

立法會
Legislative Council

LC Paper No. ESC164/17-18

(These minutes have been
seen by the Administration)

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Establishment Subcommittee of the Finance Committee

Minutes of the 20th meeting
held in Conference Room 1 of Legislative Council Complex
on Wednesday, 6 June 2018, at 8:30 am

Members present:

Hon Mrs Regina IP LAU Suk-ye, GBS, JP (Chairman)

Hon Alvin YEUNG (Deputy Chairman)

Hon James TO Kun-sun

Hon LEUNG Yiu-chung

Hon Abraham SHEK Lai-him, GBS, JP

Hon WONG Ting-kwong, GBS, JP

Dr Hon Priscilla LEUNG Mei-fun, SBS, JP

Hon Steven HO Chun-yin, BBS

Hon WU Chi-wai, MH

Hon Charles Peter MOK, JP

Hon CHAN Chi-chuen

Dr Hon KWOK Ka-ki

Dr Hon Fernando CHEUNG Chiu-hung

Hon IP Kin-yuen

Dr Hon Elizabeth QUAT, BBS, JP

Hon Martin LIAO Cheung-kong, SBS, JP

Hon POON Siu-ping, BBS, MH

Dr Hon CHIANG Lai-wan, JP

Ir Dr Hon LO Wai-kwok, SBS, MH, JP

Hon CHUNG Kwok-pan

Hon CHU Hoi-dick

Hon HO Kai-ming

Hon Holden CHOW Ho-ding

Hon SHIU Ka-fai

Hon SHIU Ka-chun

Hon YUNG Hoi-yan
Dr Hon Pierre CHAN
Hon CHAN Chun-ying
Hon Jeremy TAM Man-ho
Hon Gary FAN Kwok-wai
Hon AU Nok-hin
Hon Vincent CHENG Wing-shun
Hon Tony TSE Wai-chuen

Members absent:

Hon WONG Kwok-kin, SBS, JP
Hon KWOK Wai-keung, JP
Hon KWONG Chun-yu

Public Officers attending:

Ms Carol YUEN Siu-wai, JP	Deputy Secretary for Financial Services and the Treasury (Treasury) 1
Mr Eddie MAK Tak-wai, JP	Deputy Secretary for the Civil Service 1
Mr Alan SIU Yu-bun, JP	Director of Administration and Development, Department of Justice
Mr Wesley WONG Wai-chung, SC, JP	Solicitor General, Department of Justice
Mr Llewellyn MUI Kei-fat	Deputy Solicitor General (Constitutional Affairs), Department of Justice

Clerk in attendance:

Ms Anita SIT	Assistant Secretary General 1
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Staff in attendance:

Mr Keith WONG	Council Secretary (1)4
Ms Alice CHEUNG	Senior Legislative Assistant (1)1
Miss Yannes HO	Legislative Assistant (1)6
Ms Haley CHEUNG	Legislative Assistant (1)9

Action

The Chairman drew members' attention to the information paper ECI(2018-19)3, which set out the latest changes in the directorate establishment approved since 2002 and the changes to the directorate establishment in relation to the four items on the agenda. She then reminded members that in accordance with Rule 83A of the Rules of Procedure ("RoP"), they should disclose the nature of any direct or indirect pecuniary interest relating to the item under discussion at the meeting before they spoke on the item. She also drew members' attention to RoP 84 on voting in case of direct pecuniary interest.

EC(2016-17)26 Proposed making permanent of one supernumerary post of Deputy Principal Government Counsel (DL2) in the Legal Policy Division of the Department of Justice with immediate effect upon approval by the Finance Committee to undertake essential duties in respect of constitutional and electoral matters

2. The Chairman remarked that the staffing proposal was to make permanent one supernumerary post of Deputy Principal Government Counsel ("DPGC") (DL2) in the Legal Policy Division of the Department of Justice ("DoJ") with immediate effect upon approval by the Finance Committee ("FC") to undertake essential duties in respect of constitutional and electoral matters. She pointed out that discussion of the item was carried over from the meeting on 4 June 2018.

Workload of the Constitutional Development and Elections Unit

3. Mr CHUNG Kwok-pan pointed out that the Constitutional Development and Elections Unit ("CD&EU") needed to handle legal advisory work in relation to election and voter registration matters. Nevertheless, major elections were not held annually, and the legal disputes involving voter registration should not be too complicated. He enquired about the Administration's justifications for creating the permanent DPGC post for leading CD&EU's work.

4. Mr CHAN Chi-chuen requested that the Administration provide statistics to reflect CD&EU's workload arising from handling legal disputes relating to voter registration, including statistics on cases where legal advice was provided by CD&EU for major elections over the past few years in respect of claims and objections arising from voter registration entitlement.

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5. Deputy Solicitor General (Constitutional Affairs), Department of Justice ("DSG(CA)) remarked that in addition to providing necessary legal advice to the Government on election matters during elections years, CD&EU also had to offer legal support to the Government's regular voter registration exercises. If an elector's eligibility was subject to any individual legal challenge, CD&EU would need to provide legal advice to the Government and appoint counsel to attend court hearing, and such work had taken up a share of CD&EU's workload in recent years. To ensure the quality and consistency of CD&EU's legal advice to the Government, it was necessary for DoJ to create the proposed permanent post to lead CD&EU's work. Solicitor General, Department of Justice ("SG/DoJ") undertook to provide supplementary information on cases where legal advice was provided by CD&EU in respect of claims and objections arising from voter registration entitlement.

[Post-meeting note: The supplementary information provided by the Judiciary was circulated to members on 21 June 2018 vide LC Paper No. ESC152/17-18(01).]

6. Mr WU Chi-wai noted that the proposed post was responsible for, among others, leading CD&EU in its handling of legal work relating to constitutional reform. He pointed out that the Government had made it clear that it would not take forward constitutional reform in the coming few years, so he foresaw a significant decrease in DoJ's work relating to constitutional development. In addition, Mr WU projected that CD&EU's workload in respect of providing legal advice on voter registration matters would reduce in the future. In this connection, he did not see any sufficient ground for the Administration to make the proposed post permanent. Mr WU, Mr James TO and Mr SHIU Ka-chun enquired about CD&EU's current distribution of workload in respect of constitutional and election matters, as well as whether CD&EU was still handling and taking forward initiatives in relation to constitutional development for the time being.

7. SG/DoJ advised that while the duties of CD&EU were more about constitutional development before 2013, election and voter registration related duties took up a lion's share of its workload in recent years. CD&EU counsel were required to provide legal advice in this regard; CD&EU would offer support if any legislative amendment was proposed by the Government in respect of a certain aspect of the electoral system (including voter registration). He added that it was up to relevant policy bureaux to decide whether and when constitutional development was taken forward, and DoJ's role was to provide legal advice to the Government on relevant matters.

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8. Mr Alvin YEUNG noted that the proposed post had already lapsed in mid-2017, and CD&EU was currently only supported by two Senior Government Counsel and a Personal Secretary I. He enquired how the short-handed CD&EU could cope with its regular work as well as the extra workload arising from major elections.

9. SG/DoJ advised that DoJ would, subject to workload, deploy counsels from other DoJ units to handle CD&EU's regular legal work. Moreover, DoJ would also deploy its Government Counsels to tackle the extra workload arising from major elections. For instance, in the Legislative Council ("LegCo") General Election and the Election Committee Subsector Elections held in 2016, 80 and 32 counsels were respectively recruited by DoJ to act as Assistant Returning Officers (Legal) to help the Returning Officers ("ROs") determine questionable ballot papers during the counting of votes.

Briefing out legal services

10. Mr CHUNG Kwok-pan commented that CD&EU should consider briefing out part of its legal work to reduce its work burden. Mr CHAN Chi-chuen also enquired about the circumstances where DoJ would consider briefing out its legal work.

11. Dr Priscilla LEUNG expressed support for the staffing proposal. She pointed out that if legal work was briefed out to lawyers in private practice, the Government would need to pay exorbitant legal service fees. Under the principle of prudent use of public money, she opined that the Government should create more non-directorate Government Counsel posts to cope with the increasingly heavy and complicated legal work, instead of briefing out legal work.

12. SG/DoJ said that briefing out legal services would involve quality management in respect of legal advice. To ensure consistency in the Government's provision of legal advice, DoJ could not brief out a great deal of its legal work to lawyers in private practice. He supplemented that more specialized legal knowledge might be involved in some legal issues. In case of an absence of DoJ counsel experienced in handling such cases, DoJ would consider briefing out the cases to lawyers in private practice with relevant qualification.

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The Department of Justice's legal advice on Legislative Council elections and Members' eligibility

13. Dr Fernando CHEUNG and Mr SHIU Ka-chun pointed out that several LegCo Members-elect had been disqualified from office by the court over the past two years, and the nominations of two LegCo election candidates had been invalidated by ROs. They questioned DoJ's provision of biased legal advice to the ROs in support of the latter's decisions. Dr KWOK Ka-ki commented that DoJ had become a tool of political oppression against individuals at the Government's disposal.

14. SG/DoJ denied the claim that DoJ's legal advice constituted a tool of political oppression. He pointed out that ROs were empowered under the law to make judgment based on the facts prevalent in each and every case in order to determine the validity of nominations of LegCo election candidates. As any decision made by an RO might be subject to legal challenge, DoJ was duty-bound to offer impartial and professional legal advice to help an RO make decisions and ensure that such advice could stand up to any possible legal challenge. He stressed that DoJ's provision of legal advice was free of any political consideration.

15. Mr WU Chi-wai, Dr Fernando CHEUNG and Dr KWOK Ka-ki requested DoJ to make public the content of its legal advice to the Administration on cases involving the disqualification of LegCo Members-elect to allow public monitoring of the impartiality of DoJ's legal views.

16. SG/DoJ advised that DoJ's legal advice was covered by legal professional privilege. Coupled with the fact that some of the cases relating to the right to stand for election were pending in a court of law, he could not make the content of relevant legal advice public.

17. Mr Gary FAN and Dr KWOK Ka-ki enquired about the amount of resources deployed by DoJ in respect of the provision of legal advice to the Administration on cases involving the disqualification of LegCo Members-elect.

18. SG/DoJ said that DoJ did not compile statistics on the internal resources deployed on individual cases. DSG(CA) supplemented the overall numbers of instances involving CD&EU's provision of legal advice to the Government between April 2012 and 2017 were as follows:

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2012 (April to December):	726
2013:	672
2014:	750
2015:	1 007
2016:	1236
2017:	572

19. Mr Martin LIAO and Ir Dr LO Wai-kwok expressed support for the staffing proposal. They held that given CD&EU's heavy workload, there were imminent needs to make the proposed DPGC post permanent to lead CD&EU's work in the long run. As regards the claim made by Members of the non-establishment camp that political considerations were included in DoJ's provision of legal advice, they criticized it as an unjustified accusation which disregarded DoJ's demand for adequate manpower to provide legal advice to the Government.

20. Dr Priscilla LEUNG opined that LegCo Members from various political parties and groupings should jointly discuss on other suitable occasions how to institutionalize and regularize the work of determining the validity of candidate nominations in order to relieve the pressure on ROs and minimize the controversy arising from relevant work.

21. Mr AU Nok-hin said he would not support the staffing proposal. He pointed out that ROs would very often opt to seek DoJ's legal advice in case of any doubt over the eligibility of a candidate to stand for LegCo election rather than consulting the views of a Nominations Advisory Committee ("NAC") in accordance with the Electoral Affairs Commission Ordinance (Cap. 541). This reflected that the Government would only draw reference from the legal advice congruent with its established position for its action. Mr Jeremy TAM sought explanation from the Administration on the criteria adopted by ROs in deciding whether to seek legal advice from DoJ or NAC.

22. SG/DoJ reiterated that DoJ as a professional legal advisor would provide legal advice to the Government in an impartial manner. He advised that as a litigation case involving RO's exercise of powers was pending in court, he would not comment on how ROs should decide whether to seek legal advice from DoJ or NAC.

23. The Chairman reminded members that as required by the Rules of Procedure, reference should not be made to any case pending in court in members' speech. She held that members should stop discussing the content of any case pending in court.

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24. Mr CHU Hoi-dick pointed out that the Constitution of the People's Republic of China ("the Constitution") was revised in March 2018. He enquired whether the revision would affect the content of DoJ's legal advice to the Government, and how DoJ would interpret the Constitution.

25. SG/DoJ advised that the content of DoJ's legal advice to the Government was relevant to how DoJ interpreted Hong Kong legislation, the Basic Law and the Constitution. As the content of DoJ's legal advice to the Government was covered by legal professional privilege, he could not explain to members how DoJ interpreted the Constitution.

Voting on the item

26. The Chairman put the item to vote. At members' request, the Chairman ordered a division, and the division bell rang for five minutes. Seventeen members voted for the item and 12 against it. The Chairman declared that the Subcommittee agreed to recommend the item to FC for approval. The votes of individual members were as follows:

For

Mr Abraham SHEK	Mr WONG Ting-kwong
Dr Priscilla LEUNG	Mr Steven HO
Dr Elizabeth QUAT	Mr Martin LIAO
Mr POON Siu-ping	Dr CHIANG Lai-wan
Ir Dr LO Wai-kwok	Mr HO Kai-ming
Mr Holden CHOW	Mr SHIU Ka-fai
Ms YUNG Hoi-yan	Dr Pierre CHAN
Mr CHAN Chun-ying	Mr Vincent CHENG
Mr Tony TSE	
(17 members)	

Against

Mr James TO	Mr LEUNG Yiu-chung
Mr WU Chi-wai	Mr CHAN Chi-chuen
Dr KWOK Ka-ki	Dr Fernando CHEUNG
Mr Alvin YEUNG	Mr CHU Hoi-dick
Mr SHIU Ka-chun	Mr Jeremy TAM
Mr Gary FAN	Mr AU Nok-hin
(12 members)	

27. Mr CHAN Chi-chuen requested that the item EC(2016-17)26 be voted on separately at the relevant FC meeting.

Action

28. The meeting ended at 10:24 am.

Council Business Division 1
Legislative Council Secretariat
9 July 2018