# Ruling of the Chairman of the Finance Committee on five motions proposed by Hon CHU Hoi-dick and Dr Hon YIU Chung-yim in two letters dated 15 March 2017 relating to block allocations under the Capital Works Reserve Fund

By two letters both dated 15 March 2017, Hon CHU Hoi-dick and Dr Hon YIU Chung-yim ("the two Members") requested the Chairman of the Finance Committee ("FC") to include in the agenda of the FC meetings on 18 March 2017 five motions to be proposed under paragraph 21 of the Finance Committee Procedure ("FCP"). The two letters are at **Appendix I**.

### The Administration's views

- detailed in its letter of Administration's views are 2. In gist, the Government considers that the 17 March 2017 (Appendix II). changes proposed under Revised Motion 1, Revised Motion 2, Revised Motion 3 and New Motion 1 refer to a change in the procedure to be followed at FC meetings in approving block allocations under the Capital Works Reserve Fund ("CWRF"). On the other hand, section 8(3) of the Public Finance Ordinance (Cap. 2) is related to the conditions which may be specified in the FC's delegation to the Financial Secretary ("FS") to approve changes of the approved estimates of expenditure under section 8(1) of Cap. 2. Likewise, the changes proposed under the above four Motions are not related to how the moneys from CWRF as approved by FC may be expended by FS under paragraph (c) of the Resolution on Capital Works Reserve Fund (Cap. 2A). As such, the above four motions fall outside the permitted scope of section 8(3) of Cap. 2 and paragraph (c) of Cap. 2A and should not be included in the agenda of an FC meeting as being out of order.
- 3. As for New Motion 2, the Administration considers that the proposal under New Motion 2 includes funding items which are not under CWRF block allocations and is partly outside the scope of paragraph (c) of Cap. 2A. Since a motion should be considered as a whole, New Motion 2 should also be excluded from the agenda of an FC meeting as being out of order.

4. The Administration has also elaborated, in its letter, on the original intent of establishing the CWRF block allocations mechanism, its operation over the years, and the arrangement for the block allocations under "Head 701—Land Acquisition".

# Members' response

- 5. On 18 March 2017, Mr CHU Hoi-dick and Dr YIU Chung-yim submitted to me a letter dated 17 March 2017 setting out their response to the Administration's views (**Appendix III**).
- 6. In gist, the two Members do not subscribe to the Administration's views that New Motion 2 is out of order. While noting that there are two categories of subheads under Head 701, namely "Infrastructure" and "Block allocations", they consider that while New Motion 2 may cover seven subheads that do not fall within the scope of "Block allocations", these seven subheads are still covered by CWRF. New Motion 2 is a motion that relates to the discussion on the imposition of conditions, exceptions and limitations on the powers delegated to FS under Cap. 2A. New Motion 2, if passed, does not have retrospective effect and therefore will not create uncertainty to items under these seven subheads in respect of which funds have been approved. As such, there should not be any concerns about the Motion being out of order.
- Regarding the three Revised Motions and New Motion 1, the two Members point out that the motions seek to take out individual items from the CWRF block allocations proposal, a change expressed by means of "the financial level of the delegation of powers". The substantive meaning of which is tantamount to "changing the financial ceiling of such delegation to \$0". They consider that such motions are in order since their nature is the same as that of the resolutions passed by the Legislative Council and FC in respect of the CWRF mechanism.

8. The two Members have indicated that they will not withdraw the aforesaid five motions, and requested me to consider allowing FC to scrutinize these motions prior to voting on the block allocations proposal under CWRF this year. If this is not possible, they request FC to scrutinize the motions further proposed by them in their response letter, i.e. motions under the headings of "Revised Motion 4", "Revised Motion 5", "Revised Motion 6", "Revised Motion 7" and "Revised Motion 8" in the letter. They indicate that these further motions, despite the use of wordings that are different from those of the aforesaid five motions, share similar meanings.

# My opinion

Of the five motions, three are described as "revised motions" and 9. two are referred to as New Motion 1 and New Motion 2. In their response to the Administration's views on the five motions dated 17 March 2017, the two Members have explained that the substantive meaning of the three revised motions and New Motion 1 (collectively referred to as "the four motions") which seek to take out individual items from the CWRF block allocation proposal is to change the expenditure ceiling for individual items In my view, the four motions, as drafted, do not reflect the above intended meaning. The four motions seek to introduce a procedure not provided for in FCP for FC to consider and examine CWRF block allocations. I do not consider that what are proposed in the four motions relate to conditions, exceptions and limitations in accordance with which FS may expend moneys from CWRF for the purposes of the Government's public works programme under paragraph (c) of Cap. 2A. For the same reasons as set out in my ruling dated 17 March 2017 on a motion proposed by the two Members in their letter dated 9 March 2017, I consider that the four motions are out of order under Rule 30(3)(c) of the Rules of Procedure ("RoP")<sup>1</sup> and paragraph 37 of FCP.<sup>2</sup>

Paragraph 37 of FCP provides that subject to FC's decisions made from time to time, RoP 29 to RoP 35 (including RoP 30(3)(c)) shall apply, with necessary modifications, to FC proceedings in dealing with motions.

Under RoP 30(3)(c), the President of the Legislative Council shall direct a notice of motion or an amendment to be returned to the Member concerned as being in his opinion out of order.

New Motion 2 proposed by the two Members seeks to set a limit 10. on the expenditure for "Head 701—Land Acquisition". As explained by the Administration at the second FC meeting on 17 March 2017, Head 701 (see Appendix IV) contains two categories of land acquisition items. first category relates to independent items which the Administration will seek FC's approval on a per item basis and hence does not fall within the scope of CWRF block allocations. The second category relates to block allocation items for which FS has been given delegated authority to expend It is clear to me that New Motion 2, as drafted, would apply to items not covered in the CWRF block allocations for 2017-2018. It is therefore unclear how the proposal in New Motion 2 could work if it is passed. Since New Motion 2 does not specify the applicable subheads under the relevant CWRF block allocations, I consider that the proposal in the motion is unintelligible and hence out of order under RoP 30(3)(c) and paragraph 37 of FCP.

# My ruling

11. I rule that the five motions proposed by the two Members in their letters dated 15 March 2017 relating to block allocations under CWRF are out of order, and in accordance with RoP 30(3)(c), the notices of the motions shall be returned to the two Members.

### **Others**

views dated Administration's the 12. their response to 17 March 2017, the two Members have submitted five more revised motions ("further motions"), requesting me to make arrangements for FC to scrutinize these five further motions if I rule that the five motions proposed by them in their letter dated 15 March 2017 are out of order. paragraph 21 of FCP, the notice of agenda items should reach the Clerk to FC 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 Cap. 2. As the further motions were submitted on 18 March 2017, there is insufficient notice for these motions to be dealt with at the FC meetings on 18 March 2017. For this reason, I will not deal with these further motions.

(CHAN Kin-por)

Chairman

Finance Committee

Encls.

18 March 2017

# 關於:『緩解基本工程儲備基金「整體撥款」爭議之建議』議程項目

3月9日,我等向財務委員會主席閣下致函,題為「關於:就2017年3月17日財務委員會提出議程項目」,內容為要求主席閣下,於即將舉行之財委會,加入『緩解基本工程儲備基金「整體撥款」爭議之建議』此一議程項目,並討論我等草擬之議案。

日前,我等就此收到本會秘書處轉交之政府信件,現謹回覆及補充如下。

# 【甲:關於原議案是否符合法例、議事程序及會議規則】

## (一) 議案絕對與財委會權責相關,並有先例

查我等之議案,原文為:

根據香港法例第2章《公共財政條例》第8條第3款,及/或香港附屬法例2A《基本工程儲備基金》中的註1所提述的臨時立法會於1997年12月17日根據《公共財政條例》(第2章)第29(1)條提出和通過的決議中的(c)款,自2017/18立法年度開始,財務委員會就基本工程儲備基金整體撥款機制中,轉授財政司司長權力的「指明條件、例外情況及限制」,加入修訂如下:

如不少於 20 名立法會議員於財務委員會審議基本工程儲備基金整體撥款建議期間提出書面要求,政府須將個別項目從有關撥款建議中抽出,提交財務委員會 另行審批。

### 而政府信件則回覆:

- 4. 政府認為議案援引題述第2章和第2A章的兩項條文, 並無法律依據。
- 5. 議案所提修訂,是指修訂財委會會議在審批基金整體撥款時所依循的程序。 至於第2章第8(3)條,則關於財委會在轉授權力予財政司司長根據第2章第 8(1)條核准修改"核准開支預算"時可指明的條件。
- 6. 同樣, 議案所提修訂,與財政司司長可如何根據第2A章(c)段支用財委會所 批准的基金款項,兩者並不相關。
- 7. 因此,議案不屬第2章第8(3)條和第2A章(c)段的准許範圍,由於不合規程,議案不應被納入財委會會議的議程。

我等之議案(下稱「原議案」)其實已於正文中清楚指出,我等之議案,是針對既有財委會就轉授予財政司司長修改核准預算權力,或就《基本工程儲備基金》開支建議所設定之「條件、例外情況及限制」,並建議在現時的「條件、例外情況及限制」加入我等提出的內容。

而財委會就「條件、例外情況及限制」之審議權力,正正是來自《公共財政條例》第8條及/或附屬法例第2A章《基本工程儲備基金》。

本委員會自 1983 年以來,已多次討論和審議,至少包括 1983 年 3 月 9 日、1987 年 12 月 9 日、1989 年 4 月 12 日、1991 年 8 月 9 日、1995 年 3 月 9 日、2007 年 11 月 2 日、2012 年 7 月 13 日的立法會財委會,俱曾討論此等「條件、

例外情况及限制」的內容,絕對有先例可援。主席閣下理應接納。

# (二)參考手冊有明文涵蓋

同時,查《香港特別行政區立法會歷史、規則及行事方式參考手冊》第 12.77 段,指出:

「《財務委員會會議程序》第21段提及的議案,可包括有關修訂委員會及/或其轄下小組委員會的會議程序的議案、以及對根據《公共財政條例》(第2章)第8(3)條轉授予財政司司長的權力施加條件、例外情況或限制的議案,或就根據第2章第29條設立的各項基金的相關決議下的開支建議指明條款及條件的議案」。

我等提出的議案,至少屬於第三種情況「根據第2章第29條設立的各項基金的相關決議下的開支建議指明條款及條件的議案」,對財政司司長提出新的授權,故此並非如政府回信第五段所指,是為了修訂財委會會議在審批基金整體撥款時「所依循的程序」。

# (三)議案符合法例原意

政府回信的第六段指,「議案所提修訂,與財政司司長可如何根據第 2A 章(c) 段支用財委會所批准的基金款項,兩者並不相關」。我等認為政府的理解並不正確,查香港附屬法例 2A《基本工程儲備基金》所指,「財政司司長可由基金支用款項……但須按照財務委員會所指明的條件、例外情況及限制行事」,說明(1)提出「條件、例外情況及限制」的主導權在財委會;(2)「條件、例外情況及限制」的範圍亦可由財委會決定。

由於目前「基本工程儲備基金整體撥款機制」是根據第2章第8條第3款及/或第2A章的授權而設立,我等提出的議案只是遵循過去的授權方式,更新授權,因此沒有理由說議案與兩條法例不相關。政府指議案與第2章第8條第3款及/或第2A章無關,實際上是否定了財委會主動修訂授權的權力,與法例的原則相違背。

我等認為,政府回覆之解釋,行文十分粗疏,法律理據有欠闡述,對於何謂不相關之說明亦欠奉。在反對我等議案前,政府實應先行釐清,於財委會就轉授予財政司司長權力之「條件、例外情況及限制」一事而言,財委會權責如何,相關及不相關的範圍又如何。

### (四)權責屬財委會,故財委會須先有決議,方可考慮是否修改任何議事程序

就政府之信件,立法會助理秘書長薛鳳鳴小姐今天(3月15日)向我等口頭提及,從修訂議事程序的方法去改革現行機制,或者亦是一個可能。

就此,我等希望指出,按《公共財政條例》第8條及/或附屬法例第2A章《基本工程儲備基金》,指明財委會轉授予財政司司長修改核准預算權力之「條件、例外情況及限制」之權力,屬財務委員會。

即,若要修訂「條件、例外情況及限制」之內容,無論「原議案」是否牽涉修訂《財務委員會議事程序》,本委員會必須先行審議,方可交議事規則委員會討論、考慮或建議,因為議事規則委員會,並無權責,決定上述「條件、例外

情况及限制」之內容。

即,財委會有權力及責任,按照法例,討論及修訂「條件、例外情況及限制」 之內容(「原議案」)。而財委會主席閣下,亦可按照《議事規則》第92段, 以主席剩餘權力,主持相關會議。至於是否需要修訂《財務委員會議事程 序》,令將來之操作更順暢,則可容後再議。

# (五)措辭之輕微修訂

今午(3月15日)助理秘書長薛小姐建議「原議案」之措辭,應稍為修訂如下,我等願意接納。

根據香港法例第2章《公共財政條例》第8條第3款,及/或香港附屬法例2A《基本工程儲備基金》中的註1所提述的臨時立法會於1997年12月17日根據《公共財政條例》(第2章)第29(1)條提出和通過的決議中的(c)款,自2017/18立法財政年度開始,財務委員會就基本工程儲備基金整體撥款機制中,轉授財政司司長權力的「指明條件、例外情況及限制」,加入修訂如下:

如不少於 20 名立法會議員於財務委員會審議基本工程儲備基金整體撥款建議期間提出書面要求,政府須將個別項目從有關撥款建議中抽出,提交財務委員會 另行審批。

# 【乙:原議案的修訂版本】

考慮到政府信件意見,我等<u>在不撤回原議案的前提</u>下,亦願意提出以下數個原 議案之修訂版本,即意涵與原議案接近,以供主席閣下考慮。我等理解,<u>主席</u> 可連同原議案,全數接納,供本委員會參詳,並作合併辯論。

### (一)修訂議案一

財務委員會就基本工程儲備基金下,開支總目 701 分目 1004CA、總目 701 分目 1100CA、總目 705 分目 5001BX,維持財政司司長現有授權上限,即不設撥款限額;就開支總目 706 分目 6101TX,亦維持財政司司長現有授權上限,即7,500 萬元;就開支總目 710 分目 A007GX,亦維持財政司司長現有授權上限,即1,000 萬元;就基本工程儲備基金整體撥款所包括的其餘 21 個開支分目,亦維持財政司司長現有授權上限,即3,000 萬元;以便財政司司長可批准把各類丁級工程項目納入工務計劃。然而,自2017/18 財政年度基本工程儲備基金開始,以上授權項目,不可包括不少於20 名立法會議員於財務委員會審議基本工程儲備基金整體撥款建議期間,提出書面要求從整體撥款建議中抽出之個別項目;已簽訂承辦合約的項目除外。

### (二)修訂議案二

財務委員會就基本工程儲備基金下,開支總目701分目1004CA、總目701分目1100CA、總目705分目5001BX,維持財政司司長現有授權上限,即不設撥款限額;就開支總目706分目6101TX,亦維持財政司司長現有授權上限,即7,500萬元;就開支總目710分目A007GX,亦維持財政司司長現有授權上限,即1,000萬元;就基本工程儲備基金整體撥款所包括的其餘21個開支分目,亦維持財政司司長現有授權上限,即3,000萬元;以便財政司司長可批准把各類丁級工程項目納入工務計劃。然而,自2017/18財政年度基本工程儲備基金開

始,以上授權項目,不可包括不少於35名立法會議員於財務委員會審議基本工程儲備基金整體撥款建議期間,提出書面要求從整體撥款建議中抽出之個別項目;已簽訂承辦合約的項目除外。

# (三)修訂議案三

財務委員會就基本工程儲備基金下,開支總目701分目1004CA、總目701分目1100CA、總目705分目5001BX,維持財政司司長現有授權上限,即不設撥款限額;就開支總目706分目6101TX,亦維持財政司司長現有授權上限,即7,500萬元;就開支總目710分目A007GX,亦維持財政司司長現有授權上限,即1,000萬元;就基本工程儲備基金整體撥款所包括的其餘21個開支分目,亦維持財政司司長現有授權上限,即3,000萬元;以便財政司司長可批准把各類丁級工程項目納入工務計劃。然而,自2017/18財政年度基本工程儲備基金開始,對以上授權項目,財務委員會委員可按《財務委員會議事程序》第21段,於預告時間不得少於2整天的情況下提出議案表決,抽出個別項目;已簽訂承辦合約的項目除外。

# 【丙・小結】

我等在2017年3月9日向財委會提交的信件,是根據《財務委員會會議程序》第21段加入「議程項目」。我等認為,無論財委會主席就議案內容有何判斷,都沒有合理理由禁止將「議程項目」加入3月17日及/或3月18日的財委會會議。

我等希望再次強調,即使預算案亦設有修訂機制,然而基本工程儲備基金整體 撥款,卻須綑綁審議及表決。此情況顯然是剝奪了《基本法》第73條賦予立法 會之職能及權責,既不合理,更不合法,令相關審議的公信力長期面臨挑戰, 亦造成更多政府與民間的衝突。

無論如何,盼請主席閣下正面回覆,為目前撥款危機,及往後機制之潛在爭議解困,改善行政立法關係,造福香港市民。

此致 財委會主席陳健波議員

朱红



立法會議員朱凱廸 立法會議員姚松炎 謹啟

副本抄送:全體財委會委員 財經事務及庫務局局長陳家強教授

2017年3月15日

立法會財務委員會 主席 陳健波議員

陳主席:

# 在「緩解基本工程儲備基金『整體撥款』爭議之建議」議程下加入兩項動議

我等在2017年3月9日提出在財務委員會加入「緩解基本工程儲備基金『整體撥款』 爭議之建議」議程,我等根據《財務委員會會議程序》21段,在該議程下提出兩項和《公共 財政條例》相關的議案。議案文本如下:

# 議案一

將**總目 701-土地徵用** 從現有基本工程儲備基金撥款授權中剔出;日後 該總目內的撥款申請,須另提交財務委員會審議。

# 議案二

為基本工程儲備基金下開支 總**目701-土地徵用** 設撥款授權上限,並將上限設為1億元。

我等要求將兩項議案分開並按次序先後審議,然而我等同意若議案一獲得通過,則不 須處理議案二。敬請主席准予以上動議。

順祝

政安

朱九边 \$

朱凱迪 | 立法會議員 (新界西) 姚松炎 | 立法會議員 (建築、測量、都市規劃及園境界)

# 財經事務及庫務局 (庫務科)



# FINANCIAL SERVICES AND THE TREASURY BUREAU (The Treasury Branch)

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來函檔號 Your Ref.:

17 March 2017

Ms Anita SIT Clerk to the Finance Committee Legislative Council Secretariat Legislative Council Complex 1 Legislative Council Road Central, Hong Kong

Dear Anita,

# Proposal from Hon CHU Hoi-dick and Hon YIU Chung-yim

Thank you for your email of 16 March seeking the Government's view on the proposal raised by the Hon CHU Hoi-dick and the Hon YIU Chung-yim on 15 March 2017. Our response is set out at **Annex**.

Yours sincerely,

(Alfred ZHI)

for Secretary for Financial Services and the Treasury

### **Government Response**

to

# Motions proposed by Hon CHU Hoi-dick and Hon YIU Chung-yim on 15 March 2017

### The Motions

The Hon CHU Hoi-dick and the Hon YIU Chung-yim proposed a Encl. 1 total of five Motions (details at Enclosure 1, Chinese version only).

# **Legal Basis of the Motions**

- 2. The Government considers that the changes proposed under the Revised Motion 1, Revised Motion 2, Revised Motion 3 and the new Motion 1 refer to a change in the procedure to be followed at the Finance Committee (FC) meetings in approving the Capital Works Reserve Fund (CWRF) block allocations. On the other hand, section 8(3) of Cap. 2 is related to the conditions which may be specified in the FC's delegation to the Financial Secretary (FS) to approve changes of the approved estimates of expenditure under section 8(1) of Cap. 2.
- 3. Likewise, the changes proposed under the above four Motions are not related to how the moneys from the CWRF as approved by the FC may be expended by the FS under paragraph (c) of Cap. 2A.
- 4. As such, the above four Motions fall outside the permitted scope of section 8(3) of Cap. 2 and paragraph (c) of Cap. 2A and should not be included in the agenda of an FC meeting as being out of order.
- 5. As for the new Motion 2, the proposal therein includes funding items which are not under the CWRF block allocations and is partly outside the scope of paragraph (c) of Cap. 2A. Since a motion should be considered as a whole, the new Motion 2 should also be excluded from the agenda of an FC meeting as being out of order.

### **CWRF Block Allocations Mechanism**

- 6. Over the years, for the efficient and effective administration of the CWRF, the Government has secured the approval of the FC to delegate certain authorities to FS and government officials. These include the delegation to allow designated officials to approve the inclusion of new Category D projects (i.e. minor works projects) in the Public Works Programme subject to prescribed conditions, limitations and exceptions specified by the FC, and to pursue land acquisition according to legislations passed by the Legislative Council (LegCo) and compensation packages approved by the FC so as to reduce the number of items requiring approval by the FC. There is clear division of responsibility between the FC and the Government under the CWRF block allocations mechanism with proper checks and balances to ensure adequate accountability.
- 7. The CWRF block allocations mechanism has all along been effective. Stakeholders and the general public would expect the FC to approve the aggregate funding provision for each of the CWRF block allocations subhead on a yearly basis while offering advice to the Government on the merits of individual items. The Government should be allowed to exercise its delegated authority to create and pursue minor works items provided they are within the ambits and funding ceilings set by the FC, and land acquisition items provided they have completed statutory procedures and are in strict accordance with FC-approved compensation packages.

# **Head 701 – Land Acquisition**

- 8. "Head 701 Land Acquisition" is to cater for mainly the expenditure on compensation and ex-gratia allowances (EGA) arising from land acquisition and clearance required under public works projects. The extent of land acquisition and clearance depends on the project and its progress. Compensation and EGA payable to the eligible persons affected have to be paid once the land acquisition procedures have commenced.
- 9. In 2017-18, there are some 70 land acquisition items. For a number of them, the land acquisition work has been completed but compensation has yet to be paid as negotiations with the claimants are still on-going. Upon reaching agreement with the claimants, the Government is required to pay the statutory compensation in accordance with the statutory provisions. Failure to do so will cause delay in paying the compensation as well as the EGA to the claimants affected by the land acquisition and clearance and may also lead to civil claims against the Government.

- 10. In fact, statutory compensation under this expenditure head is assessed in accordance with statutory procedures and provisions. Claimants may also apply to the Lands Tribunal for determination of the amount of compensation. The EGA payable is calculated based on the EGA mechanism and formula approved by the FC. In other words, each compensation case is handled in accordance with the legislation passed by the LegCo and FC-approved compensation packages. To seek the FC's approval for compensation and EGA payment for each and every land acquisition item (as suggested in the new Motion 1) or every land acquisition item exceeding \$100 million (as suggested in the new Motion 2) would tantamount to passing the bulk, if not all, of the implementation work to the FC, which will affect the carrying out of the statutory procedures by the Government.
- 11. This will also defeat the purpose of the CWRF block allocations mechanism. Block allocations enable the Government to make compensation and EGA payments more efficiently so that claimants can receive the compensation payable to them as soon as possible, as well as facilitate the commencement of new land acquisition items and the implementation of related public works projects.

# 修訂議案一

財務委員會就基本工程儲備基金下,開支總目701分目1004CA、總目701分目1100CA、總目705分目5001BX,維持財政司司長現有授權上限,即不設撥款限額;就開支總目706分目6101TX,亦維持財政司司長現有授權上限,即7,500萬元;就開支總目710分目A007GX,亦維持財政司司長現有授權上限,即1,000萬元;就基本工程儲備基金整體撥款所包括的其餘21個開支分目,亦維持財政司司長現有授權上限,即3,000萬元;以便財政司司長可批准把各類丁級工程項目納入工務計劃。然而,自2017/18財政年度基本工程儲備基金開始,以上授權項目,不可包括不少於20名立法會議員於財務委員會審議基本工程儲備基金整體撥款建議期間,提出書面要求從整體撥款建議中抽出之個別項目;已簽訂承辦合約的項目除外。

# 修訂議案二

財務委員會就基本工程儲備基金下,開支總目701分目1004CA、總目701分目1100CA、總目705分目5001BX,維持財政司司長現有授權上限,即不設撥款限額;就開支總目706分目6101TX,亦維持財政司司長現有授權上限,即7,500萬元;就開支總目710分目A007GX,亦維持財政司司長現有授權上限,即1,000萬元;就基本工程儲備基金整體撥款所包括的其餘21個開支分目,亦維持財政司司長現有授權上限,即3,000萬元;以便財政司司長可批准把各類丁級工程項目納入工務計劃。然而,自2017/18財政年度基本工程儲備基金開始,以上授權項目,不可包括不少於35名立法會議員於財務委員會審議基本工程儲備基金整體撥款建議期間,提出書面要求從整體撥款建議中抽出之個別項目;已簽訂承辦合約的項目除外。

# 修訂議案三

財務委員會就基本工程儲備基金下,開支總目701分目1004CA、總目701分目1100CA、總目705分目5001BX,維持財政司司長現有授權上限,即不設撥款限額;就開支總目706分目6101TX,亦維持財政司司長現有授權上限,即7,500萬元;就開支總目710分目A007GX,亦維持財政司司長現有授權上限,即1,000萬元;就基本工程儲備基金整體撥款所包括的其餘21個開支分目,亦維持財政司司長現有授權上限,即3,000萬元;以便財政司司長可批准把各類丁級工程項目納入工務計劃。然而,自

2017/18財政年度基本工程儲備基金開始,對以上授權項目,財務委員會委員可按《財務委員會議事程序》第21段,於預告時間不得少於2整天的情況下提出議案表決,抽出個別項目;已簽訂承辦合約的項目除外。

# 新議案一

將總目701-土地徵用從現有基本工程儲備基金撥款授權中剔出;日後 該總目內的撥款申請,須另提交財務委員會審議。

# 新議案二

為基本程儲備基金下開支**總目701-土地徵用**設撥款授權上限,並將上限設為1億元。

Appendix III

關於:回應2017年3月17日政府致函立法會財委會秘書信件

如題。就此信件之附件,即政府對我等於 3 月 15 日提交之意見,謹此說明如下:

# (一)「新議案二」合乎規程

就反對「新議案二」,政府主要提出的法律理據為兩點,分別是

- (1)「涵蓋一些在不在基本整體撥款內的項目」,及
- (2)「因此部分不屬第 2A 章 (c) 段的範圍」。

我等認為

(i)總目701下的分目共有9項,分兩類,一為「基礎建設」,二為「整體撥款」。前者有7項分目,即1001CA、1002CA、1032CA、1033CA、1034CA、1035CA、1036CA。後者有兩項分目,即1004CA及1100CA。

即使「新議案二」涵蓋了不在整體撥款內的7項分目(下稱「7項分目」),但此7個分目亦在基本工程儲備基金之內。

- (ii) 而整個基本工程儲備基金,不論是否包括在整體撥款內的分目,按香港法例第2章《公共財政條例》及附屬法例第2A章《基本工程儲備基金》,其牽涉之轉授權力,及與此轉授權力相關的「條件、例外情況及限制」,俱屬財委會審議之權責範圍,故合規程。
- (iii) 立法會文件編號 FCR (2007-08) 33, 第 11 點提到:

「這些議案是有關財委會有權決定的事宜的實質議案,包括修訂程序的議案及對根據第2章第8(3)條或基本工程儲備基金決議(第2章附屬法例A)或資本投資基金決議(第2章附屬法例B)轉授財政司司長的權力施加條件、例外情況及限制的議案等。」

「新議案二」正是屬於討論根據基本工程儲備基金決議(第2章附屬法例A)轉授財政司司長的權力施加條件、例外情況及限制的議案。

立法會文件編號 FCRI (2007-08) 4, 第 4 點提到:

「立法會在 1982 年 1 月 20 日根據《公共財政條例》(第 2 章)第 29 (1)條通過一項決議,成立儲備基金,目的是為工務計劃和徵用土地提供資金。該項決議由 1982 年 4 月 1 日起生效。當局會不時修訂該項決議,以便把一些改動(例如由 1988 年 4 月 1 日起,非經常資助金及主要系統設備的開支改為由儲備基金而不是政府一般收入帳目支付)納入決議。該項決議亦載述儲備基金的管理方式、其目的、將會記入儲備基金的款項,以及可能會運用儲備基金支付的款項。該項決議載於附錄 I。根據該項決議,財政司司長可運用儲備基金支付款項作政府工務計劃等用途,並須遵守財委會可能會指明的條件、例外情況及限制。」

「新議案二」正是屬於討論「財委會可能會指明的條件、例外情況及限制」。

# (iv) 第2A章(c) 段:

- 「(c) 財政司司長可由基金支用款項 ——
- (i) 以作為政府公共工程計劃的用途;
- (ii) 以購置和安裝為實施公共工程計劃而致必需的設備;
- (iii) 以發展、購置和安裝政府所用的主要系統及設備;
- (iv) 以用作非經常補助金;
- (v) 以收購土地;及
- (vi)以支付根據《新界土地交換權利(贖回)條例》(第 495 章)須就土地交換權利 支付的贖回款項以及須就該等贖回款項支付的利息,

但須按照財務委員會所指明的條件、例外情況及限制行事;」

查此段所指之權力,無分「基礎建設」(7項分目)與「整體撥款」(1004CA及 1100CA),此段末句所指的「按照財務委員會所指明的條件、例外情況及限制」亦無分「基礎建設」(7項分目)與「整體撥款」(1004CA及1100CA)。

即,整體撥款以外的7項分目,目前授權上限為0元。然而,這並非表示,此7項分目,財委會不可轉授權力予財政司司長,並設置授權上限。

整體撥款以內,及整體撥款以外,兩者的分別,僅為現況上的分別,並非權限上的分別。

不論第2章第29條,或第2A章,亦從無述及兩類分目,在權限上的分別。

第2A章(c)段——包括末句「但須按照財務委員會所指明的條件、例外情況及限制行事」——同樣適用於7項分目。

- (v)「新議案二」即使通過,亦無追溯性,故此亦不會對7項分目中,現已批准撥款的項目,帶來任何不確定性,故此亦無不合規程之憂慮。
- (二)「修訂議案一」、「修訂議案二」、「修訂議案三」、「新議案一」亦 合乎規程

就反對「修訂議案一」、「修訂議案二」、「修訂議案三」、「新議案一」, 政府主要提出的法律理據只有一點,就是:

(1)此四項議案,乃旨在修訂財委會在審批基本工程儲備金(基金)整體撥款 時所依循之程序,與第2章第8(3)條及第2A章並不相關。

### 我等認為:

- (1)此四項議案,一旦通過,可能觸發《財委會會議程序》未來的修訂,並不等如,此四項議案提及的內容,不屬於「條件、例外情況及限制」。兩者並不互相排斥。
- (2)條件、例外情況及限制,屬授權內容的一部分,通常以「授權上限」作形式。然而,「授權上限」並非唯一合乎規程之形式。
- (3)「授權上限」,屬「限制」性質。

- (4)修訂議案一、修訂議案二、修訂議案三所建議之授權內容修訂,即「20 人書面要求」、「35人書面要求」及「通過議案」(即簡單多數在席委員要求),則屬「例外情況」性質。與前述法例提及之財委會權責,實直接相關。
- (5)「從整體撥款中抽出」,若改為「授權水平」形式表達,其實質意思,即相等於「授權上限改為0元」。
- (6) 有別於「授權上限」的例子,可參考 1987 年 12 月 9 日立法局財委會通過政府建議,修訂授權內容。當時將授權上限由 150 萬元增至 200 萬元(下表,《Report of the Finance Committee of the Legislative Council for 1987-88》,Appendix A,Item Note 58)。

此建議中,「條件、例外情況及限制」的形式,並不限於「授權上限」的形式,也有不與任何金額掛鈎的形式。

下表藍底白字部分,「項目必須為甲級工務計劃」,屬「條件」性質。

下表綠底白字部分,「財委會已批准之項目範圍不可因此改變」,則屬「限制」性質;但亦可理解為「條件」性質,因其實質意思,等如「須維持財委會已批准之項目範圍」。

# 可見,「條件、例外情況及限制」,有多種形式。

(1)	Type of changes	(2) Conditions, exceptions and	(3) Officers to whom the Financial		
(-)	-11	limitations	Secretary may delegate powers, subject to the further conditions		
			exceptions and limitations		
			specified		
1.	Creation of new subheads	Provided that the project is	Assistant Financial Secretary Principal Assistant Financial Secretary Deputy Financial Secretary		
		Category A of the Public Works			
		Programme			
•					
2	(1) additional allocations of funds	Provided that the actual unexpended balance of the approved project estimate	Finance Officer Assistant Financial Secretary		
	under subheads with approved project estimates	is not thereby exceeded	Principal Assistant Financial Secretary		
	project estimates	is not thereby exceeded			
			Deputy Financial Secretary		
	(2) additional allocations of funds	Provided that –	Financial Officer up to \$300,000;		
	under subheads without approved	(a) The additional allocation is	Assistant Financial Secretary up to		
	project estimates (i.e. block votes)	required for expenditure within the	\$800,000;		
		ambit of the subhead, and (b) The total additional allocation	Principal Assistant Financial Secretary up to \$1,200,000;		
		(b) The total additional allocation approved under delegated powers	Deputy Financial Secretary up to		
		during the financial year does not	\$2,000,000;		
		exceed \$2,000,000.	And in every case less any additional		
			allocation already approved under		
			delegated powers during the financial		
_	<u> </u>		year		
3	(1) increases in approved project estimates	(1) provided that, where the project estimate was approved by Finance	Assistant Financial Secretary up to \$800,000;		
		Committee, the total increase does	Principal Assistant Financial		
		not at any time exceed\$2,000.000	Secretary up to \$1,200,000;		
			Deputy Financial Secretary up to \$2,000,000;		
			And in every case less any increase		
			already approved under delegated		
		(2) provided that, where the project is	powers Assistant Financial Secretary provide		
		in Category D of the Public Works	that the total project estimate does no		
		Programme, the total project	thereby exceed \$800,000;		
		estimate does not thereby exceed	Principal Assistant Financial		
		\$2,000,000	Secretary provided that the total		
			project estimate does not thereby		
			exceed \$1,200,000		
	(2) decreases in approved project	Drawided that the game of the	Deputy Financial Secretary Assistant Financial Secretary		
	estimates	Provided that the scope of the project as approved by Finance	Principal Assistant Financial		
		project as approved by rmance	Secretary		

	Committee is not thereby altered	Deputy Financial Secretary
(3) creation of new Category D items in the Public Works Programme	Provided that the project estimate does not exceed \$2,000,000	Assistant Financial Secretary up to \$800,000 Principal Assistant Financial Secretary up to \$1,200,000;
		Deputy Financial Secretary up to \$2,000,000

(7)值得注意的是,即使沒有可應用的《財委會會議程序》條文,並不等如議案「不合規程」。無論是否牽涉修訂《財委會會議程序》,均須先討論議案。

若財委會通過議案,可進而討論是否應該,及是否需要修訂《財委會會議程序》。

正如我等於3月15日信件所言,即使沒有相關條文,權責仍屬財委會。

議案之建議,暫時沒有相關條文,與議案不合規程,並不等同。前者不會導致 後者。

(8)一直以來,於立法會上對基本工程儲備基金機制的討論,有兩類。一類是立法會大會議決,制訂基本工程儲備基金的框架,會變成附屬法例。

另一類是財務委員會的表決,修訂授權中的「條件、例外情況及限制」。這類 表決的結果,不須寫在附屬法例中。

「修訂議案一」、「修訂議案二」、「修訂議案三」、「新議案一」,屬於後一類。如前所述,「從整體撥款抽出」的實質意思,為「授權上限由現時水平改為 0 元」。這與過去所表決及通過的,例如 2012 年財委會把授權上限由 2,100 萬元增至 3,000 萬元,性質一致。故合乎規程。

亦因此,此四項議案,即使通過,亦不須改動附屬法例第 2A 章。故此,此四項議案是否有「程序修訂」性質,對於此四項議案是否合乎規程,並非關鍵。

### (三)修訂議案

在不撤回此五項議案的前提下,我等現再提出與此五項議案,措辭不一樣,但意思接近的議案。

### 修訂議案四

財務委員會就基本工程儲備基金下,開支總目701分目1004CA、總目701分目1100CA、總目705分目5001BX,維持財政司司長現有授權上限,即不設撥款限額;就開支總目706分目6101TX,亦維持財政司司長現有授權上限,即7,500萬元;就開支總目710分目A007GX,亦維持財政司司長現有授權上限,即1,000萬元;就基本工程儲備基金整體撥款所包括的其餘21個開支分目,亦維持財政司司長現有授權上限,即3,000萬元;以便財政司司長可批准把各類丁級工程項目納入工務計劃。然而,自2017/18財政年度基本工程儲備基金開始,若不少於20名立法會議員於財務委員會審議基本工程儲備基金整體撥款建議期間,提出書面要求,可將該個別項目之授權上限,由現時上限改為100元;已簽訂承辦合約的項目除外。

### 修訂議案五

財務委員會就基本工程儲備基金下,開支總目701分目1004CA、總目701分目1100CA、總目705分目5001BX,維持財政司司長現有授權上限,即不設撥款限額;就開支總目706分目6101TX,亦維持財政司司長現有授權上限,即7,500萬元;就開支總目710分目A007GX,亦維持財政司司長現有授權上限,即1,000萬元;就基本工程儲備基金整體撥款所包括的其餘21個開支分目,亦維持財政司司長現有授權上限,即3,000萬元;以便財政司司長可批准把各類丁級工程項目納入工務計劃。然而,自2017/18財政年度基本工程儲備基金開始,若不少於35名立法會議員於財務委員會審議基本工程儲備基金整體撥款建議期間,提出書面要求,可將該個別項目之授權上限,由現時上限改為100元;已簽訂承辦合約的項目除外。

### 修訂議案六

財務委員會就基本工程儲備基金下,開支總目 701 分目 1004CA、總目 701 分目 1100CA、總目 705 分目 5001BX,維持財政司司長現有授權上限,即不設撥款限額;就開支總目 706 分目 6101TX,亦維持財政司司長現有授權上限,即7,500 萬元;就開支總目 710 分目 A007GX,亦維持財政司司長現有授權上限,即1,000 萬元;就基本工程儲備基金整體撥款所包括的其餘 21 個開支分目,亦維持財政司司長現有授權上限,即3,000 萬元;以便財政司司長可批准把各類丁級工程項目納入工務計劃。然而,自2017/18 財政年度基本工程儲備基金開始,對以上授權項目,財務委員會委員可按《財務委員會議事程序》第21 段,於預告時間不得少於2整天的情況下提出議案表決,將該個別項目之授權上限,由現時上限改為100元;已簽訂承辦合約的項目除外。

# 修訂議案七

<u>自 2017/18 財政年度基本工程儲備基金開始,</u>基本工程儲備基金<u>整體撥款</u>中,總目 701-土地徵用(即分目 1004CA 及分目 1100CA)之授權上限,由不設上限改為 100 元。該兩項分目內開支超過 100 元之土地徵用撥款申請,須另提交財務委員會審議。

### 修訂議案八

<u>自 2017/18 財政年度基本工程儲備基金開始,</u>基本工程儲備基金<u>整體撥款</u>中, 總目 701-土地徵用(<u>即分目 1004CA 及分目 1100CA</u>) 設撥款授權上限,並將上 限設為 1 億元。

### (四)小結

請主席閣下接納「修訂議案一」、「修訂議案二」、「修訂議案三」、「新議 案一」、「新議案二」,並於是年度基本工程儲備基金整體撥款表決前,讓本 委員會審議。若否,也請考慮修訂議案四至八。感謝。

此致

財委會主席陳健波議員及全體委員

立法會議員朱凱廸、姚松炎謹啟

2017年3月17日

# Extract from the Estimates for the year ending 31 March 2018 Volume II -- Fund Accounts CAPITAL WORKS RESERVE FUND Appendix IV

(Payments)

Sub- head (Code)	Approved projects	Approved project estimate	Actual expenditure to 31.3.2016	Revised estimate 2016–17	<b>Estimate</b> 2017–18
		\$'000	\$'000	\$'000	\$'000
	Head 701—Land Acquisition				
	Infrastructure				
	Civil Engineering—Land acquisition				
1001CA	Compensation for surrenders and resumptions: street widening: urban area	135,000	114,762	10	10
1002CA	Compensation for surrenders and resumptions: urban improvement districts: Yau Ma Tei, Wan Chai and Western	1,115,100	1,090,416	1,000	100
1032CA	Special ex-gratia payments in relation to the regulation of Shenzhen River—stage I works	20,310	17,682	100	100
1033CA	Redemption money payable in respect of land exchange entitlements and interest payable thereon under the New Territories Land Exchange Entitlements (Redemption) Ordinance	2,400,000	1,155,956	1,000	1,000
1034CA	Special compensation payments for former residents of the Tiu Keng Leng Cottage Area	574,080	488,377	1,000	1,000
1035CA	Special ex-gratia payments in relation to the Hong Kong section of the Guangzhou–Shenzhen–Hong Kong Express Rail Link	86,000	72,383	15	15
1036CA	Special ex-gratia payments in relation to the Liantang/Heung Yuen Wai Boundary Control Point Project	211,000	33,723	1,110	15
	Sub-total	4,541,490	2,973,299	4,235	2,240
	Block allocations				
1004CA	Compensation for surrenders and resumptions: miscellaneous	_	_	4,703	16,550 ¶
1100CA	Compensation and ex-gratia allowances in respect of projects in the Public Works Programme	_	_	1,927,220	1,861,800 ¶
	Sub-total			1,931,923	1,878,350
	Head 701: total	4,541,490	2,973,299	1,936,158	1,880,590
	110au / 01 . total				

<sup>¶</sup> Subject to funding approval of the Finance Committee.