

立法會
Legislative Council

LC Paper No. CB(1)1165/07-08
(These minutes have been seen
by the Administration)

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**Subcommittee on Proposed Resolution under Section 7(1) of the
Public Finance Ordinance (Cap.2)**

**Minutes of the second meeting
held on Monday, 3 March 2008, at 12:00 noon
in Conference Room B of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)
Hon SIN Chung-kai, SBS, JP
Hon Emily LAU Wai-hing, JP
- Member absent** : Hon CHAN Kam-lam, SBS, JP
- Public officers attending** : Financial Services and the Treasury Bureau

Miss Amy TSE
Deputy Secretary for Financial Services and the
Treasury

Ms Rhoda CHAN
Principal Assistant Secretary for Financial Services and
the Treasury

Department of Justice

Mr Michael LAM
Senior Assistant Law Draftsman

Mr CHEUNG Man-yiu
Senior Government Counsel

Clerk in attendance : Miss Polly YEUNG
Chief Council Secretary (1)5

Staff in attendance : Mr Jimmy MA
Legal Adviser

Ms Pauline NG
Assistant Secretary General 1

Mr Timothy TSO
Assistant Legal Adviser 2

Ms Elyssa WONG
Deputy Head (Research and Library)

Mr Michael YU
Research Officer

Ms Rosalind MA
Senior Council Secretary (1)8

Mr Justin TAM
Council Secretary (1)3

I Meeting with the Administration

(LC Paper No. CB(1)959/07-08(01) — Administration's response to issues raised at the meeting held on 29 February 2008

LC Paper No. LS59/07-08 — Paper prepared by the Legal Service Division in response to members' request at the meeting held on 29 February 2008

LC Paper No. CB(1)950/07-08(01) — Administration's letter dated 28 February 2008 providing supplementary information to its paper for the Subcommittee

LC Paper No. CB(1)925/07-08(01) — Paper provided by the Administration

LC Paper No. LS52/07-08 — The Legal Service Division Report on the Subsidiary Legislation

- LC Paper No. CB(3)387/07-08 — Proposed resolution under section 7(1) of the Public Finance Ordinance (Cap.2)
- LC Paper No. CB(3)387/07-08 — Draft speech by the Secretary for Financial Services and the Treasury moving the vote on account resolution in the Legislative Council on 5 March 2008
- LC Paper No. CB(1)925/07-08(02) — Footnote to the draft speech by the Secretary for Financial Services and the Treasury moving the vote on account resolution in the Legislative Council on 5 March 2008
- LC Paper No. CB(1)926/07-08 — Background brief on proposed resolution under section 7(1) of the Public Finance Ordinance (Cap.2) prepared by the Legislative Council Secretariat
- LC Paper No. FS14/07-08 — Fact sheet on the provision of funds on account in Hong Kong prepared by the Research and Library Services Division of the Legislative Council Secretariat (English version tabled at the meeting and issued to members on 4 March 2008))

The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

2. Due to the limited time available for scrutiny and the fact that the various policy and legal issues arising from the proposed resolution might have longer-term implications on the arrangement of seeking funds on account, the Administration was requested to give an undertaking to follow up members' concerns in the speech of the Secretary for Financial Services and the Treasury for moving the Vote on Account resolution on 5 March 2008:

- (a) To make reference to evolving past practice and critically review the existing arrangement for seeking funds on account, including the suggestion of giving notice to move the motion on the Vote on Account resolution after the Estimates of Expenditure for the coming financial year had been laid before the Council, and including in the

proposed resolution more detailed information on the subheads for which funds on account were being sought;

- (b) To review whether the existing funding formula should continue; and in respect of non-recurrent expenditure subheads, to consider seeking funds on account for urgent or essential items only and to examine whether a funding proportion of lower than 100% should be adopted;
- (c) To confirm that the Administration did not have the legal authority to charge any expenditure to the additional commitments subheads under Head 106 and that when reallocating the funds under these subheads (notably Subheads 251 and 789) to other subheads under specific policy areas, approval of the Finance Committee would have to be sought;
- (d) To provide more detailed information on the background and purpose and effect of the last part of paragraph 4 of the proposed resolution (i.e. "*or such other amount, not exceeding an amount equivalent to 100% of the provision shown in the Estimates in respect of that subhead, as may in any case be approved by the Financial Secretary.*"), taking into account members' concern that drafting the proposed resolution in such a way might in effect empower the Financial Secretary to vary the funds on account to be expended against different subheads of expenditure up to an amount equivalent to the full year provision under the subheads, and to consider the need or otherwise to include the clause in future.

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3. The Administration was also requested to report the outcome of its follow-up actions and the proposed way forward to the relevant Panel in time for implementing the necessary changes to address the concerns raised by the Subcommittee before drafting the next Vote on Account resolution.

II Any other business

4. The Subcommittee had completed its scrutiny work and would issue a written report before the moving of the motion on the proposed resolution on 5 March 2008.

(Post-meeting note: The Subcommittee's report was issued to members vide LC Paper No. CB(1)981/07-08 on 4 March 2008.)

5. There being no other business, the meeting ended at 1:23 pm.

**Subcommittee on Proposed Resolution under Section 7(1) of the
Public Finance Ordinance (Cap.2)
Second meeting on Monday, 3 March 2008, at 12:00 noon
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000641	Chairman Assistant Legal Adviser 2 (ALA2) Ms Emily LAU	(a) Introductory and welcoming remarks. (b) Briefing by ALA2 on the paper prepared by the Legal Service Division (LC Paper No. LS59/07-08).	
000642 – 001134	Deputy Head (Research and Library) (DH(RL)) Chairman Administration	Briefing by DH(RL) on the fact sheet outlining the arrangements adopted by Hong Kong in seeking funds on account since 1975 (LC Paper No. FS14/07-08).	
001135 – 001504	Administration	Briefing by the Administration on its response to issues raised at the meeting held on 29 February 2008 (LC Paper No. CB(1)959/07-08(01)).	
001505 – 002127	Mr SIN Chung-kai Administration Chairman	(a) Mr SIN Chung-kai's concern about the substantial amount of funding under Subhead 789 of Head 106, 100% of which was being sought under the proposed resolution. His query about the propriety of applying the 100% funding formula on all non-recurrent and capital account items. (b) The Administration's explanation that due to their irregular and lumpy nature, it had been the established practice to seek 100% of the provisions for Operating Account Non-recurrent subheads and Capital Account subheads as shown in the Estimates.	
002128 – 004824	Ms Emily LAU Administration	(a) Ms Emily LAU's similar concern about the	

Time Marker	Speaker	Subject(s)	Action Required
	Chairman ALA2 Legal Adviser (LA)	<p>Administration's discretion to utilize the funding under Head 106, notably under Subheads 251 and 789 for "Additional commitments".</p> <p>(b) The Administration's advice that:</p> <p>(i) the Financial Secretary (FS) was not required to seek approval of the Finance Committee (FC) for expenditure of the funds on account as approved by LegCo by resolution passed under section 7(1) of the Public Finance Ordinance (PFO) (Cap.2) except where he proposed to make a change thereto. This view was shared by the Subcommittee's legal adviser.</p> <p>(ii) as specified in the Controlling Officers' Report for Head 106, provisions made under Subheads 251 and 789 were "Additional commitments" for meeting unavoidable expenditure that might arise during the year in excess of the amounts provided under other heads of expenditure. Funding under Subheads 251 and 789 could only be utilized as and when approval was given by FC to reallocate and charge the required funding to other relevant heads and subheads for implementing the initiatives under planning.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(c) ALA2's advice that from paragraph 2 of the Controlling Officers' Report for Head 106 and paragraphs 2 and 4 of the "Details of Expenditure by Subhead" in the Estimates, it seemed clear that the amounts of money put under Subheads 251 and 789 could only be used for the purpose of reallocating them to other heads and subheads under specific policy areas as and when expenditure under these other heads and subheads were approved by FC.</p> <p>(d) The Chairman's different view that since the proposed uses of the provision under Subhead 789 had already been set out in paragraph 4 of the "Details of Expenditure by Subhead", it was possible that FS might be able, under PFO, to charge the funding for new initiatives direct to Subhead 789. His concern that approval by FC might be bypassed as a result.</p> <p>(e) In response to Ms Emily LAU's enquiry, LA's confirmation of the advice that there was no requirement for the Administration to seek FC's approval for expending the respective sums of money charged on the General Revenue in accordance with the resolution passed under section 7(1) of PFO. Having regard to the stated aims of Head 106 and the "Details of Expenditure by Subhead" for Subhead 789, it seemed clear that the provisions made under the Subhead were to provide for "funding for initiatives under planning", which would be reallocated</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>and charged to the appropriate head and subhead with FC's approval.</p> <p>(f) The Administration's assurance that the actual expenditure for the initiatives under planning would not be charged to Head 106 direct. It would seek FC's approval to transfer the required funding from Head 106 to the respective heads and subheads. As a matter of fact, the Administration had in the past never charged any expenditure to the additional commitments subheads under Head 106.</p>	<p>The Administration to take action as required in paragraph 2(c) of the minutes.</p>
004825 – 005022	Mr SIN Chung-kai Chairman Administration	Mr SIN Chung-kai's suggestion that in future, the Administration should consider seeking funds on account for urgent or essential items only; and to examine whether a funding proportion of lower than 100% should be adopted for non-recurrent expenditure subheads.	The Administration to take action as required in paragraph 2(b) of the minutes.
005023 – 010816	Ms Emily LAU Administration Chairman Mr SIN Chung-kai ALA2	<p>(a) Ms Emily LAU's query that:</p> <p>(i) as the proposed resolution did not contain details of the proposed expenditure of the heads and subheads as shown in the Estimates of Expenditure 2008-09, members had considerable difficulty in the scrutiny work.</p> <p>(ii) As the Estimates of Expenditure 2008-09 were not available to members when the Administration gave notice for moving the motion for the resolution, members</p>	The Administration to take actions as required in paragraph 2(a) of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
		<p>could not ascertain the details of the monetary amount of funds being sought and the purpose/nature of the expenditure in respect of the subheads in a timely manner.</p> <p>(b) Mr SIN Chung-kai recalled that there had been past occasions when the Estimates were made available to Members before the Budget Day. Hence, Members could have sight of the details of the proposed expenditure when the Administration gave notice to move the motion on the Vote on Account resolution.</p> <p>(c) Referring to the fact sheet prepared by the Secretariat (LC Paper No. FS14/07-08), Mr SIN observed the narrowing time-gap from 14 days between the mid-1970s and the 1980s, to 12 days in the 1990s up to 2001 and seven days in recent years. He expressed concern about the tight scrutiny period for the Vote on Account resolution.</p> <p>(d) Ms Emily LAU requested the Administration to critically examine ways to improve the current arrangement with a view to providing adequate information to facilitate consideration of the Vote on Account resolution and allowing sufficient time for LegCo's scrutiny. She requested the Administration to report the outcome and the proposed way forward to the relevant Panel.</p>	<p>The Administration to take actions as required in paragraph 3 of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>(e) Ms Emily LAU's query about the reasons for providing higher funding percentages from 25% to 100% in the Schedule to the proposed resolution in respect of certain Operating Account Recurrent subheads.</p> <p>(f) The Administration's explanation that higher percentages had to be adopted for computing the funds on account for certain Operating Account Recurrent subheads to meet the funding for expenses which were incurred unevenly at certain times of the year. For example, the payment of Overseas Education Allowance under Subhead 013 of Head 46 was normally made in April and May each year; and there was also the periodic payment of Traffic Accident Victims Assistance Scheme levies under Subhead 225 of Head 59.</p>	
010817 – 012015	<p>LA Chairman Administration Ms Emily LAU Mr SIN Chung-kai</p>	<p>(a) LA drew members' attention to paragraph 4 of the proposed resolution, which stipulated that FS was empowered to vary the fund on account in respect of any subhead, provided that the varied amount did not exceed the provision shown in respect of that subhead in the Estimates. His view that members might wish to consider the purpose and the effect of the clause.</p> <p>(b) The Administration's explanation that this clause had all along been included in past Vote on Account resolutions and the variation was subject to the maximum</p>	<p>The Administration to take follow-up actions as required in paragraph 2(d) of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>provision for the subhead in question as shown in the Estimates of Expenditure and the aggregate fund on account being sought should not exceed the total sum set out in paragraph 1 of the proposed resolution.</p> <p>(c) Concern shared by the Chairman, Ms Emily LAU and Mr SIN Chung-kai that the discretionary power for FS to vary the funds on account was in effect not subject to any condition. Mr SIN's view that this would render the percentage terms set out in the proposed resolution quite meaningless. They questioned the need and appropriateness of including such a clause in the proposed resolution.</p>	
012016 – 012606	Chairman Administration Ms Emily LAU	Concluding remarks and arrangements for the moving of motion on the proposed resolution at the Council meeting on 5 March 2008.	