

立法會
Legislative Council

LC Paper No. FC254/14-15
(These minutes have been
seen by the Administration)

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Finance Committee of the Legislative Council

**Minutes of the special meeting
held at Conference Room 1 of the Legislative Council Complex
on Monday, 16 March 2015, at 8:30 am**

Members present:

Hon Tommy CHEUNG Yu-yan, SBS, JP (Chairman)
Hon CHAN Kin-por, BBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon James TO Kun-sun
Hon LEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, GBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, BBS, MH
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Starry LEE Wai-king, JP
Dr Hon LAM Tai-fai, SBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon CHEUNG Kwok-che
Hon WONG Kwok-kin, SBS
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon Paul TSE Wai-chun, JP

Hon Alan LEONG Kah-kit, SC
Hon Albert CHAN Wai-yip
Hon WONG Yuk-man
Hon Claudia MO
Hon James TIEN Pei-chun, GBS, JP
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon Frankie YICK Chi-ming
Hon WU Chi-wai, MH
Hon YIU Si-wing
Hon Gary FAN Kwok-wai
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon CHAN Han-pan, JP
Dr Hon Kenneth CHAN Ka-lok
Hon CHAN Yuen-han, SBS, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Kenneth LEUNG
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon SIN Chung-kai, SBS, JP
Hon IP Kin-yuen
Dr Hon Elizabeth QUAT, JP
Hon Martin LIAO Cheung-kong, SBS, JP
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu, JP
Dr Hon CHIANG Lai-wan, JP
Ir Dr Hon LO Wai-kwok, BBS, MH, JP
Hon CHUNG Kwok-pan
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
Hon Tony TSE Wai-chuen, BBS

Members absent:

Hon CHAN Kam-lam, SBS, JP
Dr Hon LAU Wong-fat, GBM, GBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Cyd HO Sau-lan, JP
Hon CHAN Hak-kan, JP

Dr Hon LEUNG Ka-lau
Hon LEUNG Kwok-hung
Hon Michael TIEN Puk-sun, BBS, JP
Hon Alice MAK Mei-kuen, JP
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan

Public officers attending:

Professor K C CHAN, GBS, JP	Secretary for Financial Services and the Treasury
Ms Elizabeth TSE Man-yee, JP	Permanent Secretary for Financial Services and the Treasury (Treasury)
Ms Esther LEUNG, JP	Deputy Secretary for Financial Services and the Treasury (Treasury) ¹
Mr Alfred ZHI Jian-hong	Principal Executive Officer (General), Financial Services and the Treasury Bureau (The Treasury Branch)

Clerk in attendance:

Ms Anita SIT	Assistant Secretary General 1
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Staff in attendance:

Mr Jimmy Y T MA, JP	Legal Adviser
Ms Connie FUNG	Senior Assistant Legal Adviser 1
Mr Derek LO	Chief Council Secretary (1) ⁵
Mr Daniel SIN	Senior Council Secretary (1) ⁷
Mr Raymond SZETO	Council Secretary (1) ⁵
Mr Frankie WOO	Senior Legislative Assistant (1) ³
Ms Michelle NIEN	Legislative Assistant (1) ⁵
Miss Yannes HO	Legislative Assistant (1) ⁶

Item No. 1 – The arrangement for creating and increasing expenditure ceilings for commitment items by including relevant provisions in the Estimates of Expenditure 2015-2016 instead of submitting relevant funding proposals to the Finance Committee for approval

The Chairman said that at the meeting on 23 January 2015, some members questioned the propriety of the Administration's withdrawing from the agenda of the Finance Committee ("FC") four outstanding items deferred from the 2013-2014 session and including them in the 2015-2016 Estimates of Expenditure for consideration and approval by the Legislative Council ("LegCo") in the context of the Appropriation Bill 2015. In response to members' queries, the Administration provided a written explanation on 4 February 2015 (entitled "Management of Finance Committee agenda items" issued vide LC Paper No. FC98/14-15(1)). In his letters to the Chairman dated 3 and 26 February 2015, Mr LEE Cheuk-yan raised further queries about the legal and procedural issues involved in the Administration's inclusion in the 2015-2016 Estimates of the above-mentioned four and another 21 commitment items. Mr Dennis KWOK raised similar issues in his letter dated 4 February 2015 requesting for holding a special meeting to follow up on those issues. The Administration provided a supplementary note on "Inclusion of new commitment items into the 2015-16 Estimates" (LC Paper No. FC121/14-15(01)) on 11 March 2015. The Chairman said that the present meeting was convened to enable members to discuss relevant issues without affecting the Committee's progress in deliberating funding proposals at its regular meetings.

2. At the invitation of the Chairman, Secretary for Financial Services and the Treasury ("SFST") gave a brief introduction.

3. At the invitation of the Chairman, Senior Assistant Legal Adviser 1 ("SALA1") introduced the paper LC Paper No. LS50/14-15, which provided information on the legal and constitutional framework relating to the control and management of the public finances of Hong Kong and set out the Legal Service Division's ("LSD") views on the relevant issues arising from the Administration's proposal to include items of expenditure in the Appropriation Bill 2015 instead of seeking FC's approval of those items.

4. SALA1 said that by virtue of sections 5 and 6 of the Public Finance Ordinance (Cap. 2) ("PFO"), it would seem open to the Financial Secretary ("FS") to include an item of expenditure under a relevant head or subhead to be included in an Appropriation Bill, if at the time of preparation of the estimates of the Government's expenditure for a financial year, it was known to the

Action

Government that the relevant expenditure had to be incurred in that financial year.

5. SALA1 also pointed out that the LegCo Rules of Procedure ("RoP") and the Finance Committee Procedure had set out the procedure by which LegCo, the committee of the whole Council and FC examined the Appropriation Bill and the Estimates.

6. At the invitation of the Chairman, the Clerk introduced LC Paper No. FC123/14-15(01), which outlined the role and practices of FC in examining the Government's Estimates of Expenditure and approving public expenditure.

7. The Chairman invited members to speak on the agenda item and directed that members' speaking time should not exceed five minutes each.

Constitutional convention in authorizing public finances

8. Mr Dennis KWOK referred to a constitutional convention of the Parliament of the United Kingdom ("UK") as expounded in "Erskine May Parliamentary Practice"¹, which suggested that there should be a separate process for the UK Parliament to examine new funding proposals in addition to the annual enactment of an Appropriation Ordinance. He said that as it had been customary for LegCo, and the Committee on Rules of Procedure in particular, to draw reference from the UK Parliament for procedural guidance, the UK Parliament's practice should be relevant. Mr KWOK queried why LSD had not highlighted this convention in its paper.

9. Legal Adviser ("LA") said that LegCo's practices and procedure in handling legislative and other matters had evolved over time. Unlike contravening a statutory provision, deviation from an established practice would not give rise to legal consequences. LA further explained that the system on the management of public finances in Hong Kong was governed under PFO and was different from that of the UK.

10. In response to Mr Dennis KWOK's further query on whether the constitutional convention on public financial authorization as described in "Erskine May Parliamentary Practice" was not applicable to LegCo, LA said that in the UK, any charge on the public revenue should be authorized by a

¹ The passage that Mr Dennis KWOK quoted, which was also quoted in his letter of 4 February 2015, reads, "It is a general principle of constitutional propriety that new functions which are to be exercised on a continuing basis and which are to be financed out of 'money to be provided by Parliament' through the annual Appropriation Acts should be authorized by specific Act, supported by a financial resolution, and not by the Appropriation Act alone."

Action

financial resolution of the House of Commons, whereas in Hong Kong, there was no comparable procedure and expenditure was charged on the General Revenue Account in the manner prescribed under sections 3 and 4 of PFO.

11. Mr WONG Kwok-kin asked whether the constitutional convention and the practice established by the Committee could be changed and if there was deviation, what the implications would be. Mr WONG commented that as some members had abused the procedure by way of filibustering, resulting in heavy backlog of items awaiting funding approval, it was reasonable for the Administration to adopt extraordinary measures to expedite the funding approval process. Mr TANG Ka-piu, Dr Priscilla LEUNG, Mr IP Kwok-him and Mr WONG Kwok-hing expressed similar views.

12. LA said that there was no explicit procedure for changing a practice established between the legislature and the executive authorities other than through consensus reached between them over time in the light of the prevailing circumstances and practical necessity. The law did not prescribe the consequences of deviation from an established practice.

13. Mr Albert CHAN commented that if some members had intensified the tension in the relationship between the legislature and the executive authorities through their filibusters and other confrontational tactics, the Administration should try to understand and resolve the conflict. The Administration should not exacerbate the conflict by twisting the established practice to its own favour at the expense of the legislature's exercising its functions properly.

14. Dr Priscilla LEUNG said that it was more appropriate for LegCo to abide by the relevant statutes, the Basic Law and the Rules of Procedure than to adhere to a constitutional convention established in the UK Parliament. She concurred with LA's view that the consequence of breaching any constitutional convention was, at most, political.

15. Mr NG Leung-sing commented that LegCo had the responsibility under the Basic Law to approve budgets and public expenditure proposals as put forward by the Administration. Unrestrained procrastination would only obstruct the progress of the society and LegCo would not be able to perform its constitutional duties. Mr NG also criticized some members for accusing the Administration of having breached the established practice and tradition. He commented that if members did not agree to a funding proposal, they should express their opposition by their votes. If a proposal was rejected, the Administration would make necessary modifications to address members' concerns. However, if members kept on delaying the funding process by

Action

raising questions and moving dilatory motions, the Administration would not be able to take forward the relevant projects, and the whole community would stand to lose.

16. Mr WONG Yuk-man commented that it was because the Administration refused to communicate with members and compromise that some members had to deploy filibustering tactics.

17. Ms Starry LEE commented that as filibustering of funding items had become widespread, she asked if the Administration had any further counter measures to forestall further delay of the funding items.

18. SFST stressed that the Administration's present arrangement of agenda items was not meant to be a counter measure against some members' filibuster tactics. SFST said that there were still many public works projects and proposals to be funded under the Capital Works Reserve Fund ("CWRP") as well as proposals announced in the Policy Address and the Budget that required approval by FC. He appealed to members to consider those proposals expeditiously so that the community would benefit from the initiatives at an early stage. In particular, SFST said that further delay in approving items funded under CWRP would incur additional cost and time because the items might need to be re-tendered and there might be cost-escalation due to inflation and other factors. SFST added that if members required further dialogue on the matter, he would be willing to oblige if it helped expedite the deliberation process.

Monitoring of public expenditure by the Legislative Council

19. Mr LEE Cheuk-yan criticized the Administration for arranging to include commitment items in the Estimates for approval in the context of the Appropriation Bill as a way to circumvent LegCo's monitoring of the executive authorities. He noted the Administration's argument that Members could examine the expenditure proposals embedded in the Estimates through raising written questions, participating in discussion at special meetings of FC in examining the Estimates of Expenditure, and expressing views at Budget debates. Mr LEE said that these forums were too brief to allow thorough deliberation on the 25 proposals which should have been/be submitted to FC for approval but were now included in the 2015-2016 Estimates.

20. Mr LEE Cheuk-yan sought clarification on whether, since 1985, the Administration had ever revived the practice of including commitment items in the Appropriation Bill rather than seeking explicit approval from FC. SFST confirmed that since 1985, the Government had chosen to cause such proposed

Action

commitments to be scrutinized and approved through submissions to FC (or by FS under delegated authority). SFST denied Mr LEE's criticism that the Administration's motive of deviating from the latter practice was to circumvent LegCo's monitoring of public expenditure.

21. Mr Albert CHAN said that if the Administration had to adopt a practice that had not been used for the past 30 years, it should do so only after proper consultation with members.

22. Mr CHAN Chi-chuen said that the Administration was responsible for the slow progress of FC in approving the funding items because it had deliberately placed all the controversial items ahead of other livelihood-related matters on FC's agenda. He also criticized the Administration for bending the rules and twisting procedures to circumvent the monitoring of FC. Mr CHAN queried whether the Administration would introduce further measures to, purportedly, simplify existing funding process.

23. SFST argued that the Estimates prepared by the Government under section 5 of PFO and submitted to LegCo for consideration and approval in the context of the Appropriation Bill had all along included many recurrent expenditure initiatives under the Operating Account. To streamline the funding process, the Administration was now adapting this practice to also cover non-recurrent commitment items under the Operating Account that did not involve policy changes (e.g. items seeking approval for replacement of existing equipment or installations involving no policy changes), and thus should not warrant discussion in FC on an individual basis.

24. Miss CHAN Yuen-han commented that the Administration's arrangement of including new commitment items into the 2015-2016 Estimates and inviting LegCo's approval in the context of the Appropriation Bill 2015 was unusual. While she did not fully agree with the Administration's approach, Miss CHAN said that she understood the difficult position faced by the Administration. She commented that the Administration should work with members on the way forward, so that a balance could be struck between upholding the executive-led system and respecting LegCo's monitoring role as prescribed under the Basic Law.

25. Miss CHAN Yuen-han said that some of the commitment items now included in the Estimates should be thoroughly discussed, and asked whether there was a mechanism to achieve that objective. SFST said that the Administration was mindful of the need for accountability in the implementation of policies. He stressed that the commitment items in question

Action

did not involve new policies and members could still scrutinize the commitment items through discussion in the respective Panels.

26. Mr Alan LEONG reminded members that the current meeting was convened because the Chief Executive had wilfully withdrawn outstanding funding items from the Committee's agenda to make way for priority deliberation of the proposed Innovation and Technology Bureau. In doing so, the Administration had resorted to an arrangement that had not been practised for more than 30 years. Mr LEONG maintained that the Administration's approach that was purported to counter the effects of members' filibustering tactics was unreasonable.

27. Mr LEE Cheuk-yan commented that since the Administration had included in the Estimates 25 funding items that should otherwise be considered by FC, there was no mechanism by which members could disapprove these items. He said that, even though RoP provided that Members could propose amendments to the Estimates when a committee of the whole Council was considering the Appropriation Bill, Members could only propose to reduce a certain amount of expenditure from a particular head of expenditure or its subhead. Mr LEE asked if members could specify a particular funding item to be removed from a head or subhead.

28. LA advised that according to RoP, Members might propose an amendment to reduce any head of expenditure by the sum allocated thereto in respect of any item therein. However, that did not stop the concerned Controlling Officer from authorizing the use of the remaining allocation under the head of expenditure for purposes including those of that particular item. As such, Members' intention of restraining Government's expenditure on a particular item through an amendment to the Appropriation Bill might not be enforceable under the law.

29. SFST said that notwithstanding LA's advice, the Administration had stated its position as early as 1999 that given the restriction stipulated in Article 74 of the Basic Law, it was not in order for LegCo Members to move any amendment to an Appropriation Bill.

Progress of the Finance Committee in dealing with funding proposals

30. Mr TANG Ka-piu enquired about the progress of FC in dealing with funding proposals since the beginning of the current legislative session. Permanent Secretary for Financial Services and the Treasury ("PS(Tsy)") referred members to the Administration's paper LC Paper No. FC121/14-15(01) and said that the 38 two-hour meetings held by FC in the first half of the

Action

2014-2015 session was record high compared with the corresponding half-year figures or even the full-year figures for recent years. PS(Tsy) said that only 15 funding proposals had been deliberated during the period, which was record low compared with the same period in previous sessions. She said that the Administration was concerned about the progress of FC in deliberating the funding proposals and considered that there was a need to streamline the current procedure.

Criteria for determining when to seek the Finance Committee's approval on funding items

31. Dr KWOK Ka-ki said that according to the Basic Law, LegCo had the responsibility to monitor the work of the Government and to approve taxation and public expenditure. However, LegCo could not exercise its monitoring function effectively because the Administration had ignored the established practice. Dr KWOK asked the Administration to explicate the criteria based on which it would decide to submit funding proposals to FC or include them in the Estimates for approval by LegCo in the context of the Appropriation Bill.

32. Mr Kenneth LEUNG noted that the commitment items listed in Annex B to LC Paper No. FC121/14-15(01) would be funded by the General Revenue Account in the 2015-2016 Estimates. He commented that it was not clear from the paper what criteria the Administration would adopt for determining whether an item should be included in the Estimates. He did not agree that these items did not warrant deliberation by FC. Mr LEUNG commented that the implementation of some of those items might arise from a change of specifications as a result of policy change. Members might have queries on those policy changes and such issues should be addressed in FC.

33. SFST said that there were clear criteria for determining when a funding proposal had to be submitted to FC. He explained that public works projects exceeding \$30 million, projects funded by certain funds established under section 29 of PFO, creation of directorate posts and new major initiatives of concern to members and requiring creation of new posts, would require approval by FC. There were not many circumstances under which the Administration could skip the process of examination by FC.

34. Mr Alan LEONG noted from paragraph 9 of the Administration's paper (LC Paper No. FC121/14-15(01)) the factors that the Administration would consider when deciding whether a commitment item should be included into the Estimates or be submitted to FC for approval. He recalled SFST as having indicated that the choice of the arrangement would have to be reasonable

Action

and justified. Mr LEONG commented that the factors were rather arbitrary and asked whether the Administration would adopt more objective criteria.

35. SFST reiterated that the Administration was trying to align the arrangement for handling recurrent and non-recurrent commitment items. Whether the non-recurrent commitment items would be included in the Estimates would largely depend on whether the required expenditure arose from implementation of new policies. If the Administration needed additional resources to improve on-going services, or to upgrade or replace existing equipment or installations without a change in policy, the Administration would likely include such commitment items in the Estimates for approval by LegCo in the context of the Appropriation Bill.

36. Ms Emily LAU asked if the Administration would withdraw all funding items from FC and include them in the Estimates for the Council's approval instead. SFST advised that the Administration had taken into account factors such as whether the items involved new policies, and had to ensure compliance with PFO. The Administration would have to make reference to established practice in handling commitment items.

37. Dr CHIANG Lai-wan asked if the funding proposals related to the creation of the Innovation and Technology Bureau ("ITB") could be included in the Estimates as well. SFST advised that the Administration would follow the established practice to submit ITB related proposals to FC for deliberation and approval as it involved creation of a new Head of Expenditure and directorate posts.

38. The Chairman directed that members' speaking time for the second round of questions including the Administration's response would be limited to four minutes each.

39. Mr Dennis KWOK said that the Administration had yet to provide the objective criteria by which the Administration decided whether a funding item should be submitted to FC for approval or be included in the Estimates to be approved by LegCo in the context of the Appropriation Bill. Mr KWOK noted that the Administration would submit funding proposals for discussion at the relevant LegCo Panels. He commented that the Panels did not have the authority to approve funding proposals; Panel members were normally asked to indicate whether they supported the Administration to submit the proposals to FC. Mr KWOK said that there was a proper and established mechanism through which funding items were put to FC for consideration and the Administration should not make its decision arbitrarily. Mr LEE Cheuk-yan made a similar comment.

Action

40. SFST responded that the practice of seeking LegCo approval for funding items either through inclusion in the Estimates or submission to the Committee for approval of changes to the Estimates was established and evolved through interaction between Members and the Administration over time.

41. Ms Claudia MO criticized the Administration's attitude of taking for granted that FC would approve its funding proposals.

42. At 10:29 am, the Chairman said that Mr Dennis KWOK had just submitted to him a motion that Mr KWOK intended to move at the meeting, but as the meeting was nearing the scheduled end time (10:30 am) and thus there was not sufficient time for the Committee to deal with Mr KWOK's proposed motion, he would not process the proposed motion.

43. The Chairman asked the Administration to provide further information to respond to the issues raised in Mr Dennis KWOK's letter of 4 February 2015 and Mr LEE Cheuk-yan's letter of 26 February 2015 as he found that the Administration had not fully responded to the relevant issues.

[Post-meeting note: The Administration's written responses were issued to members vide LC Paper Nos. FC134/14-15 and FC138/14-15 on 25 March 2015 and 1 April 2015 respectively.]

44. The Chairman reminded members that two meetings had been scheduled for 20 March 2015 to deal with funding proposals from the Administration.

45. At 10:32 am, the Chairman declared that the meeting be adjourned.

Legislative Council Secretariat
22 September 2015