

立法會
Legislative Council

LC Paper No. FC239/18-19

(These minutes have been
seen by the Administration)

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Finance Committee of the Legislative Council

Minutes of the 12th meeting
held at Conference Room 1 of the Legislative Council Complex
on Friday, 25 January 2019, at 3:00 pm

Members present:

Hon CHAN Kin-por, GBS, JP (Chairman)
Hon CHAN Chun-ying, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon LEUNG Yiu-chung
Hon Abraham SHEK Lai-him, GBS, JP
Prof Hon Joseph LEE Kok-long, SBS, JP
Hon Jeffrey LAM Kin-fung, 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 Michael TIEN Puk-sun, BBS, JP
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, BBS, JP

Hon LEUNG Che-cheung, SBS, MH, JP
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
Dr Hon Helena WONG Pik-wan
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, SBS, 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
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
Dr Hon Pierre CHAN
Hon Tanya CHAN
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung
Hon LUK Chung-hung, JP
Hon LAU Kwok-fan, MH
Hon Kenneth LAU Ip-keung, BBS, MH, JP
Dr Hon CHENG Chung-tai
Hon KWONG Chun-yu
Hon Jeremy TAM Man-ho
Hon Gary FAN Kwok-wai
Hon AU Nok-hin
Hon Vincent CHENG Wing-shun, MH
Hon Tony TSE Wai-chuen, BBS
Hon CHAN Hoi-yan

Members absent:

Hon Tommy CHEUNG Yu-yan, GBS, JP

Hon Kenneth LEUNG
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon Jimmy NG Wing-ka, JP
Hon SHIU Ka-chun
Hon YUNG Hoi-yan

Public officers attending:

Ms Alice LAU Yim, JP	Permanent Secretary for Financial Services and the Treasury (Treasury)
Ms Carol YUEN, JP	Deputy Secretary for Financial Services and the Treasury (Treasury) 1
Mr Mike CHENG Wai-man	Principal Executive Officer (General), Financial Services and the Treasury Bureau (The Treasury Branch)
Ms Bernadette LINN Hon-ho, JP	Permanent Secretary for Development (Planning and Lands)
Mr Jackie LIU Chun-kit	Principal Assistant Secretary for Development (Planning and Lands) ⁷
Mr Alan LO Kam-lun	Assistant Director of Lands (Specialist 2)
Mr Alan SIU Yu-bun, JP	Director of Administration and Development, Department of Justice
Ms Christina CHEUNG Kam-wai, JP	Law Officer (Civil Law), Department of Justice
Ms Theresa JOHNSON	Law Draftsman, Department of Justice
Ms Fanny IP Fung-king	Deputy Law Draftsman II, Department of Justice
Mr Herbert LI Kam-yiu	Deputy Law Officer (Civil Law) (Civil Litigation), Department of Justice
Ms Phyllis WONG Hwa-yih	Senior Assistant Law Officer (Civil Law) (Civil Litigation) ² , Department of Justice

Clerk in attendance:

Ms Anita SIT	Assistant Secretary General 1
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Staff in attendance:

Ms Angel SHEK	Chief Council Secretary(1)1
Ms Ada LAU	Senior Council Secretary (1)7
Miss Bowie LAM	Council Secretary (1)1
Miss Queenie LAM	Senior Legislative Assistant (1)2
Mr Frankie WOO	Senior Legislative Assistant (1)3
Miss Mandy POON	Legislative Assistant (1)1

Action

The Chairman reminded members of the requirements under Rules 83A and 84 of the Rules of Procedure.

Item 1 — FCR(2018-19)72

HEAD 138 — GOVERNMENT SECRETARIAT: DEVELOPMENT BUREAU (PLANNING AND LANDS BRANCH)

Subhead 700 — General non-recurrent

New Item — "Funding Scheme to Support the Use of Vacant Government Sites by Non-government Organisations"

2. The Chairman advised that the item sought the approval from the Finance Committee ("FC") of a new non-recurrent commitment of \$1 billion for the implementation of a funding scheme ("the proposed funding scheme") to support the use of vacant government sites by non-government organizations ("NGOs"). The Development Bureau ("DEVB") had consulted the Panel on Development ("the Panel") on the relevant proposal on 27 November 2018. The Panel had spent about 56 minutes on the scrutiny of the proposal.

Vacant government sites available for application

3. Mr AU Nok-hin considered that the Administration had not provided members with sufficient information on the vacant government sites. He enquired whether the Lands Department ("LandsD") would make available more related information to the public by making reference to the papers issued by the Administration to various District Councils, as well as the research reports published by Liber Research Community. He also asked about the use of those sites zoned as "Others" in Enclosure 1 to the discussion paper.

4. Permanent Secretary for Development (Planning and Lands) ("PS/DEV(P&L)") explained that at present, information on vacant government sites was made available on the website of LandsD. Given

the myriad of land use and zoning classifications involved, such information could not be listed comprehensively in the discussion paper. That said, detailed information was available from the website of LandsD.

5. Expressing support for implementation of the proposed funding scheme, Mr Gary FAN and Dr KWOK Ka-ki were concerned that the vacant government sites were generally located at remote areas. They asked whether more vacant government sites in urban areas could be made available for NGOs to carry out transitional housing or other projects.

6. In response, PS/DEV(P&L) advised that:

- (a) the aim of the proposed funding scheme was to capitalize on community wisdom for supporting different types of projects which were beneficial to the community, and the scope was not limited to transitional housing development;
- (b) drawing reference from recent experience of NGOs, a transitional housing development project would require about 1 000 sq m of land. However, 60% of the vacant government sites currently available for application only had a size of 500 sq m or below which might not be suitable for transitional housing development; and
- (c) the Task Force on Transitional Housing ("the Task Force") under the Transport and Housing Bureau ("THB") was proactively considering the establishment of a dedicated fund to support transitional housing projects. The Task Force was also working with LandsD to identify more suitable sites in addition to those on the current list of vacant government sites.

7. Dr KWOK Ka-ki considered that the Administration should publish the number and relevant information of vacant government sites which were initially assessed to be suitable for transitional housing development and give priority to using those sites for such a purpose.

8. Mr CHU Hoi-dick asked if the Administration would consider including lease-breaching land sites re-vested in the Government upon re-entry in the list of vacant government sites and giving priority to allocating the said sites to NGOs for transitional housing development so that in-situ rehousing arrangements could be made for the affected residents.

9. In response, PS/DEV(P&L) advised that:
- (a) the legal process involved in the rezoning of land sites re-vested in the Government upon re-entry took time to complete;
 - (b) according to the existing Government policy, residents displaced as a result of the Government's enforcement actions would not necessarily be given priority in allocation of subsidized housing, so as to avoid giving the public an impression that they could have priority in allocation of subsidized housing through illegal occupation of land; and
 - (c) NGOs could seek support and assistance from the Task Force under THB in respect of transitional housing development projects on any vacant sites (including government land sites).
10. Mr Vincent CHENG expressed support for implementation of the proposed funding scheme. He called on various policy bureaux/government departments to keep an open mind when handling the applications submitted by NGOs. PS/DEV(P&L) advised that she would relay the above views from members for internal reference by the Government.

Application arrangements for the proposed funding scheme

Eligibility criteria

11. Mr Jeremy TAM, Dr CHIANG Lai-wan, Mr CHAN Hak-kan, Mr YIU Si-wing and Mr AU Nok-hin raised questions about the eligibility for the proposed funding scheme. They had respectively asked if the following organizations were eligible for the scheme: (a) commercial organizations; (b) NGOs currently renting land at a nominal rent; (c) organizations without relevant experience in the projects for which funding support was being applied under the scheme; (d) NGOs operating youth hostels on a commercial basis (such as working in partnership with the business sector or having business organizations as a shareholder); and (e) trade unions or registered societies. Mr YIU also asked if there were any specific projects or business modes precluded from the scope of the proposed funding scheme.

12. PS/DEV(P&L) explained that only NGOs and social enterprises ("SEs") meeting specific criteria could apply for support under the

proposed funding scheme, and applications from the business sector would not be accepted for the time being. A prerequisite for the approval of an application was that support had been given by a relevant bureau, and individual bureau might possibly specify certain requirements concerning the experience of NGO-applicants. In addition, the projects applying for funding support must be lawful, non-profit-making and beneficial to the community.

13. Mr AU Nok-hin was of the view that without any objective standards, it was too general to say that the proposed funding scheme was meant to support "a variety of socially beneficial initiatives". He also enquired about the circumstances under which full market rent would be charged for vacant government sites leased on short-term tenancy ("STT").

14. PS/DEV(P&L) explained that as the aim of the proposed funding scheme was to capitalize on "community wisdom", the Government held that it should be open-minded about what socially beneficial initiatives were. In this regard, the relevant bureaux would consider if policy support should be given for applications lodged by NGOs. In terms of rent, STT at nominal rent would be granted for those cases with policy support by a relevant bureau; in other cases full market rent would be charged.

15. Noting that one of the application criteria of the proposed funding scheme was that the relevant NGO should take the form of SE, Mr Jeremy TAM pointed out that there was no statutory definition of SE in Hong Kong, and different government departments had different operational definitions. He asked whether the Administration would consider expanding the meaning of SEs under the proposed funding scheme to cover, say, SEs accredited by the Hong Kong General Chamber of Social Enterprises.

16. Principal Assistant Secretary for Development (Planning and Lands)7 ("PAS/DEV(PL)7") advised that subject to the consent of relevant policy bureaux, consideration would be given to expanding the meaning of SEs to cover those accepted by the public and recognized by the social welfare sector.

Vetting and approval process

17. Mr Tony TSE sought information about the membership of the inter-departmental Assessment Committee ("the Assessment Committee") responsible for vetting applications. Mr YIU Si-wing asked how the

Administration could determine the priority of applications. Mr James TO sought information about the Administration's expectation of responses from NGOs regarding the proposed funding scheme, as well as the work objectives of the scheme. Mr CHAN Chi-chuen enquired whether the vetting process involved face-to-face interviews, and whether the Administration could arrange NGO-applicants to visit the vacant government sites they applied for.

18. PS/DEV(P&L) advised that the Assessment Committee, chaired by the Deputy Secretary of DEVB and comprised members from the relevant policy bureaux and works departments, would vet the applications. If more than one application for the same site was received, consideration would first be given to whether the applications had obtained policy support. The applications would then be passed to the Assessment Committee to decide their priorities, having regard to the complexity of individual projects and views of members of the community. The Administration was of the view that NGOs would respond positively towards the proposed funding scheme. The authorities expected that upon implementation of the scheme, STT applications for use of government sites would take about six months to process, while applications under the proposed funding scheme would take several months to process. PAS/DEV(PL)7 said that site visits could be arranged by LandsD. During the process of vetting the funding applications, DEVB would generally meet with the NGO-applicants or request them to provide supplementary information as necessary.

Financial support

Ceiling of financial support

19. Mr Tony TSE and Mr Holden CHOW considered that the financial assistance under the proposed funding scheme, which was capped at \$60 million for each approved project, might not be sufficient for NGOs to complete the projects in case there was cost overrun or a need to erect new structures atop bare vacant government sites. They sought information about the settlement of project expenses above the financial ceiling. Mr Martin LIAO pointed out that the provisions sought under the current funding proposal was only sufficient to support 17 projects at most, assuming that each project was granted the maximum funding amount of \$60 million. Such a level of funding support was only a drop in the bucket, considering that there were currently 853 vacant government sites available. Mr LIAO sought an explanation from the Administration on setting the ceiling at \$60 million, and asked whether priority would be

given to projects applying for a smaller amount of financial support.

20. In response, PS/DEV(P&L) advised that:

- (a) drawing reference from the costs of basic works for comparable projects in recent years, renovation expenses for vacant school premises could cost up to \$60 million, while the cost of erecting new structures on vacant sites using modular integrated construction methods could range from over \$800,000 to \$60 million. When setting the financial ceiling, the Administration had already made reference to the above figures and factored in additional provisions;
- (b) the proposed funding scheme, in principle, would not cover any expenses above the financial ceiling. That said, in case of cost overrun caused by unforeseen factors, resulting in total project expenses exceeding \$60 million, the Administration would consider or handle such cases on a case by case basis;
- (c) unless funding was approaching exhaustion, the Administration would assess the applications on a number of factors such as the use of the sites and project scale. It did not mean that projects applying for a smaller amount of subsidies would be given priority; and
- (d) the proposed funding scheme was implemented on a trial basis. Subject to enthusiastic response to and satisfactory results of the funding scheme, the Administration would consider seeking additional provisions for the scheme to support more projects.

Scope of financial support

21. Mr CHAN Hak-kan expressed support for implementation of the proposed funding scheme. Mr CHAN enquired whether the scope of financial support under the scheme would cover fees for consultancy services not specified in the paper (such as for conducting traffic impact assessment). Mr Alvin YEUNG asked if the Administration would arrange to carry out, if necessary, supporting infrastructural works, such as water and electricity or road connection works, for the approved projects. He also enquired about the specific procedures involved.

22. PS/DEV(P&L) responded that the scope of financial support would cover consultancy services that were not specified in the paper, such as for conducting traffic impact assessment. PAS/DEV(PL)7 supplemented that supporting infrastructural works could be funded under the proposed funding scheme. Depending on the circumstances of individual cases, the Administration might consider carrying out the necessary supporting infrastructural works separately as a minor works project if part of such works was located outside an STT site. Upon receiving those STT applications, the works department concerned would first assess the project scopes and supporting infrastructures proposed by NGO-applicants and then hold discussions with them accordingly.

Arrangement for advance payment

23. Mr KWONG Chun-yu was concerned that smaller organizations might not have sufficient cash flow to take forward the approved projects. He enquired whether the proposed funding scheme would allow advance disbursement of the grant up to a specific amount to cover certain types of "initial expenses" for the projects. Mr KWONG called on the authorities to be flexible and provide assistance to successful NGO-applicants with insufficient cash flow. Mr Alvin YEUNG and Mr AU Nok-hin also expressed similar concerns.

24. In response, PS/DEV(P&L) and PAS/DEV(PL)7 advised that to ensure the proper use of public money, the grant would be disbursed by installments on a reimbursement basis subject to the fulfillment of project milestones in the funding agreement, and advance disbursement would not be made available. Depending on the circumstances of individual cases, the Administration would be flexible and consider advance partial disbursement of the grant if the subsidized NGOs had practical difficulties, so as to facilitate their engagement of contractors to take forward the approved projects.

Support for the applicants

Support when preparing the applications

25. Mr AU Nok-hin expressed concern about the low transparency of information about vacant government sites. Dr Fernando CHEUNG was concerned that the preparation of applications for using vacant government sites invariably involved considerable time and resources as the NGOs must consult various stakeholders and seek professional advice. Mr Tony TSE asked if the Administration could arrange meetings between

NGO-applicants and the relevant policy bureaux whilst the applications were being prepared, so as to ascertain whether the proposals would in principle be given policy support.

26. In response, PS/DEV(P&L) advised that:

- (a) in recent years, the Administration had enhanced the transparency of information about vacant government sites, including publishing details and pictures of the relevant sites on LandsD's website;
- (b) NGOs interested in making STT applications needed not seek policy support from the relevant policy bureaux on their own. LandsD would take this matter up and give early advice to NGO-applicants as far as practicable; and
- (c) the Administration would streamline the current STT vetting and approval process, including the introduction of a target time for a bureau's decision whether to give policy support, DEVB's coordination of technical assessments made by various departments, etc.

Professional and technical support

27. Dr Fernando CHEUNG enquired whether the Administration would set up help desks to provide technical or other support to NGO-applicants. Mr KWONG Chun-yu asked if the Administration would provide ongoing support to NGO-applicants/subsidized NGOs under a case approach until the relevant projects came into operation. Mr KWONG also enquired about the progress in arranging relevant professional institutes to nominate professionals to set up help desks on a pro bono basis.

28. In response, S/DEV(P&L) advised that:

- (a) the scope of financial support under the proposed funding scheme already covered the cost of consultancy services, and DEVB could also play a role in coordination and support; and
- (b) various professional institutes had responded positively to the provision of advisory services for NGO-applicants in preparing applications for funding support and implementing approved projects. Subject to FC's approval of the current funding proposal, the Administration would continue to liaise

with the professional institutes for support.

Other support

29. Mr Gary FAN asked whether the authorities could provide the estimated cost and time for carrying out repair and alteration works to existing structures on vacant sites for different uses.

30. PS/DEV(P&L) advised that the Administration did not have any estimates of renovation cost required for developing vacant school premises into transitional housing units. That said, drawing reference from the costs of project works for renovating vacant school premises for community uses in recent years, the maximum amount of financial subsidy for each project under the proposed funding scheme was set at \$60 million. As for the time required for renovating vacant school premises, it was difficult to give a general figure as much would depend on factors such as the geographical environment of the sites concerned (for example, whether there were slopes nearby). It normally took one to two years to complete such renovation works if no complex condition was involved.

31. Mr CHU Hoi-dick noted that some community members objected to the establishment of facilities such as support centres for ethnic minorities and support centres for animals in their community. He asked how, upon receipt of such applications, the Administration could help the relevant NGO-applicants address local resistance. In addition, he noted that the concept or objective of certain projects (such as animal support centres) might not necessarily be in line with the policy of relevant bureaux. In that case, he asked how those STT applications relating to such projects could obtain policy support.

32. PS/DEV(P&L) pointed out that by introducing the proposed funding scheme, it was the Administration's hope that various government departments could be more open-minded about projects which they seldom came across in the past. LandsD would be responsible for liaising with the relevant policy bureaux on individual cases as appropriate, and there was no need for NGO-applicants to seek policy support on their own. If local resistance was encountered in the process, the Administration would ensure coordination as appropriate or provide alternative sites for consideration by NGO-applicants.

33. Mr Vincent CHENG asked whether the Administration would relax various requirements concerning transitional housing development as far as possible, with a view to expediting the implementation of transitional

housing projects.

34. PS/DEV(P&L) pointed out that the Planning Department and the Buildings Department had already introduced flexible arrangements respectively for the planning and construction requirements of transitional housing development.

Monitoring and control

35. Mr Holden CHOW, Mr CHAN Hak-kan, Mr CHAN Chi-chuen, Mr YIU Si-wing and Mr LAU Kwok-fan raised questions respectively about the time frame for NGOs to take forward the approved projects on vacant government sites. Mr CHOW and Mr CHAN Chi-chuen sought information about the specific mechanism and responsible department for monitoring the implementation progress and tendering process of approved projects.

36. In response, PS/DEV(P&L) advised that:

- (a) under LandsD's current practice, STTs let by direct grant were normally granted for a fixed term of a duration ranging from one to five years, or up to seven years at most, and thereafter could continue on a monthly or quarterly basis, depending on whether the site concerned was required for other uses and subject to preference of the contractual parties;
- (b) the proposed funding scheme would not change the current mechanism for LandsD's handling of applications for use of vacant government sites and execution of STT terms and conditions; and
- (c) when necessary, the Administration would made it clear to NGO-applicants that certain sites would shortly be subject to planning review and might be unsuitable for projects with a longer development period.

37. PS/DEV(P&L) further said that DEVB would be responsible for monitoring the progress of approved projects under the proposed funding scheme until the completion of the funded works projects. A control mechanism would also be in place to suspend the disbursement of funding or even cease a project when necessary. PAS/DEV(PL)7 supplemented that the NGOs concerned must follow the relevant codes of practice of the Administration if tender exercises were required for the approved projects.

38. Mr AU Nok-hin considered that as LandsD had often been criticized for failing to take effective enforcement actions, it might not be able to properly monitor the use of vacant government sites leased out on STT. In this connection, he asked how DEVB could effectively manage various approved projects under the proposed funding scheme.

39. In response, PS/DEV(P&L) advised that to ensure transparency on the use of grants under the proposed funding scheme, DEVB would submit an annual report on the implementation progress of approved projects to the Panel. PAS/DEV(PL)⁷ supplemented that DEVB would handle applications of the proposed funding scheme through internal deployment of staff.

Use of government sites for purposes other than the proposed funding scheme

40. Dr Helena WONG asked whether the Administration had already confirmed that the vacant government sites concerned could not be used by any government departments before making them available for application by NGOs.

41. PS/DEV(P&L) explained that before offering the use of vacant government sites pending determination or implementation of a long-term use that were under its management for application by NGOs, LandsD would normally identify takers within the Government or among NGOs through policy bureaux/government departments. However, some sites might not be taken due to various reasons such as geographical factors.

42. Mr LEUNG Yiu-chung enquired whether the Government would consider using vacant government sites with an area of 1 000 sq m or above for the reprovisioning of temporary housing areas or the construction of residential care homes for the elderly ("RCHEs"). He was of the view that the Government might consider demolishing some of the vacant school premises on those sites to allow for in-situ construction of high-rise buildings for the aforesaid purposes, so as to fully utilize the plot ratio of the vacant sites.

43. In response, PS/DEV(P&L) advised that:

- (a) the Administration had taken the initiative to proactively carry out planning studies for any potential residential sites. If a larger piece of vacant government site was not planned for the

relevant use, it might possibly be that the land use zoning of the site was not compatible with housing development;

- (b) the Administration's current policy on transitional housing development was underpinned by community-led efforts with support from different government departments; and
- (c) NGO-applicants of the proposed funding scheme could suggest the demolition of vacant school premises.

Arrangement of scrutiny of this item

44. At 4:59 pm, the Chairman advised that he would conclude the discussion and put the item to vote after all members currently on the wait-to-speak list had spoken.

Motion proposed by members under paragraph 37A of the Finance Committee Procedure

45. At 5:15 pm, FC started to vote on whether the two motions on expressing views on the item, proposed by Mr AU Nok-hin and Mr KWONG Chun-yu respectively under paragraph 37A of the Finance Committee Procedure ("FCP") ("FCP 37A motions"), should be proceeded with forthwith.

46. The Chairman put to vote the questions, one by one, that these FCP 37A motions should be proceeded with forthwith. At the request of members, the Chairman ordered a division for each of the proposed motions. The voting results were as follows:

Members proposing the motion	Serial numbers of motion	Motions be proceeded with forthwith
Mr AU Nok-hin	0001	No
Mr KWONG Chun-yu	0002	No

Voting on FCR(2018-19)72

47. At 5:23 pm, the Chairman put item FCR(2018-19)72 to vote. The Chairman declared that the majority of the members present and voting were in favour of the item, and the item was approved.

48. After voting on the item, the Chairman directed that the meeting be suspended for 10 minutes. The meeting resumed at 5:33 pm.

**Item 2 — FCR(2018-19)73
RECOMMENDATION OF THE ESTABLISHMENT
SUBCOMMITTEE MADE ON 19 DECEMBER 2018**

**EC(2018-19)17
HEAD 92 — DEPARTMENT OF JUSTICE
Subhead 000 — Operational expenses**

49. The Chairman advised that the item sought FC's approval for the recommendation made by the Establishment Subcommittee ("ESC") at its meeting held on 19 December 2018 vide EC(2018-19)17 for the creation of two permanent posts of Principal Government Counsel ("PGC") (DL3) (designated as Deputy Law Officer (Civil Law) (Civil Litigation) 1 ("DLO(C)(CLU)1") and Deputy Law Draftsman III ("DLD III") respectively), one each in the Civil Division ("CD") and the Law Drafting Division ("LDD") of the Department of Justice ("DoJ") to better cope with the substantial increase in workload arising from existing and new initiatives in the two Divisions. ESC had spent about two hours on deliberation of the said proposal, and the Administration had also provided an information paper.

Proposed Deputy Law Officer (Civil Law) (Civil Litigation) 1

Justification for the creation of the proposed post and qualification requirements of the post holder

50. Referring to LC Paper No. ESC42/18-19(01), Mr AU Nok-hin pointed out that of the new leave applications filed with the Court of First Instance of High Court for judicial review ("JR") handled by CD of DoJ, the percentage of such applications involving briefed out counsel had dropped from 72% in 2012 to 65.4% and 55.7% in 2015 and 2016 respectively. As at 30 November 2018, the percentage further dropped to 25.2%. He considered the aforesaid figures an indication of the downward trend of briefing out cases. He therefore enquired about the justification for creating the proposed DLO(C)(CLU)1 post as a permanent post instead of a supernumerary post.

51. Mr Dennis KWOK enquired about the reasons for creating the proposed DLO(C)(CLU)1 post and the qualification requirements of the post holder. He also expressed concern about how the proposed post could help reduce the workload of CD, as well as the types of civil litigation cases to be handled by the post. Separately, Ms Claudia MO

asked the Administration to provide quantified information on: (a) the increased workload of the Civil Litigation Unit ("CLU") of CD in recent years; (b) the complexity of cases handled by CLU; and (c) the expected reduction in workload upon creation of the proposed post.

52. Law Officer (Civil Law), DoJ ("LO(C)") responded that after careful consideration, DoJ decided to create the proposed permanent post, given its proven long-term need. She said that the figures cited by Mr AU Nok-hin did not include other types of cases handled by CD. DoJ would decide whether individual cases should be briefed out on account of their specific circumstances. Director of Administration and Development, DoJ ("D of A&D") supplemented that all along, DoJ had been coping with the additional workload through internal staff redeployment or creation of non-directorate posts.

53. LO(C) said that the proposed DLO(C)(CLU)1 post was created to strengthen support at the management level. She pointed out that CD's overall workload had increased substantially. As set out in Enclosure 1 to EC(2018-19)17, the number of ongoing civil litigation cases had increased from 9 286 in 1998 to 36 778 in 2017. As at the end of 2018, the number had gone over 38 000, representing an increase of over 300%. However, over the past 30 years, CLU had all along been led by only one DLO. Separately, CD was required to handle matters covering a wide range of topics, as well as cases of increasingly complex nature, with some cases even involving controversial legal issues. As such, DoJ must engage an expert with considerable experience in civil litigation, so that he could handle some important cases personally, while sharing the workload in supervising CLU to enhance work efficiency.

54. LO(C) further said that in general, holders of PGC posts (i.e. equivalent in ranking as the proposed DLO(C)(CLU)1 post) should have at least 20 years of experience in handling civil litigation cases. At present, CLU comprised five teams with respective areas of work as follows: (a) personal injury, professional disciplinary proceedings; (b) public law and immigration ("Team 2"); (c) commercial litigation; (d) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other immigration related cases ("Team 4"); and (e) miscellaneous claims and costs.

55. Ms Claudia MO asked whether the proposed DLO(C)(CLU)1 would be the new head of CLU, and whether his rank would be higher than that of the original DLO(C)(CLU) (to be designated as DLO(C)(CLU)2 thereafter). LO(C) said that the two posts were of the same rank.

Backlog of civil litigation cases

56. Dr Fernando CHEUNG noted that the number of ongoing civil litigation cases handled by CD per annum had increased by about 300% over the past 20 years. He asked the Administration to provide information on the following: (a) the types of such cases; (b) the type of cases with the most serious backlog; and (c) the type of cases with the largest increase. Mr CHU Hoi-dick enquired about the number of new ongoing civil litigation cases in 2018. Both members sought the reasons for the serious backlog of cases, as well as the alternative solutions to the problem other than increasing manpower.

57. LO(C) advised that there were many different types of ongoing civil litigation cases, including mainly JR cases (including those relating to non-refoulement claims and other immigration matters), personal injuries or deaths and medical disciplinary cases, cases concerning miscellaneous claims and costs, etc. For each of those cases, a long time was required to complete the entire legal proceedings (with appeals probably pending for some cases). The number of new ongoing civil litigation cases in 2018 was 5 954. She further said that as set out in LC Paper No. ESC42/18-19(01), the number of new cases among the ongoing civil litigation cases each year was about 5 000 to 6 000, which was an indication of the ever-increasing workload of CLU.

58. Dr Fernando CHEUNG further asked why, notwithstanding the increasing trend of ongoing civil litigation cases since 1998, DoJ had not sought to increase manpower until the current exercise. He considered that if the backlog of cases remained outstanding simply because the relevant legal proceedings had yet to be completed, it might not be necessary to increase manpower substantially.

59. LO(C) advised that while CLU had all along been led by only one DLO over the past 30 years, DoJ had created additional directorate posts to handle different areas of work at appropriate times, such as the creation of a PGC post 10 years ago to handle mediation matters. Having reviewed its current operation (including the proportion of management staff and DoJ's efficiency in handling litigation work), DoJ considered now an opportune time to create an additional DLO post in CLU. She further said that officers in DoJ were required to oversee and follow up relevant work during different stages of the cases. Thus, manpower was required to handle the relevant work so long as the cases had not been concluded.

Judicial review cases

60. Referring to paragraph 8 of EC(2018-19)17, Mr Gary FAN pointed out that the number of ongoing JR cases being undertaken by CD per annum had increased from 557 in 2012 to 903 in 2017. In this connection, he enquired about the following:

- (a) the percentage of the number of JR cases lodged by property developers against the decisions of the Town Planning Board in the total number of the aforesaid cases;
- (b) whether it would add to the workload of CLU if appeals of the relevant cases were eventually lodged with the Court of Final Appeal; and
- (c) whether the proposed DLO(C)(CLU)1 was required to handle all JR cases concerning land and town planning.

61. LO(C) said that the Planning, Environment, Lands & Housing Unit of CD was responsible for handling JR cases concerning land and town planning, which accounted for about 3% to 4% of the total number of JR cases. Most of the other JR cases were taken up by Team 2, while cases concerning immigration-related matters were taken up by Team 4.

Non-refoulement claim cases

62. Mr CHU Hoi-dick said that according to Mr Geoffrey MA, the Chief Justice of the Court of Final Appeal, the proliferation of cases involving non-refoulement claims had created much pressure on the courts at all levels, and the Judiciary would liaise with DoJ with a view to exploring the possibility of introducing modest legislative amendments. He asked whether DoJ would hope to alleviate the workload of CLU by amending the Immigration Ordinance (Cap. 115) ("the Ordinance") to reduce the number of applications for leave to JR in relation to non-refoulement claims.

63. LO(C) explained that the Immigration Department had proposed to amend the Ordinance to expedite the screening process of new non-refoulement claims, as well as the handling of appeals. In the event that a claimant's administrative appeal to the Torture Claims Appeal Board was rejected, he could still apply to the Court of First Instance of the High Court for leave to JR in relation to his non-refoulement claim. Even if such an application was rejected, the claimant could still lodge an appeal

with the Court of Appeal of the High Court and eventually the Court of Final Appeal. The Security Bureau could seek legal advice from DoJ on the amendments to the Ordinance where necessary.

Criteria for briefing out civil and criminal cases

64. Mr AU Nok-hin said that at the ESC meeting held on 19 December 2018, attending DoJ officers had given members a clear reply in relation to the criteria for briefing out civil cases. However, he was dissatisfied with the reply given by Ms Teresa CHENG, the Secretary for Justice, at the Council meeting of 16 January 2019 regarding the criteria adopted by DoJ in briefing out criminal cases. He asked whether there was any difference in the criteria adopted by DoJ in briefing out civil and criminal cases.

65. LO(C) responded that the same criteria were adopted by DoJ internally for briefing out cases. However, the practical circumstances under which the same set of criteria were applied by CD and the Prosecutions Division might be different. She explained that DoJ would consider whether expert views from outside legal or other professionals should be sought, having regard to the complexity of the relevant cases and/or the points of law involved, before deciding whether the cases concerned should be briefed out. She added that even for briefed-out cases, Government Counsel of CLU must still handle a large amount of pre-trial preparation work, such as preparing statements and oaths. Hence, briefing out did not mean that the workload arising from such cases could be reduced completely for CLU.

Other concerns

66. Noting that Hong Kong signed the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region ("the REJ Arrangement on Civil and Commercial Matters") with the Mainland on 18 January 2019, Mr AU Nok-hin asked whether the proposed DLO(C)(CLU)1 would be responsible for following up the aforesaid arrangement, and whether the signing of the arrangement would add to the workload of CLU. Separately, in order to implement the Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Cases between the Hong Kong Special Administrative Region and the Macao Special Administrative Region ("the Service Arrangement"), the Administration had advised that the Rules of the High Court (Cap. 4A) and the Rules of the District Court (Cap. 336H) would be amended. He enquired whether the proposed post would be responsible

for the relevant work.

67. In response, LO(C) advised that as work in relation to the REJ Arrangement on Civil and Commercial Matters would be handled by the Legal Policy Division ("LPD") of DoJ, the signing of the arrangement would not directly affect the workload of CLU. Deputy Law Officer (Civil Law) (Civil Litigation), DoJ supplemented that the International Law Division of DoJ would be responsible for following up the Service Arrangement. But if adaptations to the rules of the courts were required in relation to the service of judicial documents, CD would provide legal advice on the amendments to be made to the relevant provisions where necessary.

Proposed Deputy Law Draftsman III

Duties of the proposed post and qualification requirements of the post holder

68. Mr Dennis KWOK said that he recognized the genuine need for LDD of DoJ to increase manpower as quite a number of government departments had relayed to him that as a result of LDD's manpower shortage, a longer time was required to handle the bills proposed by various departments. He commended LDD for striving to handle private Members' bills despite its manpower constraints.

69. Referring to Enclosure 7 to EC(2018-19)17, Mr CHAN Chun-ying noted that the proposed DLD III would be responsible for "drafting the Chinese and/or English text of major items of the most complex and/or sensitive legislation personally". In this connection, he enquired about the following:

- (a) the respective definitions of complex and sensitive legislation;
- (b) whether the proposed DLD III would be responsible for drafting legislation in relation to financial and economic affairs;
- (c) whether the proposed DLD III would attend all future meetings of the Policy Committee, the Executive Council and the Legislative Council ("LegCo") (including its committees); and if so, whether the qualification requirements for the proposed post should be higher than those of the two existing DLD; and

- (d) the division of work between the proposed DLD III and the existing DLD II.

70. In response, Law Draftsman, DoJ ("LD ") pointed out that:

- (a) in general, legislative work around the world had become increasingly complex. Even for some relatively short legislation, the content might be rather complex and/or sensitive. Both of the legislative exercises for establishing a Trade Single Window and introducing a new statutory corporate rescue procedure ("CRP") as cited in EC(2018-19)17 involved complex and/or sensitive law drafting work;
- (b) the proposed DLD III would be responsible for the two aforesaid legislative exercises;
- (c) the proposed DLD III should have at least 20 years of experience in law drafting (preferably law drafting experience gained in Hong Kong) and substantial management experience; and
- (d) subject to their own work schedule, the two existing DLD would take turns to act up the duties of LD. Upon creation of the DLD III post, all three DLD would help take up the relevant duties.

Legislative work to be handled by the proposed post

71. Referring to paragraph 27 of EC(2018-19)17 which stated that in 2018, LDD had to handle the legislative work for numerous items and for at least two major issues, namely, the budget and tax-related measures, and the local legislation for the national anthem law, Mr James TO considered that the two aforesaid initiatives were relatively simple and should not create too much burden on LDD. He queried that by citing the legislation for the national anthem law as an example in the aforesaid paper, the Administration was motivated politically to put pressure on the pro-establishment Members, so that they would support the creation of the proposed DLD III post. Ms Claudia MO also raised a similar question. Mr TO also enquired about the manpower and the number of working hours required for drafting the national anthem bill.

72. In response, LD pointed out that the workload of LDD had been increasing. There was an increasing trend in the number of long items that exceeded 100 and 200 pages respectively in the last three decades, while the legislation to be drafted had also become increasingly complex. She agreed that the national anthem bill was a relatively short and simple piece of legislation. But as the legislative exercise would arouse extensive discussion in the community, the bill was a sensitive legislation. Therefore, the national anthem bill was drafted by a directorate officer and a Senior Government Counsel of DoJ, and the draft legislation was then reviewed by DLD and LD. She stressed that there was no political intention in citing the legislation for the national anthem law as an example in EC(2018-19)17.

73. Referring to paragraph 24 of EC(2018-19)17 which stated that, "[f]or a major legislative exercise, it is necessary for a DLD to undertake a central facilitative role as well as review and further development functions on many occasions", Mr James TO and Mr AU Nok-hin asked if the proposed DLD III post was created to handle the legislative work for implementing Article 23 of the Basic Law. Ms Claudia MO requested the Administration to give an undertaking forthwith that the proposed DLD III would never handle the said legislative work.

74. In response, LD stressed that the proposed DLD III post was created to cope with the increasing and more complex workload of LDD, instead of handling a specific item of legislative work. D of A&D supplemented that as already explained clearly in paragraph 27 of EC(2018-19)17, there were two legislative exercises of enormous proportions to be handled by LDD over the next few years, namely, the establishment of a Trade Single Window and the introduction of a new statutory CRP.

75. Mr James TO pointed out that according to the Chief Executive, Mrs Carrie LAM, the Administration had all along been making advance preparations for the enactment of legislation to implement Article 23 of the Basic Law. He asked whether LDD would be involved in such advance preparations, and whether the relevant policy departments could request LDD to take part in such work.

76. D of A&D advised that LDD was responsible for drafting legislation as per the request of policy departments and providing them with legal support. LDD would only commence the law drafting process after receiving instructions from the relevant policy departments.

77. Dr Fernando CHEUNG and Mr CHAN Chi-chuen expressed concern about what other complex and/or sensitive legislation the proposed DLD III would have to handle in the future, in addition to the examples set out in EC(2018-19)17 (such as the establishment of a Trade Single Window and the introduction of a new statutory CRP).

78. LD advised that the above two legislative work were just examples, and there were many other legislative proposals on the Administration's legislative programme. She reiterated that LDD was facing a surging workload with increasing complexity. As the two existing DLD could not possibly cope with such workload, it was necessary to create an additional DLD post. Apart from drafting legislation, the proposed DLD III would be required to supervise four drafting teams, involving a broad scope of duties. D of A&D supplemented that the establishment of a Trade Single Window involved amendments to some 40 pieces of existing legislation, showing that the relevant drafting work was rather complex.

79. Mr CHAN Chi-chuen said that according to the Administration, the REJ Arrangement on Civil and Commercial Matters would be implemented through local legislation and would only take effect after both places had completed the necessary procedures required for implementing the arrangement. In this connection, he enquired about the following:

- (a) whether agreements of a similar nature to the REJ Arrangement on Civil and Commercial Matters were drafted by LDD or the Central People's Government; and
- (b) whether the implementation of the aforesaid arrangement would require amendments to local legislation; and if so, whether the related work was undertaken by LDD.

80. In response, D of A&D advised that:

- (a) as the REJ Arrangement on Civil and Commercial Matters was signed between Hong Kong and the relevant Mainland authorities after negotiation, both parties were involved in the drafting of the arrangement. In Hong Kong, LPD was responsible for the relevant work. DoJ had already briefed the Panel on Administration of Justice and Legal Services of LegCo on the matter; and

- (b) local legislation was required for the implementation of the arrangement, and LDD would be responsible for drafting the legislation in due course.

LD supplemented that in relation to the agreements signed between Hong Kong and the Mainland or any other jurisdictions, LDD was not involved.

81. The meeting ended at 7 pm.

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