

**立法會**  
***Legislative Council***

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**Finance Committee of the Legislative Council**

**Minutes of the 62<sup>nd</sup> meeting**  
**held at Conference Room 1 of the Legislative Council Complex**  
**on Saturday, 15 July 2017, at 9:00 am**

**Members present:**

Hon CHAN Kin-por, GBS, JP (Chairman)  
Hon James TO Kun-sun  
Hon LEUNG Yiu-chung  
Hon Tommy CHEUNG Yu-yan, GBS, JP  
Prof Hon Joseph LEE Kok-long, SBS, JP  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon Starry LEE Wai-king, SBS, JP  
Hon CHAN Hak-kan, BBS, JP  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Hon Mrs Regina IP LAU Suk-yee, GBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Claudia MO  
Hon Steven HO Chun-yin, BBS  
Hon Frankie YICK Chi-ming, SBS, JP  
Hon WU Chi-wai, MH  
Hon YIU Si-wing, BBS  
Hon MA Fung-kwok, SBS, JP  
Hon Charles Peter MOK, JP  
Hon CHAN Chi-chuen  
Hon CHAN Han-pan, JP  
Hon LEUNG Che-cheung, SBS, MH, JP  
Hon Alice MAK Mei-kuen, BBS, JP  
Dr Hon KWOK Ka-ki  
Hon KWOK Wai-keung, JP

Dr Hon Fernando CHEUNG Chiu-hung  
Dr Hon Helena WONG Pik-wan  
Hon IP Kin-yuen  
Dr Hon Elizabeth QUAT, BBS, JP  
Hon Martin LIAO Cheung-kong, SBS, JP  
Hon POON Siu-ping, BBS, MH  
Dr Hon CHIANG Lai-wan, JP  
Ir Dr Hon LO Wai-kwok, SBS, MH, JP  
Hon CHUNG Kwok-pan  
Hon Alvin YEUNG  
Hon Andrew WAN Siu-kin  
Hon CHU Hoi-dick  
Hon Jimmy NG Wing-ka, JP  
Hon HO Kai-ming  
Hon Holden CHOW Ho-ding  
Hon SHIU Ka-fai  
Hon SHIU Ka-chun  
Hon Wilson OR Chong-shing, MH  
Hon YUNG Hoi-yan  
Hon CHAN Chun-ying  
Hon CHEUNG Kwok-kwan, JP  
Hon HUI Chi-fung  
Hon LUK Chung-hung  
Hon LAU Kwok-fan, MH  
Dr Hon CHENG Chung-tai  
Hon KWONG Chun-yu  
Hon Jeremy TAM Man-ho

**Members absent:**

Hon Michael TIEN Puk-sun, BBS, JP (Deputy Chairman)  
Hon Abraham SHEK Lai-him, GBS, JP  
Hon WONG Ting-kwong, GBS, JP  
Hon WONG Kwok-kin, SBS, JP  
Hon Kenneth LEUNG  
Hon Dennis KWOK Wing-hang  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Dr Hon Junius HO Kwan-yiu, JP  
Hon LAM Cheuk-ting  
Dr Hon Pierre CHAN  
Hon Tanya CHAN

Hon Kenneth LAU Ip-keung, BBS, MH, JP

**Public officers attending:**

Mr Andrew LAI Chi Wah, JP	Acting Permanent Secretary for Financial Services and the Treasury (Treasury)
Mr Raistlin LAU, JP	Deputy Secretary for Financial Services and the Treasury (Treasury) <sup>3</sup>
Mr Alfred ZHI Jian-hong	Principal Executive Officer (General), Financial Services and the Treasury Bureau (The Treasury Branch)
Mr Kevin YEUNG Yun-hung, JP	Secretary for Education
Mr Brian LO Sai-hung, JP	Acting Permanent Secretary for Education
Mrs Angelina CHEUNG, JP	Deputy Secretary for Education (6)
Mr Godwin LAI Kam-tong	Principal Assistant Secretary for Education (Special Education), Education Bureau

**Clerk in attendance:**

Ms Anita SIT	Assistant Secretary General 1
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**Staff in attendance:**

Ms Connie FUNG	Legal Adviser
Mr Derek LO	Chief Council Secretary (1) <sup>5</sup>
Ms Ada LAU	Senior Council Secretary (1) <sup>7</sup>
Mr Raymond SZETO	Council Secretary (1) <sup>5</sup>
Mr Frankie WOO	Senior Legislative Assistant (1) <sup>3</sup>
Ms Michelle NIEN	Legislative Assistant (1) <sup>5</sup>

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The Chairman reminded members of the requirements under Rules 83A and 84 of the Rules of Procedure.

**Item No. 2 — FCR(2017-18)24**

**HEAD 156— GOVERNMENT SECRETARIAT: EDUCATION BUREAU**

**Subhead 000 —Operational expenses**

2. The Finance Committee ("FC") continued with the deliberation on item FCR(2017-18)24. The Chairman advised that this item invited FC to approve the following proposals for the Education Bureau to implement the priority initiatives to support quality education at various levels with effect from the 2017-2018 academic/school year:

- (a) a supplementary provision of \$2,253 million in 2017-2018 under Subhead 000 "Operational expenses" of Head 156 "Government Secretariat: Education Bureau"; and
- (b) an increase in the ceiling placed on the total notional annual mid-point salary value of all non-directorate posts in the establishment of Head 156 "Government Secretariat: Education Bureau" in 2017-2018 from \$3,399,891,000 by \$106,479,780 to \$3,506,370,780 for the creation of 199 non-directorate civil service posts.

3. Mr HUI Chi-fung and Dr Fernando CHEUNG enquired about the reasons for the Chairman to prohibit LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai from attending today's meeting, and how the decisions made by them at any meeting of the Legislative Council ("LegCo") held in the past should be dealt with. Mr CHU Hoi-dick doubted the fairness of the relevant ruling. The Chairman advised that according to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai had been disqualified from assuming the office of a member of LegCo ("the Office"), and had vacated the same since 12 October 2016, and were not entitled to act as a member of LegCo. Therefore, the aforesaid four persons could not attend FC meetings in the capacity of a Member.

4. At 9:11 am, the Chairman declared that the meeting be suspended so that Legal Adviser ("LA") could attend the meeting and answer questions from members concerning legal matters. The meeting resumed at 9:20 am.

5. LA advised that section 17(2) of the Legislative Council Ordinance (Cap. 542) ("the Ordinance") provided that neither a vacancy in the membership of LegCo nor "a defect ... as to the eligibility of a person to be a Member" affected the validity of its proceedings. She reckoned that "a defect ... as to the eligibility of a person to be a Member" referred to in section 17(2) could include the situation where the court ruled that a Member was disqualified from the Office. Pursuant to section 17(2) of the Ordinance, the Court of First Instance's ruling of disqualifying the aforesaid four persons from assuming the Office would not affect the validity of the LegCo proceedings conducted before the handing down of the Judgment ("pre-Judgment proceedings").

6. Mr HUI Chi-fung was of the view that the "proceedings of the Legislative Council" mentioned in section 17 of the Ordinance referred to the proceedings conducted after, rather than before, the Office had become vacant. Therefore, he considered that section 17 merely provided assurance that LegCo proceedings would remain valid after the Court of First Instance ruled that the four persons had been disqualified from the Office. Mr Kenneth LEUNG, Mr KWONG Chun-yu and Ms Claudia MO expressed similar concerns. Ms MO mentioned the need to seek additional legal advice.

7. Noting that on the one hand, LegCo held that the validity of pre-Judgment proceedings was not affected by the Judgment of the Court of First Instance that the four persons had been disqualified from the Office, but on the other hand, it took actions to recover from these four persons the allowances and entitlements which had already been disbursed to them on the ground that the Court had disqualified them from assuming the Office, Mr Andrew WAN was concerned over the inconsistency between these two approaches.

8. LA responded that:

- (a) section 17 of the Ordinance sought to prevent the validity of the decisions made by LegCo in accordance with its proceedings from being questioned as a result of a vacancy in the membership of LegCo or a defect as to the eligibility of a Member;

- (b) according to the Judgment of the Court of First Instance, the four persons had been disqualified from assuming the Office since 12 October 2016. However, the Judgment had not ruled as to whether the four persons should have enjoyed the entitlements of Members since that date;
- (c) having regard to the Interpretation of Article 104 of the Basic Law by the Standing Committee of the National People's Congress adopted on 7 November 2016, i.e. "(o)ath taking is the legal prerequisite and required procedure for public officers specified in the Article to assume office. No public office shall be assumed, no corresponding powers and functions shall be exercised, and no corresponding entitlements shall be enjoyed by anyone who fails to lawfully and validly take the oath or who declines to take the oath", the Legislative Council Commission sought to recover the remunerations and entitlements that had already been disbursed to the four persons who had been disqualified by the Court from assuming the Office;
- (d) The Legislative Council Commission would soon hold a special meeting to discuss matters relating to the recovery of the remunerations and entitlements that had already been disbursed to the four persons who had been disqualified from assuming the Office since 12 October 2016 pursuant to the Judgment of the Court of First Instance; and
- (e) a person, by taking part in LegCo proceedings in the capacity of a Member, was in effect exercising the powers and functions of a LegCo Member. However, once the court had disqualified the person from assuming the Office, it would be necessary to consider the validity of pre-Judgment proceedings. Section 17(2) of the Ordinance sought to make provisions to address this issue.

9. Mr Alvin YEUNG asked whether LA had handled similar cases in the past and whether the courts of Hong Kong had ever made any judgment in respect of section 17(2) of the Ordinance. LA responded that the two scenarios mentioned by Mr YEUNG had not happened in the past. She advised that if members had different views on her explanations or considered that there might be other legal advices, FC meetings might not be the best forum for resolving the diverse views in this respect.

10. As there were disputes among members, the Chairman directed that the meeting be suspended. The meeting was suspended at 9:39 am and resumed at 9:58 am. Mr SHIU Ka-chun and Mr Jeremy TAM complained that some members took videos in the conference room. The Chairman advised that members should not take videos in the conference room and requested members to exercise self-discipline. In reply to Mr SHIU Ka-chun's question regarding the supplementary information provided by the Administration in response to the four persons who had been disqualified by the Court from assuming the Office, the Chairman indicated that, in the course of discussion of the item being deliberated, members could still follow up on and ask questions about such supplementary information, as well as other related issues.

11. Mr CHAN Chi-chuen enquired whether LegCo had sought further legal advice on the present case in which Members had been disqualified by the Court from assuming the Office. Mr Jeremy TAM was of the view that LegCo had to seek further legal advice from external parties. Dr Fernando CHEUNG considered that before this incident had been settled, it would be impossible for FC to continue with its deliberations on various items. The Chairman advised that whether further legal advice would be sought was a matter for the President of LegCo to decide. It was not within the purview of the Chairman of FC.

12. Ms Starry LEE urged that the items on the agenda be discussed expeditiously. She said that if members had other views on the Judgment of the Court of First Instance that the four persons had been disqualified from the Office, they should express their views through legal proceedings.

13. The Chairman advised that as members were still very agitated, it was difficult for FC to continue with its deliberations under such circumstances. He declared the end of today's meeting. The meeting ended at 10:08 am.