committee Agenda Items" (**Annex A**).

Commitment items

3. Section 5(3)(b) of PFO provides that the estimates of expenditure shall –

“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.”

4. Section 8 of PFO provides that no changes shall be made to the approved estimates of expenditure except with the approval of FC upon a proposal of the Financial Secretary (FS). Under section 8(3) of the Ordinance, FC may delegate to FS the power to approve changes to the approved estimates of expenditure subject to such conditions, exceptions and limitations as are specified in the delegation. In endorsing FCR(96-97)63 in 1996, FC delegated to FS the power to approve changes involving no more than \$10 million.

5. Where FC or FS under authority delegated by FC has approved the creation of a new commitment item, the “approved commitment” for the item would be the control figure. No separate approval or approvals are required for the same commitment(s) even though the consequential cash flow requirements may straddle over a number of financial years. Commitment items are distinct from recurrent items and are **not** meant to create recurrent or lasting financial implications for the Government.

6. The inclusion of new recurrent or commitment items into the draft Estimates for LegCo’s approval in the context of Appropriation Bill will **not** undermine the exercise of LegCo’s powers and functions to examine and approve budgets and public expenditure under Article 73 of the Basic Law. It has been part of the established practice for policy bureaux and departments to consult relevant LegCo panels or committees in a timely manner on major new funding proposals to be included in the draft Estimates. Policy bureaux and departments will include the necessary provision for such proposals under the respective heads and subheads of expenditure; provide appropriate descriptions in the controlling officer’s reports; and submit relevant information in the special FC meetings as appropriate. LegCo cum FC Members can examine the new funding proposals through raising written questions and/or attending the special FC meetings, Budget debate and the Second and Third Reading debates on the Appropriation Bill.

Need for change

7. The Government is obliged to deliver public services and to enable that funding so needed would be secured in a timely manner with due regard to the due process. While it has been the Government’s practice in recent years to seek approval for new commitment items through FC under section 8 of the PFO, we have **not** ruled out the option of seeking LegCo’s approval under sections 5 and 6 of the PFO. For the considerations set out below, there is a practical need for the Government to adjust the recent practice –

- (a) **The number of two-hour meetings held by FC for the first half of the 2014-15 Legislative Session was record high - 38 meetings.** This is a record compared with the number of meetings held in the **first half** of a Legislative Session in recent years. This is a record even when compared with the **total** number of meetings held in a full year.

| Meetings held | 2008 – 2012 (average) | 2012-13 | 2013-14 | 2014-15 |
|-------------------------------------|------------------------------|----------------|----------------|--------------------|
| 1st half (Oct – Feb) | 12 | 19 | 10 | 38 |
| 2 nd half (Mar – Jul) | 18 | 13 | 25 | - |
| Total | 30 | 32 | 35 | 38 (so far) |

- (b) **However, the number of items deliberated during the period was record low – 15 items only.** 11 of these 15 items were deferred from the 2014-15 Legislative Session.

| Items deliberated | 2008 – 2012 (average) | 2012-13 | 2013-14 | 2014-15 |
|-------------------------------------|------------------------------|----------------|----------------|--------------------|
| 1st half (Oct – Feb) | 22 | 21 | 34 | 15 |
| 2 nd half (Mar – Jul) | 44 | 36 | 31 | - |
| Total | 66 | 57 | 65 | 15 (so far) |

- (c) **The frequency of FC items requiring deliberations in excess of five meetings has been on the rise.**

| Items taking more than five meetings for deliberation | | | |
|---|--|--|---|
| 2008 – 2012 | 2012-13 | 2013-14 | 2014-15 |
| 1. Express Rail Link [13 meetings] 2. Reorganisation of Government Secretariat [20 meetings] | 1. Old Age Living Allowance [15 meetings] | 1. Study on development of North East New Territories [15 meetings] | 1. Four FC items on landfills and Integrated Waste Management Facilities [17 meetings] 2. Creation of new Bureau [8 meetings so far] |

- (d) Read together, the **efficiency of FC deliberations in 2014-15 has been seriously constrained**, by factors beyond the control of the Government. There is a genuine cause for concern.
- (e) The Government is obliged to ensure that funding needed to deliver public services would be secured in a timely manner. Having regard to the adjusted flow of business in FC, the Government has **no choice** but to review the scope for streamlining and prioritising funding submissions to FC.

Changes

8. The Government fully respects the right and duty of FC members to scrutinise all funding proposals. To allow adequate time for deliberations of all FC items, the Government has opted to include into the 2015-16 draft Estimates a number of new commitment items, as listed in **Annex B**. Other than the four FC agenda items deferred from the 2013-14 LegCo session, these include 11 items which involve service enhancement proposals under existing government policies, on which the relevant LegCo Panels have been consulted and indicated support; and ten items for the replacement of ageing equipment or exhibits involving no policy changes.

9. In considering whether a funding proposal should be included into the draft Estimates or be submitted to FC for approval of changes to the approved Estimates, the Government has had due regard to a host of factors, including the account and amount involved; the specific details and implementation timetable of the proposal, etc. In either case, LegCo members will be duly apprised of the key features of the funding proposals.

Other FC items in the pipeline

10. Other than the funding proposals in the Estimates, the Government is planning to invite FC to consider about 40 non-works items following the passage of the Appropriation Bill. The major ones, all essential to support new and improved services for the community, are listed in **Annex C**.

11. In addition, subject to the progress of the Public Works Subcommittee (PWSC), the Government intends to submit over 50 works items to PWSC and eventually FC within the current legislative session. Should there be requests for separate voting after deliberations at PWSC, each of these will form a separate FC agenda item.

Management of Finance Committee Agenda Items

1. At the Finance Committee (FC) held on 23 January 2015, Members requested the Government to explain in writing its decision to withdraw four outstanding agenda items deferred from the 2013-14 legislative session and include them into the 2015-16 draft Estimates for consideration by the Legislative Council (LegCo) in the context of the Appropriation Bill 2015. The key considerations are set out below.

Relevant statutory requirements

2. It is legally permissible to include funding proposals under the General Revenue Account into the draft Estimates for consideration by LegCo in the context of the Appropriation Bill. The relevant provisions are –

- (a) According to section 5 of the Public Finance Ordinance (hereafter referred to as “the Ordinance”), 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 LegCo before or as soon as practicable after the commencement of the financial year to which they relate. The estimates of expenditure shall be classified into heads and subheads, stating in respect of each head the ambit; the estimated total expenditure; the provision sought in respect of each subhead; the establishment of posts; as well as the limit to the commitments of expenditure which is not annually recurrent, etc.
- (b) According to section 6 of the Ordinance, the heads contained in the estimates of expenditure for a financial year shall be included in an Appropriation Bill which shall be introduced into LegCo at the same time as the estimates. Upon the enactment of the Appropriation Ordinance, the estimates of expenditure shall be deemed to be approved and shall have effect from the first day of such financial year.

- (c) According to section 8 of the Ordinance, subject to the section, no changes shall be made to the approved estimates of expenditure except with the approval of FC upon a proposal of the Financial Secretary. Under section 8(3) of the Ordinance, FC may delegate to the Financial Secretary the power to approve changes to the approved estimates of expenditure subject to such conditions, exceptions and limitations as are specified in the delegation. In endorsing FCR(96-97)63 in 1996, FC delegated to the Financial Secretary the power to approve changes involving no more than \$10 million.

3. Funding or financial proposals for fund accounts established under section 29 of the Ordinance shall normally be approved by the Financial Secretary or FC in accordance with the respective resolutions for establishing the funds. For example, funding proposals or injections relating to the “Capital Works Reserve Fund”, “Loan Fund”, “Innovation and Technology Fund” and “Disaster Relief Fund” shall be approved by FC except with prior delegation. They cannot be included into the Estimates for approval by LegCo in the context of the Appropriation Bill. Funding for supporting and developing social welfare services under the “Lotteries Fund” shall be earmarked and approved by the Financial Secretary in accordance with the requirement under section 6 of the Government Lotteries Ordinance.

Established practice

4. It is not a new arrangement for funding proposals under the General Revenue Account to be included in the draft Estimates for consideration by LegCo in the context of the Appropriation Bill. The Estimates prepared by the Government under section 5 of the Ordinance and submitted to LegCo for consideration and approval in the context of the Appropriation Bill have all along included many funding initiatives involving additional recurrent expenditure under the Operating Account. For instance, the proposals involving additional recurrent expenditure for regularising three Community Care Fund programmes for needy students (\$529 million), and for regularising the Elderly Health Care Voucher Pilot Scheme and increasing the annual voucher amount from \$1,000 to \$2,000 (\$582 million) were both included in the 2014-15 Estimates.

5. It has been part of the established mechanism for examining the draft Estimates that policy bureaux and departments will consult relevant LegCo panels or committees in a timely manner on major new expenditure proposals to be included in the draft Estimates. They will also endeavour to clearly set out the expenditure for such proposals under the respective heads and subheads; provide appropriate descriptions in the controlling officer's reports; and submit relevant information in the special FC meetings. LegCo cum FC members can examine the new expenditure proposals through raising written questions, as well as attending the special FC meetings, Budget debate and Second and Third Reading debates on the Appropriation Bill.

6. Apart from recurrent expenditure, proposals for creating and increasing the expenditure ceiling for commitment items used to be included in the Appropriation Bill for scrutiny and approval by LegCo under section 5 of the Ordinance prior to 1985-86. In recent years, the Government chose to cause such proposed commitments to be scrutinized and approved through submission to FC or by the Financial Secretary under delegated authority (for proposals involving amounts not exceeding \$10 million) in accordance with section 8 of the Ordinance. These include "non-recurrent" commitment items under the Operating Account which are one-off in nature and do not involve acquisition or construction of a physical asset, like expenditure required for participating in or organising international conferences and for implementing time-limited or purpose-specific subsidy schemes; as well as commitment items under the Capital Account for the procurement and replacement of plant, vehicles and equipment as well as minor works projects for government departments and subvented bodies. Where the expenditure item arises from a major new policy and involves a commitment of over \$10 million, the Government will normally submit the proposals for discussion at the relevant LegCo panels or committees.

7. In considering whether a funding proposal should be included in the Estimates or be submitted to FC for approval of changes to the approved Estimates, the Government will have due regard to a host of factors, including the account and amount involved; the specific details and the implementation timetable of the proposal, etc.

8. Though not required by the Ordinance, the Government will seek approval of the FC for certain funding proposals in line with established practice pursuant to FC decisions. The creation of directorate civil service posts or equivalent positions is a case in point.

Withdrawal of four deferred items

9. The four withdrawn agenda items involve creation of new commitments under the relevant heads of expenditure. They were intended to be submitted to FC for approval of changes to the 2014-15 approved Estimates under section 8 of the Ordinance. Unfortunately, three months have lapsed since the commencement of the 2014-15 legislative session and FC has only deliberated on some of the items deferred from the 2013-14 legislative session. The seven remaining items have been held up for more than six months, undermining the delivery of public service, and causing a drain on public resources. Meanwhile, many new items requiring FC's deliberation and approval have also been held up. The situation is indeed worrying.

10. In view of the serious blockage in the FC agenda, the Government has no alternative but to race against time and consider how best to secure early approval of the funding proposals. Including some of these deferred agenda items into the 2015-16 draft Estimates prepared under section 5 of the Ordinance for approval by LegCo in the context of the Appropriation Bill is a lawful, rational and reasonable arrangement. This would also help reduce the backlog of items in FC.

Approval arrangement for expenditure proposals

11. Since the 2011-12 legislative session, deliberations on both the Appropriation Bill by LegCo and funding proposals by FC have increasingly and unduly been prolonged by filibustering. On the other hand, in response to demands of the community and Government's operational needs, the funding proposals submitted for consideration have not been reduced. To contain the damage to public services, the Government is obliged to review the approval arrangement for expenditure proposals in both LegCo and FC with a view to ensuring the mechanism would continue to function properly and efficiently in accordance with the relevant requirements of the Ordinance.

12. While ensuring compliance with the relevant provisions of the Ordinance, the Government will carefully examine each expenditure proposal, take into account the impact of the huge backlog of items, and be more prudent in managing the agenda items in future. We will adapt the practice of incorporating new recurrent expenditure proposals into the expenditure estimates prepared under section 5 of the Ordinance for seeking LegCo's approval in the context of the Appropriation Bill to also cover the creation of commitment items and adjustment to approved commitments where justified.

13. After the passage of the Appropriation Bill, any additional funding proposal that involves an amount exceeding the limit of the Government's delegated authority (i.e. exceeding \$10 million) or that requires FC's approval in line with established practice will be submitted to FC for approval. Together with proposals which have or will have completed deliberation by the Establishment Subcommittee and the Public Works Subcommittee under FC, we expect that there will still be quite a large number of agenda items requiring consideration by FC in the 2014-15 legislative session.

14. In the face of prolonged deliberations in FC, the Government will continually review the sequence of agenda items, as well as the priorities among the deferred and new items. We will also adopt a pragmatic approach in facilitating early approval of funding proposals in compliance with the relevant provisions under the law.

**Major commitment items under the
General Revenue Account included the 2015-16 Draft Estimates**

| Head | | Bureau/ Department | Subhead/Item | Commitment (\$'000) | 2015-16 Estimated Expenditure (\$'000) |
|---|-----|---|---|--------------------------------|---|
| A. Deferred Agenda Items from Finance Committee in the 2013-14 LegCo Session | | | | | |
| 1. | 47 | Government Secretariat: Office of the Government Chief Information Officer | Subhead 700 General non-recurrent Item 894 Enriched IT Programme in Secondary Schools | 75,000 | 13,250 |
| 2. | 156 | Government Secretariat: Education Bureau | Subhead 700 General non-recurrent Item 848 Implementation of the Fourth Strategy on Information Technology in Education | 105,000 | 51,000 |
| 3. | 122 | Hong Kong Police Force | Subhead 603 Plant, vehicles and equipment Item 89L Replacement of 18 police launches | 658,410 | 9,100 |
| 4. | 45 | Fire Services Department | Subhead 603 Plant, vehicles and equipment Item 8EX One replacement crash fire tender R12 | 15,000 | 6,187 |

| Head | | Bureau/ Department | Subhead/Item | Commitment (\$'000) | 2015-16 Estimated Expenditure (\$'000) |
|--|----|---|--|------------------------|---|
| B. Service Enhancement Proposals Supported by relevant LegCo Panels | | | | | |
| 5. | 44 | Environmental Protection Department | Subhead 700 General non-recurrent Item 880 Enhancement and Extension of the Cleaner Production Partnership Programme | 150,000 | 30,000 |
| 6. | 44 | Environmental Protection Department | Subhead 700 General non-recurrent Item 881 Grant for the operators of the projects under the Restored Landfill Revitalisation Funding Scheme | 40,000 | 100 |
| 7. | 53 | Government Secretariat: Home Affairs Bureau | Subhead 700 General non-recurrent Item 897 Operations Consultancy for the Multi-purpose Sports Complex at Kai Tak | 40,000 | 14,000 |
| 8. | 55 | Government Secretariat: Commerce and Economic Development Bureau (Communications and Technology Branch) | Subhead 700 General non-recurrent Item 480 Film Development Fund | 200,000 | 40,000 |
| 9. | 55 | Government Secretariat: Commerce and Economic Development Bureau (Communications and Technology Branch) | Subhead 700 General non-recurrent Item 897 Hong Kong Design Centre | 80,000 | 20,000 |

| Head | | Bureau/ Department | Subhead/Item | Commitment (\$'000) | 2015-16 Estimated Expenditure (\$'000) |
|-------------|-----|--|--|--------------------------------|---|
| 10. | 122 | Hong Kong Police Force | Subhead 603 Plant, vehicles and equipment Item 89M Acquisition of barge operating platform for the Marine Region | 35,762 | 3,000 |
| 11. | 141 | Government Secretariat: Labour and Welfare Bureau | Subhead 700 General non-recurrent account Item 876 Child Development Fund | 300,000 | 52,604 |
| 12. | 152 | Government Secretariat: Commerce and Economic Development Bureau (Commerce, Industry and Tourism Branch) | Subhead 700 General non-recurrent Item 835 Consultancy on the Phase 2 development of the Hong Kong Disneyland Resort | 27,300 | 4,368 |
| 13. | 156 | Government Secretariat: Education Bureau | Subhead 700 General non-recurrent Item 849 Pilot on providing career-related experiences for students with specific learning difficulties and non-Chinese speaking students in secondary schools | 16,563 | 5,331 |
| 14. | 170 | Social Welfare Department | Subhead 700 General non-recurrent account Item 470 Partnership Fund for the Disadvantaged | 400,000 | 70,700 |
| 15. | 170 | Social Welfare Department | Subhead 700 General non-recurrent account Item 811 Short-term food assistance | 200,000 | 89,244 |

| Head | | Bureau/ Department | Subhead/Item | Commitment (\$'000) | 2015-16 Estimated Expenditure (\$'000) |
|---|----|--|--|------------------------|---|
| C. Items on replacement of equipment or exhibits | | | | | |
| 16. | 31 | Customs and Excise Department | Subhead 603 Plant, vehicles and equipment Item 833 Replacement of one high speed pursuit craft (CE15) | 26,294 | 2,290 |
| 17. | 31 | Customs and Excise Department | Subhead 603 Plant, vehicles and equipment Item 834 Replacement of one high speed pursuit craft (CE17) | 26,293 | 100 |
| 18. | 31 | Customs and Excise Department | Subhead 603 Plant, vehicles and equipment Item 835 Replacement of one high speed pursuit craft (CE18) | 26,293 | 100 |
| 19. | 45 | Fire Services Department | Subhead 603 Plant, vehicles and equipment Item 8EY One replacement jackless snorkel R34 | 13,862 | 4,159 |
| 20. | 95 | Leisure and Cultural Services Department | Subhead 700 General non-recurrent Item 836 Renewal of permanent exhibitions of Hong Kong Science Museum | 76,000 | 4,000 |
| 21. | 95 | Leisure and Cultural Services Department | Subhead 700 General non-recurrent Item 837 Renewal of permanent exhibition and Historical Trail of Hong Kong Museum of Coastal Defence | 30,800 | 250 |

| Head | | Bureau/ Department | Subhead/Item | Commitment (\$'000) | 2015-16 Estimated Expenditure (\$'000) |
|-------------|-----|--|---|--------------------------------|---|
| 22. | 95 | Leisure and Cultural Services Department | Subhead 700 General non-recurrent Item 838 Renewal of permanent exhibition of Hong Kong Museum of History | 466,000 | 7,350 |
| 23. | 95 | Leisure and Cultural Services Department | Subhead 700 General non-recurrent Item 839 Renewal of permanent exhibitions of Hong Kong Heritage Museum | 43,500 | 4,400 |
| 24. | 95 | Leisure and Cultural Services Department | Subhead 603 Plant, vehicles and equipment Item 850 Replacement of stage automation system at the Auditorium of Kwai Tsing Theatre | 25,000 | 200 |
| 25. | 100 | Marine Department | Subhead 603 Plant, vehicles and equipment Item 832 Replacement of hydrographic survey launch "Hydro 2" | 43,500 | 4,500 |

**New FC items in the pipeline
(major ones only)**

1. Proposed creation of Innovation and Technology Bureau (two re-submitted items)
2. Pay adjustment items for the civil service and judicial officers
3. Enhancement of Remuneration Package for District Council Members
4. Establishment of a fund for Hospital Authority to make use of investment returns for public-private partnership initiatives (\$10 billion)
5. One-off relief measures comprising the provision of two extra months of Comprehensive Social Security Assistance standard rates, Old Age Allowance, Old Age Living Allowance and Disability Allowance, as well as one month's rent for most public housing tenants (\$6.6 billion)
6. Establishment of a Recycling Fund (\$1 billion)
7. Establishment of a Sustainable Agricultural Development Fund (\$500 million)
8. Establishment of an independent Insurance Authority (\$500 million)
9. Additional funding injection into CreateSmart Initiative (\$400 million)
10. Setting up a Youth Development Fund (\$300 million)
11. Launching an Art Development Matching Grants Pilot Scheme (\$300 million)
12. Launching a pilot scheme to provide financial and professional support to local public sector schools and Direct Subsidy Scheme schools having formed sister school with schools in the Mainland to further promote professional interflow among them (\$200 million)
13. Providing additional funding to the Construction Industry Council to embark on training of semi-skilled workers up to skilled workers level (\$100 million)
14. Launching a pilot scheme to enhance talent training for the insurance and asset and wealth management services (\$100 million)