

立法會
Legislative Council

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Finance Committee of the Legislative Council

Minutes of the 18th meeting
held at Conference Room 1 of the Legislative Council Complex
on Friday, 29 March 2019, at 3:00 pm

Members present:

Hon CHAN Kin-por, GBS, JP (Chairman)
Hon CHAN Chun-ying, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon LEUNG Yiu-chung
Hon Abraham SHEK Lai-him, GBS, JP
Hon Tommy CHEUNG Yu-yan, GBS, JP
Prof Hon Joseph LEE Kok-long, SBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon CHAN Hak-kan, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
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 CHAN Chi-chuen

Hon CHAN Han-pan, BBS, JP
Hon LEUNG Che-cheung, SBS, MH, JP
Hon Kenneth LEUNG
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung, JP
Hon Christopher CHEUNG Wah-fung, SBS, 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, SBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon Alvin YEUNG
Hon Andrew WAN Siu-kin
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon HO Kai-ming
Hon LAM Cheuk-ting
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai
Hon SHIU Ka-chun
Hon Wilson OR Chong-shing, MH
Hon YUNG Hoi-yan
Dr Hon Pierre CHAN
Hon Tanya CHAN
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung
Hon LUK Chung-hung, JP
Hon LAU Kwok-fan, MH
Hon Kenneth LAU Ip-keung, BBS, MH, JP
Dr Hon CHENG Chung-tai
Hon KWONG Chun-yu
Hon Jeremy TAM Man-ho
Hon Gary FAN Kwok-wai
Hon AU Nok-hin
Hon Vincent CHENG Wing-shun, MH
Hon Tony TSE Wai-chuen, BBS
Hon CHAN Hoi-yan

Members absent:

Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon Charles Peter MOK, JP
Hon Alice MAK Mei-kuen, BBS, JP
Hon Dennis KWOK Wing-hang
Hon CHUNG Kwok-pan

Public officers attending:

Ms Alice LAU Yim, JP	Permanent Secretary for Financial Services and the Treasury (Treasury)
Ms Carol YUEN, JP	Deputy Secretary for Financial Services and the Treasury (Treasury) 1
Mr Mike CHENG Wai-man	Principal Executive Officer (General), Financial Services and the Treasury Bureau (The Treasury Branch)
Mr Alan SIU Yu-bun, JP	Director of Administration and Development
Mr Wesley WONG Wai-chung, SC, JP	Solicitor General, Department of Justice
Mr Llewellyn MUI Kei-fat	Deputy Solicitor General (Constitutional Affairs), Department of Justice

Clerk in attendance:

Ms Anita SIT	Assistant Secretary General 1
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Staff in attendance:

Ms Ada LAU	Senior Council Secretary (1)7
Miss Bowie LAM	Council Secretary (1)1
Miss Queenie LAM	Senior Legislative Assistant (1)2
Mr Frankie WOO	Senior Legislative Assistant (1)3
Miss Mandy POON	Legislative Assistant (1)1

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

Item 1 —FCR(2018-19)53

**RECOMMENDATION OF THE ESTABLISHMENT
SUBCOMMITTEE MADE ON 6 JUNE 2018**

EC(2016-17)26

HEAD 92 — DEPARTMENT OF JUSTICE

Subhead 000— Operational expenses

2. The Chairman advised that this item invited the Finance Committee ("FC") to approve the recommendation of the Establishment Subcommittee ("ESC") made at its meeting on 6 June 2018, i.e. the proposal in the paper EC(2016-17)26 to make permanent of one supernumerary post of Deputy Principal Government Counsel ("DPGC")(DL2) in the Legal Policy Division ("LPD") of the Department of Justice ("DoJ") to undertake essential duties in respect of constitutional and electoral matters. A request for separate voting on the recommendation at the FC meeting had been made by members.

Justification for the proposed post

3. Mr Michael TIEN, Mr SHIU Ka-fai and Mr Tony TSE expressed support for the proposed post. Mr TIEN considered that discussion of the item should focus on the actual manpower requirement of DoJ rather than political issues related to the disqualification of Legislative Council ("LegCo") Members-elect or election candidates. Mr SHIU agreed with the proposal to solicit professional and sustainable legal expertise in view of the perennial election cycle and the constitutional reform in the long term. Mr TSE supported the item having considered the increasingly heavy workload and complex legal issues related to electoral matters to be dealt with by the Constitutional Development and Elections Unit ("CD&EU").

Scope of responsibilities and workload

4. Given that there was no timetable and no reason to believe that the incumbent Government would embark on constitutional reform shortly, Mr Andrew WAN, Mr Gary FAN, Mr James TO and Mr LEUNG Yiu-chung queried the need to make permanent the supernumerary post which was designated, among others, to provide legal advice on issues

related to constitutional matters. They considered that the anticipated workload related to constitutional matters did not justify the proposed post. Mr James TO said that members would support the staffing proposal if constitutional reform work had been scheduled for commencement.

5. Solicitor General, Department of Justice ("SG/DoJ") advised that the heavy workload of CD&EU on the electoral front alone was sufficient to justify the creation of the proposed permanent post dedicated to steering CD&EU. In line with the established practice, the discussion paper EC(2016-17)26 had given a comprehensive coverage of the duties of the proposed directorate post.

6. In respect of the workload related to electoral matters, Mr Gary FAN said that DoJ should provide more details to substantiate the proposal for creation of the post, such as providing the annual statistics on the provision of legal advices related to electoral matters. Mr Tony TSE asked whether there was any data on the legal advice rendered by DoJ in relation to disputes arising from eligibility of electors of the Functional Constituencies. Deputy Solicitor General (Constitutional Affairs) ("DSG(CA)") replied that the relevant information was not available as DoJ did not classify the legal advices rendered by CD&EU in the manner as mentioned by the members.

7. At 3:22 pm, the Chairman left the conference room, and the Deputy Chairman took the chair of the meeting.

8. Dr KWOK Ka-ki queried whether invalidation of the nominations of candidates considered to be ineligible for elections had contributed to the increased workload of CD&EU. Mr Gary FAN queried the need to make permanent the post to provide legal support to the Government for disqualifying LegCo Members-elect or election candidates, given that it was only occasional that by-elections would be held in-between the major elections.

9. SG/DoJ advised that:

- (a) there was no statistical information on the number of legal advices related to the determination as to whether candidates running for elections were validly nominated. The annual total of legal advices rendered by CD&EU from 2012 to 2016 spoke volumes about the heavy workload of the Unit justifying the creation of the permanent post;

- (b) while the provision of legal services for the Government on regular matters was covered by counsel of non-directorate level, a dedicated directorate officer with expertise and experience in the specialized area of the law was required to steer CD&EU. The concern of DoJ was to provide solid legal advice irrespective of the interest of any person; and
- (c) apart from providing legal services related to voter registration and public elections, the dedicated team was also responsible for advising on legislative amendment proposals related to electoral matters some of which were to be scheduled for scrutiny by LegCo.

10. Mr HUI Chi-fung asked about the respective numbers of legal advices related to election petitions and judicial reviews arising from the public elections in 2016, and the manpower resources required in respect of the aforesaid workload. DSG(CA) replied that there was no such breakdown of the legal advices rendered by CD&EU. SG/DoJ added that among the 797 legal advices rendered in 2018, the numbers of election related and non-election related cases were 532 and 265 respectively.

11. Mr AU Nok-hin, Mr SHIU Ka-chun and Mr Andrew WAN queried the need to create the permanent post as public elections in 2017 and thereafter had been held smoothly notwithstanding that the supernumerary DPGC post had already lapsed in mid-2017. Mr AU and Mr SHIU asked about the relevant staffing arrangement and work deployment since mid-2017. Mr WAN suggested that the proposed post could be maintained on a supernumerary basis if needed.

12. SG/DoJ and Director of Administration and Development, DoJ ("D of A&D") advised that:

- (a) DoJ was obliged to sustain its provision of legal service for the Government notwithstanding the vacancy. The work of the vacant DPGC post had been taken up by non-directorate Government counsel in DoJ in the meantime. It was far from satisfactory that CD&EU operated without a team head to manage its day-to-day operation, monitor service quality, gather corporate legal knowledge and experience, and oversee its services, particularly in view of the forthcoming voter registration cycle, the District Council Election in 2019 and the LegCo Election in 2020; and

- (b) the CD&EU team coordinated the assistance rendered by a total of 80 counsel from within and outside DoJ in providing legal advice to Returning Officers ("ROs") during the counting of votes of the LegCo Election in 2012. As for 2015 District Council Election, a record high of over 1 500 cases of claims and objections arising from voter registration entitlement had generated very heavy workload for CD&EU.

13. Mr LEUNG Yiu-chung said that the Administration should have stated the above in its paper. If the above was true, Mr LEUNG queried how the post, if created, could still have capacity to cope with the advisory work required of him/her when constitutional reform was reactivated in future. Mr LEUNG asked whether DoJ would make further staffing proposal to augment the services of CD&EU when constitutional reform was reactivated. Mr Gary FAN noted DoJ's claim that it had no viable alternative to deploy manpower resources from other units due to their increasing and fully-stretched workload. If that was the case, DoJ should propose to enhance its manpower resources rather than proposing to make permanent a directorate post.

14. SG/DoJ advised that:

- (a) the Basic Law provided that the ultimate aim was to elect the Chief Executive and all LegCo Members by universal suffrage. It would be for the proposed directorate counsel to head the team to provide legal input if and when constitutional reform was to be reactivated notwithstanding the increasingly heavy workload on the electoral front; and
- (b) DoJ had been prudent and was exercising restraint in making staffing proposals. There was no plan to further increase directorate staff to augment the work of CD&EU. DoJ would first consider internal staff deployment in case of overwhelmingly heavy workload of the Unit in future.

15. Mr KWONG Chun-yu enquired whether the duties of the post holder would cover the drafting of legislation to implement Article 23 of the Basic Law ("BL23") and whether it was more appropriate for ROs to seek advice from the Electoral Affairs Commission ("EAC") instead of DoJ on matters relating to disqualification of election candidates.

16. SG/DoJ said that he had no comment as to whether the post holder would render advisory services in relation to the promulgation of BL23, as

any legal advice should be related to specific issues arising from an actual legal problem. SG/DoJ reiterated that the proposed post would lead its dedicated team to render professional legal advice to the Government on matters relating to constitutional and electoral affairs which could stand up to legal challenge and in accordance with the law. ROs might as appropriate seek advice from the Nominations Advisory Committees as provided under the relevant sections of the Electoral Affairs Commission (Nominations Advisory Committees (Legislative Council)) Regulation (Cap. 541C).

Demand for legal services on electoral matters

17. Mr CHAN Chi-chuen and Mr SHIU Ka-chun considered that the demand for legal advice might decline as electoral disputes related to the nomination procedures might decrease pursuant to the conclusion of the judicial reviews which would serve as reference for prospective candidates in future elections. Mr SHIU considered it more appropriate for the DPGC post to remain a supernumerary post. He asked about the criteria in the granting of legal services to respective departments.

18. SG/DoJ said that:

- (a) other than legal advice related to validity of nominations for elections, the proposed post would also advise on legal disputes arising from general elections or by-elections, and the Government's legislative proposals;
- (b) experience indicated that it was unlikely that the workload of DoJ would decline as its services were demand-led and the specific legal issues varied from case to case. A case in point was that there had been constant and substantive demand for legal advice on litigation cases related to the Basic Law since its implementation in 1997; and
- (c) DoJ would provide legal service when a legal issue was raised by the relevant agency and the legal issue was within the agency's portfolio. If the matter was not a legal question but policy-related, DoJ would refer the matter to the relevant bureau for follow-up.

19. Mr James TO, Dr KWOK Ka-ki, Mr CHAN Chi-chuen and Ms Tanya CHAN shared the view that legal issues related to the vetting of nomination and post-election litigations, which were considered "complex, sensitive and controversial" by DoJ, were in fact triggered by the

Government. These members expressed grave concern that DoJ would become a political tool colluding with the Government to scrutinize and disqualify election candidates allegedly advocating "self-determining" or "independence could be an option for Hong Kong". Mr TO said that legal advice on cases related to electoral disputes, such as vote-rigging and accuracy of voters' registered addresses were often de facto and were not considered "complex, sensitive and controversial". Mr CHU Hoi-dick was concerned that the proposed post would contribute to serving as a political tool to impose restriction on the right of Hong Kong residents to stand for elections as provided under the Basic Law. Pointing out that the total number of legal advice rendered by CD&EU had increased by two-fold in 2016 (1 236 cases) compared to 2013 (726 cases), Ms Claudia MO held the view that counsel of DoJ should uphold legal justice to defend the right to stand for election instead of rendering legal support to ROs to disqualify candidates. The Secretary for Justice ("SJ") should sustain the integrity of the legal system and not collude with the Government to suppress the legislature by disqualifying LegCo Members-elect. Mr HUI Chi-fung expressed similar views and called on the Government to uphold the rule of law and the principle of justice. Dr KWOK enquired about the source of instruction to invalidate the nominations of candidates seeking election and how DoJ had been involved in the process.

20. SG/DoJ reiterated that legal advice provided by CD&EU was demand-led and rendered based on the actual circumstances of individual case reliant on instructions from the Registration and Electoral Office ("REO"), ROs or the related officers who would provide the relevant evidence, information or documents related to eligibility of candidates. There was no question that legal services of DoJ would act as political tool to take order from any parties. As ROs' decision to invalidate a nomination of candidate for election might subject to legal challenge, counsel of DoJ had to ensure that their legal advice rendered was to the point and sound. DoJ's legal advice and the course of the provision of legal advice were covered by legal professional privilege.

21. Mr HUI Chi-fung enquired about SJ's advisory role in cases related to election petitions and judicial reviews. SG/DoJ replied that SJ would consider how far she should be involved in the cases raised by the respective units of DoJ for her advice. As regards the rendering of legal advice, there was no statutory requirement on the level of DoJ staff to be held accountable for specific cases. In respect of cases involving important and controversial issues, DoJ counsel would assist SJ in the process of rendering legal advice to the relevant agency.

22. Mr WU Chi-wai noted that the increased number of by-elections in recent years since 2016 was unprecedented in the history of public elections in Hong Kong and expressed concern as to whether the situation would prevail. Mr WU sought explanation about the Administration's claim that legal issues were anticipated to become increasingly "complex, sensitive and controversial".

23. SG/DoJ advised that as legal issues arising from RO's decision in determining the validity of a nomination was often controversial, and the questions raised by ROs were increasingly complex in terms of coverage and depth, DoJ needed to take heed of those issues and ensure that the rendering of legal advice could stand up to any possible legal challenge.

Briefing out legal services

24. Dr Priscilla LEUNG expressed support for the proposed post in view of the increased workload of DoJ. She opined that enhancement of in-house expertise could help to minimize the need for briefing out legal services. Dr LEUNG urged DoJ to ensure that the candidate of the proposed directorate post should be professional expert specialized in the field. SG/DoJ advised that the creation of the proposed permanent directorate post would enable the accumulation of expertise and provision of in-house support to other teams such as the Civil Division or the Prosecutions Division.

25. Mr AU Nok-hin asked about the circumstances under which DoJ would consider briefing out services and whether it would favour those counsels in private practice who had previously worked for DoJ. Mr AU questioned whether the briefing out of services would be required pursuant to the creation of the post, if approved. SG/DoJ advised that DoJ when considering briefing out would take into account its workload and the need to require specialized legal knowledge outside the expertise of DoJ counsel. The proposed directorate staff to head CD&EU, with his/her legal experience, would scrutinize whether the legal problem of a case would require advice from non-DoJ legal professionals. DoJ would follow the established and formal procedure in briefing out services when needed.

Assessment of workload

26. Mr Kenneth LEUNG considered that the numbers of legal advice alone could not objectively reflect the workload of CD&EU, as some cases might be more simple and straight forward than the others. Mr LEUNG suggested that a running record on the man hours spent by counsels in

carrying out each of their tasks could provide a more objective benchmark to evaluate the workload of the proposed post.

27. SG/DoJ said that the role of the post holder, among others, was to monitor the workload of counsel through assigning cases of different levels of complexity and assess the work quality through staff performance appraisal. He noted that the logging system on working hours used in private practice was mainly for the purpose of charging service fee.

Legal advice related to electoral affairs

Vetting procedures for candidates' eligibility

28. Mr CHU Hoi-dick said that the nomination procedures required of candidates seeking election appeared to vary case by case. While a candidate might be subject to further questions after signing the declaration in the nomination form to the effect that he/she would uphold the Basic Law and pledge allegiance to the Hong Kong Special Administrative Region ("HKSAR"), another might be invalidated by RO despite the signing of the declaration, or both the declaration and Confirmation Form. In this regard, Mr CHU queried the meaning of the procedural requirement for signing the declaration and Confirmation Form. He asked whether DoJ was involved in drafting the questions for candidates to answer pursuant to the latter's declaration. Mr CHU considered that ROs, with the support of DoJ, had advanced legal procedures against the relevant candidates by imposing additional procedural requirements. ROs had exercised political scrutiny against candidates for public elections since 2016 to ascertain whether they upheld the Basic Law and pledged allegiance to HKSAR. He considered it unfair that the Government had provided no legal support for the candidates to deal with the matter.

29. SG/DoJ reiterated that the legal services rendered by DoJ were demand-led. DoJ would render legal advice upon request from the relevant RO. However, he could not comment on details of DoJ's legal advice. In response to Mr CHU's further enquiry whether there were cases that ROs had sought legal advice related to political scrutiny on candidates for public elections before 2016, DSG(CA) replied that there was no such statistics.

30. Dr Junius HO raised no objection to the proposed post in view of the changes of political climate in the recent years. In response to Mr CHU Hoi-dick's view, Dr HO said that the role of DoJ, which was an in-house legal advisory body, was not to assist election candidates to deal with legal disputes. Dr HO said that the main issue was whether the

restriction on nomination for public elections was reasonable or not. The Basic Law had stipulated that "self-determination" or advocating "independence could be an option for Hong Kong" was inconsistent with the constitutional and legal status of HKSAR.

Professional standard and impartiality of legal services

31. Mr WU Chi-wai considered it against legal logic that, notwithstanding the candidate's signing of the declaration, ROs took action to gather subjective evidence by all means including social media platform to invalidate a candidate from nomination. Mr WU and Ms Claudia MO asked whether DoJ would sustain professional standard and impartiality in analysing the information provided by ROs, and whether Government counsels would remind ROs of the need to adhere to legal logic and uphold natural justice by allowing the candidate concerned to defend prior to their decision to invalidate a nomination.

32. SG/DoJ said that as the relevant issue had been raised in a litigation case which was pending in court, it was inappropriate for DoJ to make any comment at this stage. SG/DoJ remarked that:

- (a) DoJ's advice was objective and deprived of personal and political interest. DoJ was neither to provide support for ROs to invalidate nomination nor to judge the decision of ROs. Its counsel were to make legal analysis on the relevant issues and evidence to ensure that ROs' decisions were made according to the law; and
- (b) if DoJ's counsel found that the principle of natural justice should be considered in the cases raised by the decision-maker, the counsel would so remind the latter accordingly as the decisions might be subject to legal challenge.

33. Mr CHAN Chi-chuen said that he would not support the proposal. He expressed grave concern about the apparent Government policy since 2016 to invalidate some candidates' nomination and hence intervening the right of Hong Kong residents to stand for elections. Mr CHAN queried DoJ's claim that its advice for ROs was professional and impartial as no relevant detail of its legal advice was available. Mr CHAN asked whether there was any case that DoJ's legal advice to ROs was incongruent with the latter's position.

34. SG/DoJ reiterated that the legal advice provided by DoJ was covered by legal professional privilege. The complexity of the legal issues related to the disputes arising from ROs' invalidation of nomination spoke volumes about the professional standard required of DoJ in rendering its services. It should be noted that the relevant RO's reasons for his/her decisions were publicly accessible and might be subject to legal challenge.

35. Mr Alvin YEUNG asked about the number of cases, if any, that EAC had entirely followed DoJ's advice to disqualify candidates or vice versa. SG/DoJ advised that it was the RO who was empowered to determine the validity of a nomination. There was not a question of whether EAC was to follow DoJ's advice or not. SG/DoJ reiterated that DoJ would render its legal advice and analysis based on the information and evidence provided by ROs on individual cases and remind ROs to consider the applicable legal principles in making their decisions.

36. Mr Alvin YEUNG sought confirmation as to whether DoJ was unbiased and non-directive when rendering advice related to EAC's decision to invalidate a nomination. He further asked whether DoJ would seek answer to a specific legal question when engaging service of outside counsel related to the 2016 LegCo Election and 2018 By-elections.

37. SG/DoJ reiterated that details of DoJ's legal advice were protected under professional legal privilege. He advised there could be occasions when DoJ might require an expert to whom a matter was briefed out to provide specialist opinion to give a specific view on novel issues of law. In response to Mr Alvin YEUNG's further question as to whether initial consultation with DoJ was sought by ROs prior to raising a case on the invalidation of nominations of candidates, SG/DoJ said that he could not disclose the relevant details. ROs would request DoJ to render advice if so required to facilitate their execution of statutory duties.

Revising electoral laws and guidelines

38. Mr CHAN Chi-chuen asked whether DoJ had initiated advice to the Government to undertake legal proceedings related to the oath-taking of LegCo Members-elect and whether it would propose to the Government to amend the relevant legislation to make expressive requirement on oath-taking of LegCo Members-elect. SG/DoJ advised that any legal advice should be rendered on an individual case basis subject to information and evidence provided by the relevant agency.

39. Mr CHAN Chi-chuen further enquired whether the proposed post would assist in amending legislation to make expressive the relevant

procedural requirements on candidates' nomination. Dr Priscilla LEUNG opined that the Government should consider introducing express provisions with a view to minimizing legal disputes as well as the workload of DoJ. Ms Tanya CHAN noted that there had been more stringent scrutiny of candidates' eligibility for elections since 2016. She asked whether DoJ would advise to make expressive the electoral guidelines, such as whether it was a mandatory requirement for candidates to fill in the Confirmation Form. As she understood, it was based solely on ROs' own judgment to decide whether a person was validly nominated as a candidate regardless of whether the candidate had signed the Confirmation Form or not.

40. SG/DoJ said that DoJ had provided legal advice related to the requirement of completing a Confirmation Form as part of the nomination procedure according to the law. Given that the court had rendered its judgment on the issue, DoJ would make reference to the court judgment in giving advice to the relevant officers. The Constitutional and Mainland Affairs Bureau would be the policy bureau to initiate request for legal advice related to legislative amendment on electoral matters if so required.

41. Mr Tony TSE noted that a candidate's nomination might be considered valid for one election but not the other. In this regard, Mr TSE asked whether DoJ would consider issuing principle electoral guidelines for the reference of ROs on the specific requirements of respective elections with a view to minimizing the need for legal advice. SG/DoJ responded that given the broad spectrum of legal questions, legal advice should base on the factual matrix and the prevailing circumstances in each case. The proposed directorate post to head CD&EU would ensure consistency and quality of the legal advice rendered by the Unit.

42. Mr WU Chi-wai asked whether there would be an anticipated increase in post-election legislative amendments and whether DoJ could openly share its legal experience and knowledge arising from previous legal disputes, such as through the website in the form of Frequently Asked Questions ("FAQs"), with a view to assisting prospective candidates to be more aware of the nomination procedures and avoid being invalidated.

43. SG/DoJ said that the building up of legal knowledge and expertise aimed to enhance the capability of in-house counsels in providing legal services in future. It was inappropriate for DoJ to provide such information in the form of FAQs as DoJ was not the execution department on electoral affairs. Furthermore, DoJ was covered by legal professional privilege not to disclose such information.

Legal advice across Units

44. Mr AU Nok-hin noted that the right of Hong Kong people to stand for public elections was protected under Article 39 of the Basic Law and Article 25 of the International Covenant on Civil and Political Rights. Mr AU asked whether the Human Rights Unit ("HRU") and the Basic Law Unit ("BLU") of DoJ had provided input to advise ROs of the human rights implications on their decision to invalidate the nominations of candidates seeking public selections, and if so, the number of legal advice and whether ROs had taken heed of such advice. Mr HUI Chi-fung asked whether DoJ had reminded ROs to abide by the International Covenant on Civil and Political Rights when making decisions on the nominations.

45. SG/DoJ said that if human rights or the Basic Law was an issue related to the legislative proposal or legal question raised by the agency, DoJ's counsel would seek the input of the respective Units. DoJ's counsel would make reference to court rulings on precedent cases prior to rendering advice to the departments to ensure that the legal advice was in compliance with the law. There was no relevant statistics on the legal advice from HRU as requested by Mr AU Nok-hin. DoJ would not disclose details of its legal advice.

46. Mr SHIU Ka-chun enquired about the rationale for establishing the CD&EU under the Constitutional Affairs Sub-division of LPD. SG/DoJ explained that before the establishment of CD&EU in 2012, the work in respect of constitutional and electoral affairs was undertaken jointly by LPD and the Civil Division. Subsequently, DoJ considered it more appropriate to set up CD&EU alongside HRU and BLU under the steer of DSG(CA).

Public access to candidates' personal data

47. Mr Jeremy TAM noted the ongoing nomination procedure for LegCo Election which included a public display of a candidate's residential address at REO. Mr TAM enquired about the need for the relevant arrangement and whether REO had sought DoJ's legal advice in this regard, and if not, whether DoJ would initiate to look into the legal implication of such procedural arrangement.

48. SG/DoJ said that the mandatory requirements related to the nomination procedure were made in accordance with the electoral laws. CD&EU would render advice on electoral issues upon request from the relevant policy bureau. In case CD&EU identified legal issues in the course of rendering advice to the bureaux/departments which might be

subject to legal challenge, CD&EU might request input from other Units and refer the matter to the relevant policy bureau for necessary action. In response to Mr Jeremy TAM's enquiry about DoJ's handling of public views on issues related to the electoral-related laws, SG/DoJ said that DoJ would first examine whether the issue concerned was within the jurisdiction of DoJ, and if not, it would refer the matter to the relevant policy bureaux/departments for follow-up.

Other issues

49. Mr AU Nok-hin enquired about the candidate to fill the permanent post if approved by FC. SG/DoJ said that DoJ would follow the stipulated Government promotion procedure in the filling of the civil service post of a higher rank. In response to Mr Andrew WAN and Mr AU, D of A&D replied that DSG(CA) would have to hold accountable for the performance appraisal of CD&EU staff when the proposed post was vacant. Pursuant to the discussion on the item by ESC in June 2018, the item had been pending for seeking approval by FC as the Administration considered it more appropriate to give priority to other items.

Arrangement for scrutiny of this item

50. At 4:45 pm, the Deputy Chairman directed that the meeting be suspended for 10 minutes. The meeting resumed at 4:55 pm. At 6:18 pm, the Chairman advised that the present item had been discussed for more than three hours by FC and also more than three hours at ESC. The Chairman declared that he would conclude the discussion and put the item to vote after all members currently on the wait-to-speak list had spoken.

Motions proposed by members under paragraph 37A of the Finance Committee Procedure

51. At 6:33 pm, FC started to vote on whether the motions proposed by members under paragraph 37A of the Finance Committee Procedure ("FCP 37A motions") should be proceeded with forthwith. The Chairman announced that FC decided against proceeding with the first FCP 37A motion proposed by Mr CHU Hoi-dick. Ms Starry LEE then moved without notice a motion under FCP 47 that in the event of further divisions being claimed in respect of any motions or questions under the same agenda item, FC should proceed to each of such divisions immediately after the division bell had been rung for one minute. The Chairman put the motion to vote. At the request of members, the Chairman ordered a division, and the motion was [carried](#).

52. At the request of members, the Chairman ordered a division for each of the proposed FCP 37A motions. The voting results were as follows:

Member proposing the motion	Serial no. of the motion	Whether to proceed with the motion forthwith
Mr CHU Hoi-dick	<u>001</u>	<u>No</u>
Mr Andrew WAN	<u>002</u>	<u>No</u>
Mr AU Nok-hin	<u>003</u>	<u>No</u>
Mr Gary FAN	<u>004</u>	<u>No</u>

Voting on FCR(2018-19)53

53. At 6:48 pm, the Chairman put item FCR(2018-19)53 to vote. At the request of members, the Chairman ordered a division. The Chairman declared that 24 members voted in favour of and 17 members voted against the item, and no member abstained from voting. The votes of individual members were as follows:

For:

Mr Tommy CHEUNG
 Ms Starry LEE
 Mr WONG Kwok-kin
 Mr YIU Si-wing
 Mr LEUNG Che-cheung
 Mr Christopher CHEUNG
 Mr POON Siu-ping
 Ir Dr LO Wai-kwok
 Mr Holden CHOW
 Mr Wilson OR
 Mr CHAN Chun-ying
 Mr Tony TSE
 (24 members)

Mr WONG Ting-kwong
 Dr Priscilla LEUNG
 Mr Steven HO
 Mr CHAN Han-pan
 Mr KWOK Wai-keung
 Mr Martin LIAO
 Dr CHIANG Lai-wan
 Mr HO Kai-ming
 Mr SHIU Ka-fai
 Ms YUNG Hoi-yan
 Mr LUK Chung-hung
 Ms CHAN Hoi-yan

Against:

Mr James TO
 Prof Joseph LEE
 Mr WU Chi-wai
 Dr Helena WONG
 Mr Andrew WAN
 Mr SHIU Ka-chun
 Mr HUI Chi-fung
 Mr Jeremy TAM

Mr LEUNG Yiu-chung
 Ms Claudia MO
 Mr CHAN Chi-chuen
 Mr Alvin YEUNG
 Mr CHU Hoi-dick
 Ms Tanya CHAN
 Mr KWONG Chun-yu
 Mr Gary FAN

Mr AU Nok-hin
(17 members)

54. The Chairman declared that the item was approved.

Item 2 —FCR(2018-19)87

**RECOMMENDATION OF THE ESTABLISHMENT
SUBCOMMITTEE MADE ON 15 FEBRUARY 2019**

EC(2018-19)19

**HEAD 152 —GOVERNMENT SECRETARIAT :
COMMERCE AND ECONOMIC DEVELOPMENT
BUREAU (COMMERCE, INDUSTRY AND
TOURISM BRANCH)**

Subhead 000— Operational expenses

55. The Chairman advised that this item invited FC to approve the recommendation of ESC made at its meeting on 15 February 2019, i.e. the proposal in the paper EC(2018-19)19 relating to the creation of one supernumerary post of Senior Principal Executive Officer (D2) in the Tourism Commission, the Commerce, Industry and Tourism Branch of the Commerce and Economic Development Bureau to lead a Preparatory Team with a view to planning and implementing the preparatory work for the establishment of the Travel Industry Authority and a new regulatory regime of the travel industry. No member had requested that the proposal be voted on separately at the FC meeting.

Voting on FCR(2018-19)87

56. At 6:50 pm, the Chairman put item FCR(2018-19)87 to vote. The Chairman declared that the majority of the members present and voting were in favour of the item, and that the item was approved.

Item 3 — FCR(2018-19)89

**RECOMMENDATIONS OF THE ESTABLISHMENT
SUBCOMMITTEE MADE ON 22 FEBRUARY 2019**

EC(2018-19)22

**HEAD 49 —FOOD AND ENVIRONMENTAL HYGIENE
DEPARTMENT**

Subhead 000— Operational expenses

EC(2018-19)25

HEAD 28 — CIVIL AVIATION DEPARTMENT

Subhead 000— Operational expenses

57. The Chairman advised that the item sought FC's approval of the recommendations made by ESC at its meeting held on 22 February 2019 regarding the proposals in EC(2018-19)22 and EC(2018-19)25. As no member had requested that the proposal in EC(2018-19)25 be voted on separately at the FC meeting, the Chairman advised that this proposal would be put to vote, and the proposal in EC(2018-19)22 would be dealt with at the next FC meeting.

Voting on FCR(2018-19)89- EC(2018-19)25

EC(2018-19)25 – Retention of one supernumerary post of Administrative Officer Staff Grade B (D3) in the Civil Aviation Department to continue strengthening the senior management of the Department

58. At 6:51 pm, the Chairman put the above proposal to vote. The Chairman declared that the majority of the members present and voting were in favour of the proposal, and that the proposal was approved.

59. The meeting ended at 6:51 pm.

Legislative Council Secretariat

19 July 2019