立法會

Legislative Council

LC Paper No. FC253/17-18
(These minutes have been cleared with the Chairman)

Ref: FC/1/1

Finance Committee of the Legislative Council

Minutes of special meeting
held at Conference Room 1 of the Legislative Council Complex
on Saturday, 13 January 2018, at 9:00 am

Members present:

Hon CHAN Kin-por, GBS, JP (Chairman)
Hon Michael TIEN Puk-sun, BBS, JP (Deputy Chairman)
Hon LEUNG Yiu-chung
Hon Abraham SHEK Lai-him, GBS, JP
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon CHAN Hak-kan, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Claudia MO
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, SBS, JP
Hon WU Chi-wai, MH
Hon YIU Si-wing, BBS
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon CHAN Han-pan, JP
Hon LEUNG Che-cheung, SBS, MH, JP
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung, JP
Hon Dennis KWOK Wing-hang
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 Alvin YEUNG
Hon Andrew WAN Siu-kin
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon HO Kai-ming
Hon LAM Cheuk-ting
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai
Hon Wilson OR Chong-shing, MH
Hon YUNG Hoi-yan
Hon CHAN Chun-ying
Hon Tanya CHAN
Hon CHEUNG Kwok-kwan, JP
Hon LUK Chung-hung
Hon LAU Kwok-fan, MH
Dr Hon CHENG Chung-tai
Hon KWONG Chun-yu
Hon Jeremy TAM Man-ho

Members absent:

Hon James TO Kun-sun
Prof Hon Joseph LEE Kok-long, SBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Helena WONG Pik-wan
Hon SHIU Ka-chun
Dr Hon Pierre CHAN
Hon HUI Chi-fung
Hon Kenneth LAU Ip-keung, BBS, MH, JP
Item 1 — Procedure for the Finance Committee to deal with members' motions to amend the Finance Committee Procedure, the Establishment Subcommittee Procedure and the Public Works Subcommittee Procedure

Meeting arrangement

The Chairman advised that the Finance Committee ("FC") would continue to proceed with the debate and voting on the procedure for dealing with members' motions to amend the Finance Committee Procedure ("FCP"), the Establishment Subcommittee Procedure and the Public Works Subcommittee Procedure (the three sets of procedure collectively referred to as "the Procedures") ("the Handling Procedure"). At the special meeting held on 6 January 2018, Mr CHU Hoi-dick had already spoken on the Amending Motions. He then moved a motion under FCP 39 for the adjournment of discussion on the agenda item. FC would continue with the handling of the said motion.

Members' queries on whether the Finance Committee Procedure and amendments to it were required to be published in the Gazette

2. Mr Alvin YEUNG said that the paper issued by the Legislative Council ("LegCo") Secretariat on 12 January 2018 had yet to fully answer the questions of members concerning the issues on whether FCP had legislative effect, and whether its amendments were thus required to be published in the Gazette. Expressing grave concern about the matter, Mr YEUNG called on the Chairman not to push through the Handling Procedure hastily.
3. The Chairman advised that members could express their concerns or worries through the present debate on the adjournment motion. Thereafter, they could vote on whether discussion on the Handling Procedure should be adjourned.

4. Mr Dennis KWOK cited paragraph 3 of LC Paper No. LS22/17-18 which stated that although there was no provision in the Basic Law ("BL") regarding FC, FC’s function of approving funding proposals as specified in the Public Finance Ordinance (Cap. 2) had been considered by the courts to be a facet of the function of LegCo to approve taxation and public expenditure under BL 73(3). Given that FCP was a set of rules in accordance with which FC performed its functions under BL 73(3) and Cap. 2 and hence binding on FC in the performance of those functions, it was submitted that FCP had legal effect. Based on such a premise, Mr KWOK said that he could not understand why amendments made under the present approach to FCP, given its legal effect, were not required to be published in the Gazette. He considered that FC should not act hastily and amend FCP before the above two points had been clarified.

5. Responding to Mr Dennis KWOK, the Chairman cited paragraph 4 of LC Paper No. LS22/17-18 which stated that under section 20(1) of the Interpretation and General Clauses Ordinance (Cap. 1), an Ordinance was required to be published in the Gazette. As FCP was not an Ordinance falling within the definition of the term in Cap. 1, nor was it an instrument made under an Ordinance, the gazettal requirement stipulated in section 20(1) of Cap. 1 did not apply.

6. Mr Dennis KWOK maintained that given the legal effect of FCP, the Handling Procedure as proposed in the motions set out in the agenda did not specify any requirement that motions moved to amend the Procedures should follow the format of motions moved to amend provisions with legal effect. He held that the matter could not simply be resolved by uploading the amended versions of the Procedures onto the LegCo website. Instead, the amended versions of the Procedures should be gazetted for public notice.

7. The Chairman pointed out that it had always been the practice of LegCo to publish the Rules of Procedure ("RoP") in the Gazette. As for FC, while FCP had been amended many times over the years, it had never been published in the Gazette. The Chairman invited the attendance of the Legal Adviser ("LA") to give advice to members.
8. **LA** took the view that FCP had legal effect. She pointed out that section 20(1) of the Interpretation and General Clauses Ordinance (Cap. 1) required an Ordinance to be published in the Gazette. The word "Ordinance" was defined in section 3 of Cap. 1 to mean, among others, any Ordinance enacted by LegCo and any subsidiary legislation made under any such Ordinance. As FCP was not an Ordinance falling within the definition of the term in Cap. 1, nor was it an instrument made under an Ordinance, the gazettal requirement stipulated in section 20(1) of Cap. 1 did not apply.

9. **LA** advised that there was neither any provision in the Public Finance Ordinance (Cap. 2) nor FCP requiring the publication of FCP or amendments made to the procedure in the Gazette. LegCo and FC could decide on its own whether amendments made to the procedure should be published in the Gazette. **LA** further said that not all instruments having legal effect were published in the Gazette. For instance, the summons issued to witnesses under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) was a legal instrument, but it was not published in the Gazette.

10. **Mr Dennis KWOK** considered that given FC's exercise of its powers as conferred by BL 73(3) was subject to FCP, FC's practice and the amendments made to the procedure should be gazetted for public notice.

11. **Dr CHIANG Lai-wan** suggested that the Secretariat could provide further information to **Mr Dennis KWOK** after the meeting on the concerns he raised. Meanwhile, FC should proceed with the handling of the business on the agenda.

12. **Mr IP Kin-yuen** said that as both RoP and FCP had legal effect, he did not understand why LegCo had published the amendments to the former in the Gazette, while amendments to the latter were not so published. **Mr IP** was worried that if the Handling Procedure under discussion and future amendments made to FCP through motions were not published in the Gazette, the legal effect of FC's decisions on funding proposals might be subject to challenge, giving rise to serious consequences. **Mr IP** further said that according to the voting arrangement for the present meeting, if the 1st motion moved by **Mr Michael TIEN** was passed, the following six remaining motions would not be put to vote. **Mr IP** considered that the said voting arrangement was different from that adopted all along for the handling of motions with legal effect.
13. As members still had their concerns, the Chairman allowed a discussion on the points of order first and directed that each member might speak once for not more than one minute.

14. Mr CHU Hoi-dick asked whether FCP should be regarded as spawning from the Public Finance Ordinance and hence, a piece of subsidiary legislation or a legal instrument. Mr LEUNG Yiu-chung held that notwithstanding the absence of any gazetral requirement, amendments made to the Procedures should still be published in the Gazette if doing so was feasible and considered to be important by Members, while having no detrimental effect. Dr Fernando CHEUNG opined that the intention of Cap. 1 was that formal texts of "instruments" having legal effect should be published in the Gazette for public information. Referring to the example cited by LA, he pointed out that the summons specified in Cap. 382 was not required to be published in the Gazette because it was related to the performance of a statutory power and thus different from amendments made to the Procedures by nature. If the amended Procedures were not published in the Gazette, the public would have no way to tell the time when they took legal effect.

15. Mr Charles Peter MOK and Ms Claudia MO held that there was no urgency to amend the Procedures, and the Chairman had yet to explain how the official texts of the amended Procedures would be published.

16. Mr Alvin YEUNG and Mr CHAN Chi-chuen stated that given the legal effect of FCP and the making of substantial amendments to the Procedures in the present exercise which was unprecedented, FC should handle the matter prudently and publish the official texts of the amendments in the Gazette.

17. Mr Jeremy TAM asked who was responsible for deciding whether or not to publish the amendments made to the Procedures in the Gazette. The non-gazetral of such amendments in the past might be a mistake. If the amendments were to be gazetted, matters including the correct format to be adopted would have to be ascertained.

18. Mr Paul TSE said that FCP was different from RoP. LegCo's work involved a myriad of different public interests, as well as cases such as the summoning of witnesses, while the matter under discussion presently was only about how to amend the Procedures. Quoting the decisions made by owners' corporations, Mr TSE pointed out that it was not a case that all legal instruments should be published in the Gazette.
19. **LA** said that FCP was not an Ordinance falling within the definition of the term in Cap. 1, nor was it an instrument made under an Ordinance. The Public Finance Ordinance (Cap. 2) also did not have any provision requiring the gazettal of FCP. There was legally no requirement for or against the gazettal of amendments made to FCP, and it was a matter which FC could determine on its own. LegCo had followed past practices to publish the amendments made to RoP in the Gazette. In 2007, FC had amended FCP to include a new paragraph 37A, and corresponding provisions had also been included in the procedures of its two subcommittees. At that time, the amendments to include the new provisions in the procedures of FC and its two subcommittees were presented to FC for decision in the form of a discussion paper.

20. **LA** said that neither RoP nor FCP had any provision on how FCP should be amended. Previously, amendments had been made to FCP in the form of a discussion paper. In 2012, there was also a case where a Member had proposed to amend FCP 37A in the form of a motion. Under RoP 71, FC was at liberty to determine its practice and procedure which were not provided in RoP. Hence, matters concerning the form of proposing amendments to the Procedures and whether the amendments should be gazetted could be decided by FC on its own. **LA** supplemented that under the usual approach adopted by LegCo and overseas legislatures, matters for decision would be presented by way of motions. Hence, it was a general parliamentary practice to amend the procedures in the form of a motion.

21. **Dr KWOK Ka-ki** held that the Chairman had acted arbitrarily. He considered that FC should first be allowed to decide whether amendments to the Procedures should be published in the Gazette before holding any discussion on the Handling Procedure.

22. The Chairman pointed out that members could express their stance on the matter through voting on the motion for the adjournment of discussion on the agenda item. The Chairman said that while he did not preclude the option of FC holding discussion some other time on the gazettal of FCP amendments, he held that for the time being, FC should concentrate on dealing with the item already placed on the agenda rather than any side issues, so as not to depart from the original meeting arrangement. Mr CHU Hoi-dick opined that discussion on the adjournment motion was unrelated to the question of whether amendments made to the Procedures should be published in the Gazette, and they should not be muddled together. Mr Charles Peter MOK expressed similar views. Mr CHAN Chi-chuen queried that given the Chairman's pre-set
Action

position on amending the Procedures, he should not preside over the meeting.

23. Ms Claudia MO said that notwithstanding the absence of any legal requirement on the gazettal of FCP amendments, FC could decide on its own to publish such amendments in the Gazette.

24. Mr Dennis KWOK said that as the powers exercised by FC were those conferred to LegCo under BL 73(3), and FCP had legal effect, FC shall cause the official texts of amendments made to FCP to be gazetted for public notice. Otherwise, the legal effect of FCP might be subject to challenge.

25. Mr IP Kin-yuen considered that FC should take the opportunity presented by the establishment of the Handling Procedure to incorporate the procedure for handling FCP amendments into FCP. Moreover, amendments made to FCP should be gazetted for public notice, so that the public would be informed about the amended provisions and their effective date.

26. Mr Martin LIAO said that amendments to RoP were made under BL 75, while FCP was a set of LegCo's internal rules concerning the operation of FC and not made under the Public Finance Ordinance (Cap. 2). Hence, the former was required to be gazetted but not the latter.

Motion moved under FCP 39 for the adjournment of discussion on the agenda item

27. At 10:03 am, the Chairman directed FC to resume the discussion on the motion for the adjournment of discussion on the agenda item.

28. Mr WU Chi-wai, Dr KWOK Ka-ki and Mr Charles Peter MOK spoke in support of the adjournment motion. Dr KWOK Ka-ki considered that FC's powers as conferred by BL to monitor the use of public funds by the Government would be undermined if the Handling Procedure was passed by FC hastily. Mr Charles Peter MOK considered that the Chairman should neither act rashly nor regard the dissenting views or doubts expressed by members as a personal challenge. He also called on the Chairman to chair the meeting in a fair manner.
29. Speaking in reply on his motion, Mr CHU Hoi-dick stated that over the past two weeks or so, a number of members had been trying hard to explore ways to safeguard FC's position, such that it could act with dignity and establish a sound system. He considered that as various legal and other questions raised by members on the present agenda item had yet to be resolved satisfactorily, discussion on the item should be adjourned.

30. The Chairman put the motion to vote. At the request of members, the Chairman ordered a division, and the motion was negatived. The votes of individual members were set out in Annex I.

31. FC continued with the discussion on the agenda item.

FC resumed discussion on the agenda item

32. The Chairman directed Mr CHU Hoi-dick to speak in reply on the agenda item for not more than eight minutes. Mr CHU considered that FC was now facing its greatest crisis since the establishment of the Hong Kong Special Administrative Region, and that had made him reflect on FC's functions. He pointed out that a critical function provided under the Public Finance Ordinance (Cap. 2) and FCP was the approval of financial proposals from the Administration, but according to one of the amendments proposed by Mr Martin LIAO on the Procedures, items which were agreed by the two subcommittees of FC would not be subject to further discussion by FC and could be put to vote forthwith. Such a requirement would take away FC's powers to examine financial proposals from the Administration. Separately, valid questions had been raised by Mr Dennis KWOK on whether amendments made to FCP should be published in the Gazette. There was a close relationship between FC's procedures and practices and the interests of the public because members of the public were gravely concerned about the use of public funds. They hoped Members could raise questions to the Government on their behalf. Mr CHU opined that pro-establishment Members had undermined the public's interests and right to know by amending the Procedures to tighten the scope of Members' power to raise questions to the Government.
33. Mr CHU Hoi-dick stated that his proposed motions were intended to refine the Handling Procedure, while allowing members of the public to see for themselves whether the motions to be moved by Mr Martin LIAO in due course to amend the Procedures were legally sound. In this regard, he held that FC should first hold a meeting for the focused discussion on the relevant legal issues. He also pointed out that according to Mr Michael TIEN's motion, the "12+5" notice requirement was stipulated for the moving of motions to amend the Procedures and amendments to such motions respectively, while no requirements had been made for the giving of notice of meetings or the relevant debate and voting arrangements. Mr CHU said that while his proposed motions could fill those gaps in Mr TIEN's motion, the voting procedure adopted for the present meeting had precluded the incorporation of his suggestions. He could foresee that Mr TIEN's motion would definitely be passed, with the actual effect of members not being allowed to express their stance on the kindly intended suggestions in his motions through voting thereon. Expressing dissatisfaction with the matter, he said that pro-democracy Members could not accept the present procedures proposed on the initiative of pro-establishment Members to deprive Members of their rights to raise questions and to scrutinize the Administration's financial proposals.

Voting on the original motions and amending motions

34. At 10:31 am, the Chairman declared that FC would proceed to voting on the motions. He also said that he would invite members to move the Amending Motions which sought to amend Mr TIEN's Original Motion and forthwith propose and put to vote the questions on those Amending Motions one by one. Then he would put to vote the question on Mr TIEN's Original Motion or the motion as amended.

35. The Chairman invited Ms Claudia MO to move the 1st Amending Motion. Ms Claudia MO moved the 1st Amending Motion on the agenda. The Chairman forthwith proposed and put to vote the question on the said Amending Motion. At the request of Members, the Chairman ordered a division, and Ms MO's motion was negatived. The votes of individual members were set out in Annex II.
36. At 10:32 am while the division bell was ringing, a number of members including Ms Claudia MO, Mr Charles Peter MOK, Mr CHAN Chi-chuen, Mr Kenneth LEUNG, Dr KWOK Ka-ki, Mr Dennis KWOK, Dr Fernando CHEUNG, Mr IP Kin-yuen, Mr Alvin YEUNG, Mr CHU Hoi-dick, Mr LAM Cheuk-ting, Ms Tanya CHAN, Dr CHENG Chung-tai, Mr KWONG Chun-yu and Mr Jeremy TAM left the Conference Room of their own accord at the same time in protest.

37. The Chairman declared that as Ms Claudia MO and Mr CHAN Chi-chuen were not present, FC would not deal with the 2nd, 3rd and 4th Amending Motions they proposed. Hence, FC had already dealt with the voting on the Amending Motions which sought to amend the 1st Original Motion moved by Mr Michael TIEN. The Chairman reminded members that as the seven Original Motions on the agenda were independent alternative proposals on the Handling Procedure, if in the course of voting according to the sequence set out in the agenda, the question put on any of the Original Motion, or such motion as amended, was passed, it implied that FC had made a decision to adopt the Handling Procedure as represented by the Original Motion, or such motion as amended. Thereafter, he would not propose further questions on the remaining Original Motions and the relevant Amending Motions, as such questions would be inconsistent with the decision that FC had just made. In other words, if Mr Michael TIEN's Original Motion was passed, Mr CHU Hoi-dick could not move the remaining Original Motions.

38. At 10:39 am, the Chairman put to vote the question on the 1st Original Motion moved by Mr Michael TIEN. The Chairman declared that the motion was passed.

39. The meeting ended at 10:40 am.
點名表決 DIVISION: 1

日期 DATE: 13/01/2018
時間 TIME: 10:22:43 上午 AM

動議 MOTION: 動議中止議程項目的討論
Motion that discussion on the item be now adjourned

動議人 MOVED BY:

出席 Present : 51
投票 Vote : 50
贊成 Yes : 16
反對 No : 34
棄權 Abstain : 0
結果 Result : 否決 Negatived

個別表決如下 THE INDIVIDUAL VOTES WERE AS FOLLOWS:

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秘書 CLERK

附件I Annex I
點名表決 DIVISION: 2
日期 DATE: 13/01/2018
時間 TIME: 10:38:11 上午 AM

動議 MOTION: 毛孟靜議員動議的第 1 項修訂議案
Hon Claudia MO to move the 1st amending motion

動議人 MOVED BY:
出席 Present : 35
投票 Vote : 34
贊成 Yes : 0
反對 No : 34
棄權 Abstain : 0

結果 Result : 否決 Negatived

個別表決如下 
THE INDIVIDUAL VOTES WERE AS FOLLOWS:

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