

立法會

Legislative Council

LC Paper No. FC 106/17-18

Finance Committee

Information note prepared by the Legislative Council Secretariat on issues raised by members at the special meetings of the Finance Committee held on 5 and 6 January 2018

Purpose

This paper provides information on certain issues raised by members regarding the proceedings at the special meetings of the Finance Committee ("FC") held on 5 and 6 January 2018.

Background

2 At the special meetings of FC held on 5 and 6 January 2018 for deciding the procedure for FC to deal with members' motions to amend the Finance Committee Procedure ("FCP"), the Establishment Subcommittee Procedure ("ESCP") and the Public Works Subcommittee Procedure ("PWSCP")¹ ("Handling Procedure"), members sought further explanations in respect of the following issues:²

¹ The three sets of procedure are collectively referred to as "the Procedures" in this paper.

² The Chairman has given permission for Hon Michael TIEN Puk-sun and Hon CHU Hoi-dick to move one motion and six motions respectively on the Handling Procedure ("Original Motions") at the special meetings. In respect of these seven Original Motions, the Chairman has given permission for Hon Claudia MO, Hon CHAN Chi-chuen and Hon LEUNG Yiu-chung to move a total of 19 motions which seek to amend respectively four of the seven Original Motions ("Amending Motions"). These Original Motions and Amending Motions have been set out on the agenda of the special meetings.

- (a) whether the Handling Procedure as to be decided by FC would be incorporated into FCP;
- (b) how the Handling Procedure could be amended in future;
- (c) the reason(s) for not putting to vote the remaining Original Motions and the relevant Amending Motions on the agenda if any of the preceding Original Motions, or such motion as amended, has been passed by FC; and
- (d) the reason(s) for not allowing members to move motion(s) under FCP 37A during the proceedings of the special meetings to deal with the Handling Procedure.

Incorporation of the Handling Procedure into the Finance Committee Procedure and future amendments to the Handling Procedure

3 Under Rule 71(13) of the Rules of Procedure ("RoP"), subject to RoP, the practice and procedure of FC and its subcommittees shall be determined by FC. As such, the Handling Procedure covered by any of the Original Motions, or such motion as amended, that has been passed by FC will become a decision of FC and that Handling Procedure will be followed for handling members' motions to amend the Procedures in future. As explained by the Chairman at the special meetings, after FC has accumulated experience in the use of the Handling Procedure over time, FC may in due course determine whether it is necessary to incorporate it (with necessary amendments if so decided by FC) into FCP.

4 As to how the Handling Procedure could be amended in future, members are invited to note that by virtue of FCP 37,³ RoP 29 to RoP 35 (including RoP 32) apply to FC. According to RoP 32(1), where FC has taken a decision on a specific question and the question has been decided

³ FCP 37 provides that subject to the decisions of FC made from time to time, RoP 29 to RoP 35 shall apply, with necessary modifications, to the proceedings of FC in dealing with motions.

in the affirmative, no further motion shall be moved in relation to that question during the current session except a motion to rescind the decision, moved with the permission of the Chairman. In other words, after FC has made a decision on the Handling Procedure, during the same legislative session, no motion on the Handling Procedure may be moved, except a motion to rescind the decision of FC on the Handling Procedure, moved with the permission of the Chairman. In the next or subsequent legislative sessions, should a member wish to amend the Handling Procedure, he may give notice of a motion to amend the Handling Procedure and such motion would be dealt with in accordance with RoP 29 to RoP 35 unless FC decides otherwise pursuant to FCP 37. If by then the Handling Procedure has been incorporated into FCP, any amendment to the Handling Procedure should then follow the relevant procedure in FCP.

Voting arrangements for the Original Motions and Amending Motions

5 The purpose of the special meetings is for FC to decide the Handling Procedure. In the context of FC's making a decision on the Handling Procedure, the Original Motions are each a self-contained package of procedural requirements governing the presentation of motions by members to amend the Procedures and the manner in which such motions are to be dealt with by FC. The Original Motions and the respective Amending Motions are placed on the agenda altogether for members to consider.⁴ FC's decision now being sought is among these packages, which one (as originally proposed or as may be amended) is to be adopted as the Handling Procedure. As such, it has been pointed out in LC Paper Nos. FC91/17-18 and FC95/17-18 that since the seven Original Motions are 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 Motions, or such motion as amended, is passed, it implies that FC has made a decision to adopt the Handling Procedure as represented by the Original Motion, or

⁴ The order and the principle in accordance with which these Original Motions and Amending Motions would be put to FC for its decision have been clearly stated in LC Paper No. FC91/17-18 issued on 28 December 2017.

such motion as amended. Thereafter, the Chairman will not put to vote questions on the remaining Original Motions and the relevant Amending Motions, as such questions will be inconsistent with the decision that FC has just made. In other words, should FC continue to vote on the remaining Original Motions and the relevant Amending Motions with two or more Original Motions, or such motions as amended, being passed, the resultant Handling Procedure as decided by FC would inevitably contain ambiguities and internal inconsistencies⁵ and ultimately the Handling Procedure may be rendered inoperable due to such ambiguities and internal inconsistencies.

Inapplicability of FCP 37A motions to the agenda item of the special meetings

6 As pointed out in paragraph 13.131 of *A Companion to the history, rules and practices of the Legislative Council of the Hong Kong Special Administrative Region* ("the Companion"), when FCP 37A was formulated, the intention was to enable members of FC to express views on a ***financial proposal*** (emphasis added) submitted by the Administration to FC for scrutiny, if there was a need to do so, through a motion moved without notice. Under section 8 of the Public Finance Ordinance (Cap. 2), proposals to change the approved Estimates of Expenditure must come from the Financial Secretary and members of FC cannot amend the Financial Secretary's proposals. FC must discuss and vote on the proposal as it stands.⁶ Only the Financial Secretary may amend the financial proposals on the agenda of FC. Prior to the

⁵ Such a scenario can be illustrated by comparing the Original Motions to be moved by Mr Michael TIEN and Mr CHU Hoi-dick respectively: regarding the notice of motions to amend the Procedures and their amendments, Mr TIEN's Original Motion expressly provides for the Chairman's discretion to dispense with such notice while the six Original Motions of Mr CHU do not contain such provision. Furthermore, regarding the mode of presenting the proposed amendments, the requirements under the Original Motions of Mr TIEN and Mr CHU also differ: Mr TIEN's Original Motion requires that the proposed amendments "***shall be*** (emphasis added) shown as texts marked-up...", while Mr CHU's Original Motions only require that the proposed amendments "***may be*** (emphasis added) shown as texts marked-up...".

⁶ See FCP 27.

inclusion of FCP 37A in 2007, there was no procedure in FCP to deal with a motion without notice for the purpose of expressing a view on Government's financial proposals. Against the relevant background to FC's adoption of FCP 37A,⁷ it is clear that the objective of the procedure provided therein is to facilitate FC to formulate a collective view, if so desired by FC, on a financial proposal in the course of its relevant deliberations. Since its adoption, FCP 37A has not ever been invoked and applied to FC's proceedings other than those on financial proposals. Given that the agenda item of the special meetings is for FC to decide the Handling Procedure through the proceedings, including a joint debate, on the Original Motions and Amending Motions, and having regard to the background to and objective of the formulation of FCP 37A, the Chairman has ruled at the special meeting on 6 January 2018 that FCP 37A should not apply to the proceedings of the special meetings.

Other queries

7 At the special meetings, Hon Dennis KWOK Wing-hang raised queries on whether FCP has legislative effect and thus whether the amendments to FCP are to be gazetted, as well as whether there is Basic Law implications on the voting procedure of FC as mentioned by some members at the FC meeting on 10 July 1998. The Legal Service Division of the Secretariat will prepare a separate information note on the issues.

Advice sought

8 Members are invited to note the information set out in this note.

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⁷ Please refer to paragraphs 13.121 to 13.126 of the Companion for details.