

# 立法會

## *Legislative Council*

LC Paper No. LS 22/17-18

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### **Finance Committee**

#### **Legal Service Division's note on the nature of Finance Committee Procedure and interpretation of paragraph 37A of the Finance Committee Procedure**

#### **Purpose**

At the special meeting of the Finance Committee ("FC") on 6 January 2018, the Legal Service Division was requested to advise whether the Finance Committee Procedure ("FCP") has legal and/or legislative effect and how FCP 37A should be interpreted. This note provides information on the above and related matters.

#### **Nature of FCP**

2. FC is one of the committees of the Legislative Council ("LegCo") set up under LegCo's Rules of Procedure ("RoP"), which are made by LegCo pursuant to Article 75 of the Basic Law ("BL"). RoP 71(4) provides that the functions of FC are such as are conferred upon it by the Public Finance Ordinance (Cap. 2), any other law and RoP, and such as may from time to time be referred to FC by LegCo. RoP 71(5B) provides that all matters before FC or its subcommittees shall be decided by a majority of the members voting. Under RoP 71(13), FC shall, subject to the RoP, determine its practice and procedure. Pursuant to RoP 71(13), FC passed the FCP as its governing rules and procedure.

3. Although there is no provision in BL regarding FC, FC's function of approving funding proposals as specified in Cap. 2 has been considered by the courts to be a facet of the function of LegCo to approve taxation and public expenditure under BL 73(3).<sup>1</sup> Given that the FCP is a set of rules in accordance with which FC performs its functions under BL 73(3) and Cap. 2 and hence binding on FC in the performance of these functions, it is submitted that the FCP has legal effect.

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<sup>1</sup> *Wong Yuk Man v Ng Leung Sing*, HCMP 3217/2015, CA.

## **Whether FCP and its amendments are required to be published in Gazette**

4. Section 20(1) of the Interpretation and General Clauses Ordinance (Cap. 1) requires an Ordinance to be published in the Gazette. The word "Ordinance" is 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 the FCP is not an Ordinance falling within the definition of the term in Cap. 1, nor is it an instrument made under an Ordinance, we consider that the gazettal requirement stipulated in section 20(1) of Cap. 1 does not apply.<sup>2</sup>

## **Applicability of the voting requirements specified in Annex II of BL to FC proceedings**

5. Under the voting requirements specified in Annex II of BL, the passage of bills introduced by the government shall require at least a simple majority vote of Members present. On the other hand, the passage of motions, bills or amendments to government bills introduced by individual Members shall require a simple majority vote of each of the two groups of Members present: Members returned by functional constituencies and those returned by geographical constituencies.

6. The applicability of the voting requirements specified in Annex II of BL had been considered at the time when FC was considering the adoption of the FCP in 1998. At the FC meeting on 10 July 1998, the then Legal Adviser advised that the said requirements would only apply to Council meetings but not other committees of the Council.<sup>3</sup> Although FC was at liberty to determine its own practice and procedure (including whether to incorporate the voting requirements in Annex II of BL) pursuant to RoP 71, the then FC decided that no change should be made to the established voting procedure in order to ensure the smooth conduct of FC proceedings.<sup>4</sup> That the FCP is lawfully made under RoP, which in turn are lawfully made under BL 75, has been recognized by the courts.<sup>5</sup>

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<sup>2</sup> According to the practice of the Council, resolutions made and passed by LegCo on RoP are published in the Gazette.

<sup>3</sup> Refer to minutes of meeting of FC on 10 July 1998, paragraph 4.

<sup>4</sup> Ibid, paragraph 5.

<sup>5</sup> *Wong Yuk Man v Ng Leung Sing* [2015] 5 HKLRD 606, HCAL 78/2014, CFI, paragraph 59.

## **Interpretation of FCP 37A**

7. FCP 37A provides that during the deliberation of an agenda item, prior to the question on it being put to vote, a member may move a motion without notice to express a view on the agenda item under specified circumstances.

8. In determining how FCP 37A should be interpreted, it may be useful to make reference to the general principles on statutory interpretation. It has been laid down by the Court of Final Appeal that the modern approach to statutory interpretation is to adopt a purposive interpretation.<sup>6</sup> Under this approach, the statutory language is construed having regard to its context and purpose. Words are given their natural and ordinary meaning unless the context or purpose points to a different meaning. Context and purpose are considered when interpreting the words used and not only when an ambiguity may be thought to arise.

9. At the special meeting on 6 January 2018, members were informed that FCP 37A was made to allow members to move motions without notice in the course of FC's consideration of a funding proposal from the Administration to express views on the proposal given that FC could only discuss and vote on the proposal as it stands. Although the rules in the FCP are not statutory provisions, the above purposive approach may be relevant to the Chairman's interpretation of FCP 37A. Based on this approach, FCP 37A could be construed as only applying to FC's consideration of the Administration's funding proposals having regard to its purpose. If necessary, FC may consider reviewing the scope of application of FCP 37A in future.

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<sup>6</sup> See, for example, the Court of Final Appeal's judgments in *Medical Council of Hong Kong v Chow Siu Shek* (2000) 3 HKCFAR 144 and *HKSAR v Cheung Kwun Yin* (2009) 12 HKCFAR 568. The principles on statutory interpretation laid down by the Court of Final Appeal were summarized and followed in *Ho Kwok Tai v Collector of Stamp Revenue* CACV 52/2016, 31 October 2016, CA.