

## **Finance Committee**

### **Note on Chairman's direction regarding notice of motions proposed by members under paragraph 21 of the Finance Committee Procedure for deciding on matters under the Public Finance Ordinance (Cap. 2)**

#### **Purpose**

This note sets out the factors taken into account by the Chairman of the Finance Committee ("FC") in his review of the notice requirement for motions proposed by members that are dependent on an agenda item and are on matters that are within the powers of FC to decide under the Public Finance Ordinance (Cap. 2) (hereafter referred to as "subsidiary Cap. 2 motions"), and the new arrangement that the Chairman will adopt in future in respect of the notice of such motions.

#### **Background**

2. Pursuant to the Resolutions<sup>1</sup> made under section 29 of the Public Finance Ordinance (Cap. 2), FC may specify certain "terms and conditions" or "conditions, exceptions and limitations" in respect of the expenditure from the relevant Funds for the purpose specified under the relevant financial proposal from the Government. A member of FC may propose to move a motion to specify such "terms and conditions" or "conditions, exceptions and limitations" for decision of FC. The notice required for this type of motions is provided in FCP 21, which states that –

*"The Financial Secretary, .... each being a public officer designated by the Government of the Hong Kong Special Administrative Region under Article 62(6) of the Basic Law, or any member may give notice to the Clerk of the items of business to be included in the*

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<sup>1</sup> These Resolutions are: Resolution on the Capital Works Reserve Fund (Cap. 2A), Resolution on the Capital Investment Fund (Cap. 2B), Resolution on the Loan Fund (Cap. 2C) and Resolution on the Innovation and Technology Fund (Cap. 2Q).

*agenda of the Finance Committee. The notice of agenda items should reach the Clerk at least six clear days before the meeting concerned, but shorter notice may be given if the Chairman so directs, provided that it shall not be shorter than two clear days for motions moved by members for deciding on matters under the Public Finance Ordinance (Cap. 2). The proposed motions should be presented in written form."*

3. FCP 21 was last amended on 2 November 2007 to provide for the notice period for such motions. As explained in paragraph 11 of the relevant discussion paper FCR(2007-08)33 (**Appendix I**), for those motions proposed by members which are dependent on other agenda items and are on matters that are within the powers of FC to decide under Cap. 2, e.g. a motion to impose conditions in respect of a Capital Works Reserve Fund ("CWRP") item on the agenda of an FC meeting, it is not likely that a notice of six clear days for the motion can be given, as the notice requirement for a CWRP item is at least six clear days. While the then FCP 21 provided that shorter notice may be given if the Chairman so directs, it was considered that the shorter notice for this type of motions should be set at not less than two clear days in order that members and the Administration had adequate time before the meeting to consider the proposed conditions, exceptions or limitations specified in such a motion. To this effect, the then proposed amendment to FCP21, which was passed by FC on 2 November 2007 (**Appendix II**), was to add the following at the end of FCP 21 –

*".... provided that it shall not be shorter than two clear days for motions moved by members for deciding on matters under the Public Finance Ordinance (Cap. 2). The proposed motions should be presented in written form."*

4. No member had proposed this type of motions, i.e. subsidiary Cap. 2 motions, since the above amendment was made until FC considered the financial proposal FCR(2016-17)86 on block allocations under CWRP in February and March 2017.

#### **Handling of subsidiary Cap. 2 motions proposed by members in respect of items FCR(2016-17)86 and FCR(2017-18)1**

5. The first time when members invoked FCP 21 to propose subsidiary Cap. 2 motions was during FC's deliberations on the item

FCR(2016-17)86 on block allocations under CWRP. This item was included in the agenda of the FC meetings on 24 February 2017<sup>2</sup>. As deliberations on the item was not completed at those meetings, the item was carried over to the meetings scheduled for 17 and 18 March 2017. On 9 March 2017, two members jointly proposed a motion pursuant to FCP 21 and the Resolution on Capital Works Reserve Fund (Cap. 2A) and requested that it be included in the agenda of the next FC meetings. In their response to the Administration's views on the first motion, the two members proposed five other motions pursuant to FCP 21 on 15 March 2017.

6. In considering whether these motions met the notice requirement under FCP 21, the notice was counted in relation to the date (i.e. 17 March 2017) of the next upcoming FC meetings to continue the deliberations on the item which was carried over from the meetings on 24 February 2017. While the members gave six clear days' notice for the first motion, they gave only two clear days' notice for the second batch of five motions. For the second batch of five motions, the Chairman exercised his discretion under FCP 21 and allowed a shorter notice of two clear days for the motions.

7. The same approach was adopted in handling the motions proposed by members in respect of FCR(2017-18)1 on injection of \$5,450 million as equity from the Capital Investment Fund ("CIF") to the Hongkong International Theme Parks Limited to support an expansion and development plan at the Phase 1 site of the Hong Kong Disneyland Resort. FC started deliberating the item on 1 April 2017<sup>3</sup> and the deliberations were carried over to the meetings on 21 and 22 April 2017. Three members gave notice on 18 April 2017 for two motions proposed under FCP 21. In giving his ruling on these motions, the Chairman stated that whether he would exercise discretion to allow a shorter notice would be decided on a case-by-case basis, and the reason that he was

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<sup>2</sup> In response to the Administration's request made on 22 February 2017, the Chairman agreed to allow a shorter notice of one clear day for inclusion of the item in the agenda of the FC meetings on 24 February 2017. FC started deliberations on the item on 24 February 2017 and the deliberations continued at the meetings on 17 and 18 March 2017. The item was approved on 18 March 2017.

<sup>3</sup> In response to the Administration's request made on 27 March 2017, the Chairman agreed to allow a shorter notice of four clear days for inclusion of the item in the agenda of the FC meetings on 1 April 2017. FC started deliberations on the item on 1 April 2017 and the deliberations continued at the meetings on 21, 22 and 28 April and 2 May 2017. The item was approved on 2 May 2017.

prepared to exercise discretion under FCP 21 to allow a shorter notice of two clear days for the two motions was that it was the first time that members of FC had ever proposed motions which sought to invoke paragraph 5(b) of the Resolution on the Capital Investment Fund (Cap. 2B) in respect of a proposal seeking funds from the CIF. Subsequently, one other member and the three members gave notice for one motion and six motions respectively. The Chairman refused to allow a shorter notice for these motions on the ground that the members should have sufficient time to give six clear days' notice for the motions and thus returned the relevant notices to the members.

### **Review of application of FCP 21 to subsidiary Cap. 2 motions**

8. In the above two instances where members proposed subsidiary Cap. 2 motions pursuant to FCP 21, the Chairman noted that the Administration had not given the minimum six clear days' notice for the items concerned as required under FCP 21. Instead, they requested a shorter notice. The Chairman acceded to the Administration's requests on consideration of the urgency of the item FCR(2016-17)86 and the need of the Administration to take into account the outcome of the preceding FC meetings on 25 March 2017 in the case of the item FCR(2017-18)1. At that time, no member had indicated that he would propose subsidiary Cap. 2 motions on those items pursuant to FCP 21. Having regard to the operational experience in dealing with the above two items, the Chairman considers that for proposals in respect of which FC may specify "terms and conditions" or "conditions, exceptions or limitations" pursuant to relevant legislation, it is important for the Administration to give the requisite notice period in order to allow members to propose motions under FCP 21 if they wish to do so, as it is possible that the relevant items are discussed and voted on at the meeting when they are included in the agenda of FC for the first time.

9. In the above instances, the Chairman also noted that fresh notices of further subsidiary Cap. 2 motions were given by the members concerned when the relevant item was carried over to the next meeting day(s), with the result that there could be multiple deadlines for members to propose such motions until the relevant item is voted on by FC. This had given rise to the problem of the lack of certainty for the Committee's proceedings.

10. As subsidiary Cap. 2 motions, if passed, would be binding on how the Financial Secretary may expend moneys from the relevant Funds, in accordance with the principle of procedural fairness, the Chairman considers it appropriate to invite the Administration to comment on subsidiary Cap. 2 motions and the members concerned to respond to the Administration's comments before he rules on the motions. The operational experience gained so far in handling such motions has revealed that given that time is required for processing such motions, if a very short notice (such as merely two clear days' notice) is given for such motions, other members may not have timely notice of whether the proposed motions will be considered by FC under the relevant agenda item.

11. In the light of the above problems, the Chairman has considered it necessary to review the application and operation of FCP 21. In this regard, he has asked the Secretariat to collect information on the practice of the Council in dealing with similar matters for his consideration.

**Established practice in handling Committee stage amendments to bills and amendments to motions having legislative effect**

12. As mentioned above, subsidiary Cap. 2 motions proposed by members, if passed, would have legal effect and would be binding on how the Financial Secretary may expend moneys from the relevant Funds. As such, the effect of such motions is similar to that of Committee stage amendments ("CSAs") to bills and amendments to motions that have legislative effect. The Chairman therefore considers it appropriate to make reference to the established practice of the Legislative Council ("LegCo") in handling CSAs to bills and amendments to motions having legislative effect.

13. Under rule 57(2) of the Rules of Procedure, notice of amendments proposed to be moved to a bill shall be given not less than 7 clear days before the day on which the bill is to be considered in committee of the whole Council; and except with the leave of the Chairman of the committee of the whole Council no amendment of which notice has not been so given may be moved to a bill. The Chairman notes from the information provided by the Clerk to LegCo that where the Committee stage on a bill is to be carried over to subsequent meeting(s) of the Council, the Chairman of the committee of the whole Council will not consider fresh notice to propose further CSAs before the subsequent

meeting(s). Similarly, for motions having legislative effect that have been placed on the agenda but are carried over to a subsequent Council meeting, the President will not consider fresh notice to propose further amendments to such motions before the subsequent meeting. According to the Clerk to LegCo, this long established practice is to ensure certainty for the scheduling of Council business, fairness to all Members and the need for a holistic picture of all the proposed amendments ruled admissible before the Council proceeds to vote on the proposed amendments.

### **Future application and operation of FCP 21 pursuant to review**

14. Having regard to the established practice of the Council for handling CSAs and amendments to motions having legislative effect and the relevant operational experience of FC, the Chairman considers that as FC is a committee of the Council, FCP 21 should be interpreted in the context of the above Council's practice. Accordingly, the Chairman has decided that the following arrangement will be adopted for subsidiary Cap. 2 motions proposed by members:

- (a) for financial proposals in respect of which FC may specify "terms and conditions" or "conditions, exceptions or limitations" pursuant to relevant legislation, while FCP 21 provides that notice of the agenda items should reach the Clerk at least six clear days before the meeting concerned, the Administration will be requested to give the longest possible notice. This is to ensure that members have sufficient time to peruse the financial proposals, and if they so wish propose subsidiary Cap. 2 motions;
- (b) the Chairman would also request the Administration to stagger the items on the type of financial proposals mentioned in (a) above for deliberation by FC to avoid the inclusion of too many such items in the agenda of FC meetings on a particular day. The purpose of this arrangement is to allow members to have sufficient time to peruse the financial proposals, and if they so wish propose subsidiary Cap. 2 motions; and
- (c) while the Chairman may consider allowing a shorter notice of not less than two clear days for members to propose subsidiary Cap. 2 motions under FCP 21 when the financial proposal

concerned is included in the agenda for the first time, he will not consider fresh notice of such motions if the relevant agenda item is carried over to other meeting day(s). This arrangement is in line with the established practice of the Council as mentioned in paragraph 13 above and is to ensure certainty for the scheduling of FC businesses, fairness to all FC members and the need for a holistic picture of all the subsidiary Cap. 2 motions ruled admissible before FC proceeds to vote on such motions.

15. The Chairman considers that in deciding on the above arrangement, he has struck a proper balance between the right of the Administration to give notice for relevant financial proposals, the right of members to propose FCP 21 motions for FC's decision on matters under Cap. 2 and the right of other members to have sufficient time to peruse the financial proposals in conjunction with any relevant motions proposed by members under FCP 21.

Council Business Division 1  
Legislative Council Secretariat  
5 May 2017

For discussion  
on 2 November 2007

FCR(2007-08)33

## ITEM FOR FINANCE COMMITTEE

### Review of the Procedures of the Finance Committee and its subcommittees

#### Purpose

This paper outlines the outcome of a review conducted by the Legislative Council Secretariat (LegCo Secretariat) on the Procedures of the Finance Committee and its two subcommittees, namely the Establishment Subcommittee (ESC) and the Public Works Subcommittee (PWSC). Members are invited to approve the proposed amendments to the Procedures of FC, ESC and PWSC which are based on the recommendations made as a result of the review.

#### Background

2. The Procedures of PWSC, ESC and FC (the Procedures) were endorsed by FC at its meetings on 11 March, 13 May and 8 July 1994 respectively in connection with the taking-over of the clerkship duties from the Government by the LegCo Secretariat which was established in April 1994. The Procedures were drafted by the LegCo Secretariat based on the Government's User's Guide to the workings of FC for use by Branch Secretaries, Heads of Departments and officers in the Finance Branch. The Administration was consulted throughout the drafting process. One of the major changes in the new Procedures was the inclusion of arrangements for electing non-official Members of the Legislative Council to be the chairmen and deputy chairmen of FC and its two subcommittees.

3. Since 1994, changes were made to the Procedures from time to time to formalize practices adopted over time or to bring in improvements to existing practice and procedures. These included election arrangements for the FC Chairman and Deputy Chairman, duration of division bell, duration of FC meetings, invitation of public officers to respond to questions on ESC/PWSC items at FC meetings, etc.

4. Towards the end of the 2006-2007 session, a number of financial

proposals involving controversial issues were considered and had led to extensive discussions with the Administration during meetings on matters which caused wide public concern. As a result, some procedural issues over the conduct of meetings were raised, e.g. the chairman's discretion to decide on speaking time, duration of ESC/PWSC meetings, motions to adjourn discussion of agenda items, motions to express a view, etc. A review of the Procedures in the light of the latest developments has recently been conducted by the Clerks and the Legal Adviser to FC, ESC and PWSC. The outcome of the review is set out below.

## **Review of the Procedures and recommendations**

### Subcommittees' authority to determine practice and procedure for dealing with motions moved without notice

5. At ESC's meeting held on 13 June 2007, the chairman of ESC made reference to the procedures adopted by other LegCo committees in dealing with motions moved without notice at meetings upon a member's indication that he intended to move a motion without notice in the course of ESC's consideration of an agenda item. The motion was to express a certain request to be made of the Administration. It was not intended to have any substantive effect on the recommendation in the ESC agenda item. The chairman considered that the proposed motion was relevant to the agenda item and asked members to indicate whether it should be proceeded with at the meeting. Following an indication of support by a majority of members present for the motion to be dealt with immediately, the chairman allowed the motion to be moved. Thereupon the motion was proposed, debated and put to a vote at the meeting. The motion was passed and was incorporated as part of ESC's recommendations to the FC. The issue for consideration is whether it is in order for ESC to determine its own practice and procedure for dealing with a motion sought to be moved without notice at a meeting during ESC's consideration of a submission from the Administration.

6. Paragraph 25 of the ESC Procedure provides: "Subject to the Rules of Procedure of the Legislative Council and the procedure endorsed by the FC, the ESC determines its own practice and procedure [Rule 71(13)].". Rule 71(13) of the Rules of Procedure of the Legislative Council (RoP) is included in Paragraph 25 to indicate that it is that subrule on which the paragraph is based. That subrule provides: "Subject to these Rules of Procedure, the practice and procedure of the committee (i.e. FC) and its subcommittees (i.e. ESC and PWSC) shall be determined by the committee".

7. It is clear that RoP contemplate that FC and its subcommittees will have to decide how to deal with matters not provided for in RoP in the course of transacting business. In the Legal Adviser's view, there is nothing in RoP

to suggest that it was the intention of the Legislative Council to impose a procedural restriction on subcommittees to the extent that the only procedures available to them for transacting business are those that had been pre-determined for them by their parent committees. Had there been such intention, it would give rise to the absurd situation that proceedings in a subcommittee would have to be brought to a grinding halt if the pre-determined procedures do not contain provisions to deal with a matter before it. That cannot be the intention underlying Rule 71(13). In other words, Rule 71(13) does not have the effect of giving the power to determine practice and procedure of ESC and PWSC exclusively to FC.

8. Paragraph 25 of the ESC Procedure makes it clear that ESC has the authority to determine its own practice and procedure as a power which is reasonably incidental to the performance of its functions, but subject to the limitation that such power can only be exercised where the practice and procedure so determined by ESC have not already been provided in RoP or determined by FC.

9. In relation to the procedure adopted by ESC at its meeting on 13 June 2007, ESC was faced with a procedural situation for which no provision was made in RoP or the ESC Procedure has made provision for. There is nothing to suggest that the procedure it determined at the meeting was not in order.

10. On 6 July 2007, FC similarly adopted the same procedure in dealing with two motions moved without notice in respect of two agenda items for its consideration. As it appears that there may be more moving of motions without notice in future, it is proposed that a procedure be included in the FC, ESC and PWSC Procedures to ensure procedural consistency. The proposed amendment to put in place the procedure is in **Appendix I**.

Procedure for dealing with motions moved for deciding on matters under the Public Finance Ordinance (Cap. 2)

11. The procedure for dealing with motions in the current Procedures, e.g. Paragraph 37 of the FC Procedure, aims to deal with motions that are moved by a member and are qualified as an agenda item for discussion at a meeting. These motions are substantive motions on matters that are within the powers of FC to decide. They include motions amending procedures, and motions imposing conditions, exceptions or limitations on the Financial Secretary's power delegated to him under section 8(3) of Cap. 2 or under the Capital Works Reserve Fund Resolution (Cap. 2 sub. leg. A) or the Capital Investment Fund Resolution (Cap. 2 sub. leg. B). For those motions which are dependent on other agenda items of the same meeting, e.g. a motion to impose conditions in respect of a Capital Works Reserve Fund (CWRF) item on the agenda of an FC meeting, it is not likely that a notice of six clear days for the motion can be given, as the notice requirement for a CWRF item is only six clear days. The

current Procedure has provided that shorter notice may be given if the Chairman so directs. In order that members and the Administration have adequate time before the meeting to consider proposed conditions, exceptions or limitations specified in a motion, it is proposed that the shorter notice for these circumstances be set at not less than two clear days. The proposed amendment is in **Appendix II**.

#### Record of proceedings

12. The records of the proceedings of FC, ESC and PWSC are kept in the form of minutes. However, where considered necessary, the Committee/Subcommittees may consider keeping a verbatim record of the whole or any part of a meeting. It is proposed that Paragraph 7 of the FC Procedure be amended as in **Appendix III**. If considered appropriate, similar amendments may also be made to the ESC and PWSC Procedures.

#### Notice to require attendance of public officers at FC meetings

13. Under the current practice, all items endorsed by ESC/PWSC are usually included under one composite paper and submitted to FC for approval. Members are entitled to speak on and request separate voting on any of the items in the paper. If members consider it necessary for Government officials in charge of a specific item to attend a FC meeting to answer questions on it, they are requested to inform the Clerk to FC one day before the date of the relevant FC meeting so that arrangements can be made. To formalize this practice, it is recommended that Paragraph 17 of the FC Procedure be amended as proposed in **Appendix IV**.

#### Motion to adjourn discussion on an item or further proceedings

14. Paragraph 39 of FC Procedure provides for a member to move without notice that discussion on an item or further proceedings be adjourned. The same procedure has also been provided in the ESC and PWSC Procedures. This procedure is adapted from Rule 40 of RoP, but the procedure for moving, debating and voting on the motion has not been set out in Paragraph 39. It is proposed that for clarity and consistency, Paragraph 39 of FC Procedure, as well as relevant paragraphs in the ESC and PWSC Procedures, be amended as in **Appendix V**.

#### Extension of meeting time

15. At present, agenda items not dealt with at a meeting of FC, ESC and PWSC are carried over to the next meeting or, if the Chairman so decides, to a special meeting. For ESC and PWSC, the present practice of providing a two-hour meeting slot for their meetings is to keep it in line with a decision of FC on 24 March 2006 to limit its meetings to two hours for each meeting. As

there is a growing need to extend the meeting time of ESC/PWSC so that items on the agenda can be concluded and its recommendations can be put forward to FC as scheduled, it is proposed that flexibility be provided in the ESC and PWSC Procedures to allow the Subcommittees to extend their meeting time when necessary. As the meetings of ESC and PWSC are usually held on Wednesdays before a Council meeting, one of the preconditions to be satisfied should be that such extended meeting time should not clash with the meeting time of the Council. Another precondition should be that the meeting venue is available. It is proposed that a meeting may be extended by not more than 15 minutes by an announcement made by the Chairman before the appointed ending time, unless the Subcommittee decides otherwise. The Subcommittee may further extend a meeting for a specified period of time subject to no dissenting voice. No new motion should be proposed during the period of extension decided by the Subcommittee unless the motion is in relation to an item on the agenda which is raised for discussion during the extension period. The proposed amendments to the Procedures are in **Appendix VI**.

### **Advice Sought**

16. Members are invited to consider the recommendations set out in paragraphs 5 to 15 above and to endorse the proposed amendments to the Procedures as set out in Appendices I to VI.

Council Business Division 1  
Legislative Council Secretariat  
26 October 2007

**Proposed amendments in relation to procedure for dealing with motions  
moved for deciding on matters under  
the Public Finance Ordinance (Cap. 2)**

**Finance Committee Procedure**

**Agenda Item**

21. The Financial Secretary, the Secretary for Financial Services and the Treasury, the Permanent Secretary for Financial Services and the Treasury (Treasury) or a Deputy Secretary for Financial Services and the Treasury (Treasury), each being a public officer designated by the Government of the Hong Kong Special Administrative Region under Article 62(6) of the Basic Law, or any member may give notice to the Clerk of the items of business to be included in the agenda of the Finance Committee [Rule 9(2)]. The notice of agenda items should reach the Clerk at least six clear days before the meeting concerned, but shorter notice may be given if the Chairman so directs, provided that it shall not be shorter than two clear days for motions moved by members for deciding on matters under the Public Finance Ordinance (Cap. 2). The proposed motions should be presented in written form.

**Extract from the minutes of the Finance Committee meeting  
on 2 November 2007**

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**Item No. 3 - FCR(2007-08)33**

**Discussion paper on the review of the procedures of the Finance Committee and its subcommittees**

26. The Chairman said that members were invited to endorse amendments to the Procedures of the Finance Committee and its two subcommittees, namely the Establishment Subcommittee and the Public Works Subcommittee, as set out in the discussion paper.

27. In response to Ms Emily LAU's question on the procedure for dealing with motions moved for deciding on matters under the Public Finance Ordinance (Cap 2), the Clerk explained that paragraph 37 of the FC Procedure dealt with motions that were moved by a member and were qualified as an agenda item for discussion at a meeting. These motions were substantive motions on matters that were within the powers of FC to decide. They included motions amending procedures, and motions imposing conditions, exceptions or limitations on the Financial Secretary's power delegated to him. For those motions which were dependent on other agenda items of the same meeting, e.g. a motion to impose conditions in respect of a Capital Works Reserve Fund (CWRF) item on the agenda of a FC meeting, it was not likely that a notice of six clear days for the motion could be given, as the notice requirement for a CWRF item was only six clear days. The current Procedure had provided that shorter notice might be given if the Chairman so directed. In order that members and the Administration had adequate time before the meeting to consider the proposed conditions, exceptions or limitations specified in a motion, it was proposed that the shorter notice for these circumstances be set at not less than two clear days. The Legal Adviser said that the motions moved under the Ordinance (Cap. 2) would have legal effect once they were passed.

28. The Chairman put the item to vote. The Committee approved the proposal.

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