

立法會
Legislative Council

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Finance Committee of the Legislative Council

Minutes of the 37th meeting
held at Conference Room 1 of the Legislative Council Complex
on Thursday, 2 July 2020, from 9:03 am to 12:49 pm; and
from 2:30 pm to 6:28 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
Hon Tommy CHEUNG Yu-yan, 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 Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung, JP
Hon Dennis KWOK Wing-hang
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Hon Elizabeth QUAT, BBS, JP
Hon Martin LIAO Cheung-kong, GBS, 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 CHU Hoi-dick
Hon Jimmy NG Wing-ka, BBS, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon LAM Cheuk-ting
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai, JP
Hon SHIU Ka-chun
Hon Wilson OR Chong-shing, MH
Hon YUNG Hoi-yan, JP
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 Vincent CHENG Wing-shun, MH, JP
Hon Tony TSE Wai-chuen, BBS
Hon CHAN Hoi-yan

Members absent:

Hon Andrew WAN Siu-kin

Public officers attending:

Ms Alice LAU Yim, JP	Permanent Secretary for Financial Services and the Treasury (Treasury)
Mr Raistlin LAU Chun, 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)
Mr Amor WONG Yiu-tuen	Principal Assistant Secretary for Food and Health (Food) 3
Dr LEUNG Siu-fai, JP	Director of Agriculture, Fisheries and Conservation
Mr Peter MA Wai-chung	Assistant Director of Agriculture, Fisheries and Conservation (Agriculture)
Mr LAI Cheuk-ho, JP	Project Manager (North), Civil Engineering and Development Department
Ms Teresa MA Oi-suet	Senior Engineer (6(N)), Civil Engineering and Development Department
Mr Joseph CHAN Ho-lim, JP	Under Secretary for Financial Services and the Treasury
Mr Andrew LAI Chi-wah, JP	Deputy Secretary for Financial Services and the Treasury (Treasury) 2
Mr TAM Tai-pang, JP	Deputy Commissioner of Inland Revenue (Operations)
Mr Tony WONG Kai-cheong	Assistant Commissioner of Inland Revenue (Headquarters Unit)
Mr Barry NG Kwok-ho	Chief Systems Manager (Inland Revenue), Inland Revenue Department
Ms Gracie FOO Siu-wai, JP	Director of Administration and Development, Department of Justice
Mr Wesley WONG Wai-chung, SC, JP	Solicitor General, Department of Justice
Dr James DING Kwok-wing	Principal Government Counsel (Secretary for Justice's Office),

Miss LEE Sau-kong	Department of Justice Deputy Solicitor General (Policy Affairs), Department of Justice
Ms Adeline WAN Ping-siu	Secretary, Law Reform Commission, Department of Justice
Ms Esther LEUNG Yuet-yin, JP	Director of Administration
Ms Jennifer CHAN Sau-fong	Deputy Director of Administration 2
Dr LAW Chi-kwong, GBS, JP	Secretary for Labour and Welfare
Mr Carlson CHAN Ka-shun, JP	Commissioner for Labour
Mr Raymond HO Kam-biu, JP	Assistant Commissioner for Labour (Development)
Mr Raymond LIANG Lok-man	Assistant Commissioner for Labour (Labour Relations)

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
Miss Bowie LAM	Council Secretary (1)1
Ms Alice CHEUNG	Senior Legislative Assistant (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
Miss Yannes HO	Legislative Assistant (1)7
Ms Clara LO	Legislative Assistant (1)9
Ms Haley CHEUNG	Legislative Assistant (1)10

Action

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

2. The Chairman declared that he was an Executive Director and the Chief Executive Officer of Well Link Insurance Group Holdings Limited. He was also a Director of Well Link General Insurance Company Limited and Well Link Life Insurance Company Limited, both of which were subsidiaries of Well Link Insurance Group Holdings Limited.

**Item 1 — FCR(2019-20)20
RECOMMENDATION OF THE PUBLIC WORKS
SUBCOMMITTEE MADE ON 26 APRIL 2019**

**PWSC(2018-19)43
HEAD 707 — NEW TOWNS AND URBAN AREA
DEVELOPMENT
Recreation, Culture and Amenities — Open spaces
471RO — The Establishment of an Agricultural Park in Kwu Tung
South**

Continuation of the discussion on item FCR(2019-20)20

3. The Finance Committee ("FC") continued with the discussion on FCR(2019-20)20 on the upgrading of part of 471RO (The Establishment of an Agricultural Park in Kwu Tung South) as 473RO, entitled "The Establishment of an Agricultural Park in Kwu Tung South – Phase 1" to Category A and the retention of the remainder in Category B at an estimated cost of \$176.6 million in money-of-the-day ("MOD") prices. The Chairman said that, at the last meeting, FC spent one hour and 52 minutes on the discussion of the item.

4. Mr WU Chi-wai enquired whether existing farmers operating within the area of the Agricultural Park ("Agri-Park") prior to its establishment would receive compensation; and whether the Administration had consulted relevant private land owners and local farmers on the establishment of the Agri-Park.

5. Project Manager (North), Civil Engineering and Development Department and Director of Agriculture, Fisheries and Conservation ("DAFC") said that the Government would resume around 80 hectares of land from private land owners for the establishment of the Agri-Park Phases 1 and 2. Rehousing arrangement in accordance with the prevailing General Ex-gratia compensation and rehousing arrangements and domestic removal allowances would be offered to eligible households. Ex-gratia allowances ("EGA") would be paid to the displaced farmers under the current EGA policy.

6. Mr Steven HO expressed support for this item and considered that the Administration should set up an ad hoc committee for the operation and management of the Agri-Park. Pointing out that the Government's New Agriculture Policy included measures such as establishing the Agri-Park, Agricultural Priority Areas and the Sustainable Agricultural Development Fund, he enquired about the implementation timetables and financial

arrangements for the various measures, especially the cost estimate of the establishment of Agri-Park Phase 2.

7. DAFC replied that the Agri-Park Phase 2 was still under planning and details such as its scale of development, scope and the extent of private land resumption were yet to be confirmed. Therefore, the cost estimate of the item was not available at the moment. According to current estimates, the Agri-Park Phase 1 would complete in 2023 and the timetable for Phase 2 would be subject to the progress of, and the operating experience gained from, Phase 1.

8. Mr CHU Hoi-dick enquired whether Tsiu Keng Road needed to be widened. Furthermore, he enquired whether the Administration would require tenants in the Agri-Park to provide training and learning opportunities for young people with a view to helping them join the agricultural industry.

9. DAFC said that, in order to meet the long-term operational needs of Agri-Park Phases 1 and 2, the proposed works included the construction of a single two-lane carriageway connecting the Agri-Park with Tsiu Keng Road and Fan Kam Road, while Tsiu Keng Road would need to be widened in the future. DAFC further said that the Agri-Park aimed to help nurture agro-technology and knowledge on modern farm management through leasing farmland and providing associated agricultural facilities for farmers to conduct commercial farming. The Government also planned to co-organize farming-related activities, such as educational, interactive and experiential activities, with tenants to encourage young people to enter the agricultural industry.

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

10. At 9:16 am, FC started to vote on whether the two motions on expressing views on the item, proposed by Mr WU Chi-wai and Mr CHU Hoi-dick respectively under paragraph 37A of the Finance Committee Procedure ("FCP") ("FCP 37A motions"), should be proceeded with forthwith.

11. 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. The voting results were as follows:

Members proposing the motions	Serial numbers of motions	Motions be proceeded with forthwith
Mr WU Chi-wai	0001	No
Mr CHU Hoi-dick	0002	No

Voting on FCR(2019-20)20

12. At 9:27 am, the Chairman put item FCR(2019-20)20 to vote. At the request of members, the Chairman ordered a division. The Chairman declared that 23 members voted for and 8 members voted against the item. No member abstained from voting. The votes of individual members were as follows:

For:

Mr LEUNG Yiu-chung	Mr Tommy CHEUNG Yu-yan
Mr Jeffrey LAM Kin-fung	Mr WONG Ting-kwong
Ms Starry LEE Wai-king	Mr WONG Kwok-kin
Mrs Regina IP LAU Suk-yee	Mr Steven HO Chun-yin
Mr Frankie YICK Chi-ming	Mr YIU Si-wing
Mr CHAN Han-pan	Mr Christopher CHEUNG Wah-fung
Mr POON Siu-ping	Dr CHIANG Lai-wan
Ir Dr LO Wai-kwok	Mr Jimmy NG Wing-ka
Mr SHIU Ka-fai	Mr Wilson OR Chong-shing
Ms YUNG Hoi-yan	Mr Kenneth LAU Ip-keung
Mr Vincent CHENG Wing-shun	Mr Tony TSE Wai-chuen
Ms CHAN Hoi-yan	
(23 members)	

Against:

Mr WU Chi-wai	Mr Charles Peter MOK
Dr Fernando CHEUNG Chiu-hung	Mr CHU Hoi-dick
Ms Tanya CHAN	Mr HUI Chi-fung
Dr CHENG Chung-tai	Mr Jeremy TAM Man-ho
(8 members)	

13. The Chairman declared that the item was approved.

Item 2 — FCR(2020-21)28
RECOMMENDATION OF THE PUBLIC WORKS
SUBCOMMITTEE MADE ON 4 DECEMBER 2019

PWSC(2019-20)12

HEAD 703 — BUILDINGS

Recreation, Culture and Amenities — Mixed amenity packages

58RG — District Library and Residential Care Home for the Elderly in the Joint User Complex at Lei King Road

Social Welfare and Community Buildings — Community halls

196SC — Community Hall-cum-Home Affairs Enquiry Centre in Cheung Chau

Recreation, Culture and Amenities — Open spaces

441RO — Hoi Sham Park Extension in Kowloon City District

14. The Chairman said that this item sought the approval of FC for the recommendation on PWSC(2019-20)12 made by the Public Works Subcommittee ("PWSC") at its meeting held on 4 December 2019, which was as follows:

- (a) to upgrade **58RG** (District Library and Residential Care Home for the Elderly in the Joint User Complex at Lei King Road) to Category A at an estimated cost of \$673.6 million in MOD prices;
- (b) to upgrade **196SC** (Community Hall-cum-Home Affairs Enquiry Centre in Cheung Chau) to Category A at an estimated cost of \$142.6 million in MOD prices; and
- (c) to upgrade **441RO** (Hoi Sham Park Extension in Kowloon City District) to Category A at an estimated cost of \$293.2 million in MOD prices.

Voting on FCR(2020-21)28

15. At 9:32 am, the Chairman put item FCR(2020-21)28 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.

Item 3 — FCR(2020-21)29

**RECOMMENDATION OF THE PUBLIC WORKS
SUBCOMMITTEE MADE ON 15 JANUARY 2020**

PWSC(2019-20)16

**HEAD 707 — NEW TOWNS AND URBAN AREA
DEVELOPMENT**

Civil Engineering – Land Development

332CL — West Kowloon Reclamation – main works (remainder)

16. The Chairman advised that this item sought the approval of FC for the recommendation on PWSC(2019-20)16 made by PWSC at its meeting held on 15 January 2020, i.e. the upgrading of part of **332CL** (West Kowloon Reclamation – main works (remainder)) as **831CL**, entitled "West Kowloon Reclamation – main works (remainder) – footbridge at the junction of Sham Mong Road and Hing Wah Street West in Sham Shui Po", to Category A at an estimated cost of \$331.9 million in MOD prices; and the retention of the remainder of **332CL** in Category B.

Voting on FCR(2020-21)29

17. At 9:35 am, the Chairman put item FCR(2020-21)29 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.

Item 4 — FCR(2020-21)30

**RECOMMENDATION OF THE PUBLIC WORKS
SUBCOMMITTEE MADE ON 27 MAY 2020**

PWSC(2019-20)25

HEAD 703 —BUILDINGS

Recreation, Culture and Amenities – Cultural facilities

**75RE — Expansion of Hong Kong Science Museum and Hong
Kong Museum of History**

**HEAD708 —CAPITAL SUBVENTIONS AND MAJOR SYSTEMS
AND EQUIPMENT**

54QJ —New facilities building of the Hong Kong Sports Institute

18. The Chairman said that this item sought the approval of FC for one of the recommendations on PWSC(2019-20)25 made by PWSC at its meeting held on 27 May 2020, i.e. the upgrading of part of **54QJ** (New facilities building of the Hong Kong Sports Institute) as **56QJ**, entitled "Pre-construction activities for new facilities building of the Hong Kong Sports Institute", to Category A at an estimated cost of \$54.7 million in MOD prices; and the retention of the remainder of **54QJ** in Category B.

Voting on FCR(2020-21)30

19. At 9:36 am, the Chairman put item FCR(2020-21)30 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.

Item 5 — FCR(2020-21)31

**RECOMMENDATION OF THE PUBLIC WORKS
SUBCOMMITTEE MADE ON 10 JUNE 2020**

PWSC(2019-20)28

HEAD 711 —HOUSING

Support – Others

**191GK — Community hall, general outpatient clinic and maternal
and child health centre at Ching Hong Road, Tsing Yi**

Civil Engineering—Land development

**795CL — Site formation and infrastructure works for public
housing developments at Pok Fu Lam South**

**812CL — Site formation and infrastructure works for public
housing developments at Pik Wan Road, Yau Tong**

HEAD 707 —NEW TOWNS AND URBAN AREA DEVELOPMENT

Civil Engineering—Land development

**666CL —Formation, roads and drains in Area 54, Tuen Mun –
phase 1 stage 2**

**681CL —Formation, roads and drains in Area 54, Tuen Mun –
phase 2**

20. The Chairman said that this item sought the approval of FC for the recommendation on PWSC(2019-20)28 made by PWSC at its meeting held on 10 June 2020, which was as follows:

- (a) the upgrading of **191GK** (Community hall, general outpatient clinic and maternal and child health centre at Ching Hong Road, Tsing Yi) to Category A at an estimated cost of \$1,033.2 million in MOD prices;
- (b) the upgrading of **795CL** (Site formation and infrastructure works for public housing developments at Pok Fu Lam South) to Category A at an estimated cost of \$4,571.3 million in MOD prices;

- (c) the upgrading of **666CL** (Formation, roads and drains in Area 54, Tuen Mun – phase 1 stage 2) to Category A at an estimated cost of \$48.2 million in MOD prices; and
- (d) the upgrading of part of **681CL** (Formation, roads and drains in Area 54, Tuen Mun – phase 2) as **844CL** entitled "Formation, roads and drains in Area 54, Tuen Mun – phase 2, stage 4B works", to Category A at an estimated cost of \$264.3 million in MOD prices; and the retention of the remainder of **681CL** in Category B.

Voting on FCR(2020-21)31

21. At 9: 37 am, the Chairman put item FCR(2020-21)31 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.

Point of order

22. Regarding the implementation of The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("the National Security Law"), especially Article 4 (i.e. human rights shall be respected and protected in safeguarding national security in the Hong Kong Special Administrative Region ("HKSAR") and the rights and freedoms, such as the freedoms of speech, of assembly, of procession and of demonstration, which Hong Kong residents enjoy shall be protected in accordance with the law), Mr CHU Hoi-dick, Dr Fernando CHEUNG and Mr Jeremy TAM expressed the following concerns and raised the following queries :

- (a) after the National Security Law took effect, whether members' freedom of speech and debate before the Legislative Council ("LegCo") or a committee was protected by the privileges and immunities provided in or conferred on LegCo Members by sections 3 and 4 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), (i.e. freedom of speech and debate, and immunity from civil or criminal legal proceedings); and Article 77 of the Basic Law of the HKSAR of the People's Republic of China ("the Basic Law")(i.e. LegCo Members shall be immune from legal action in respect of their statements at meetings of the LegCo); and
- (b) as the definition of the term "national security" in the provisions of the National Security Law was established

according to the National Security Law of the People's Republic of China, and the coverage was extensive, FC should therefore clarify the impact of the National Security Law on members' speech and debate before continuing the meeting.

23. Mr WONG Ting-kwong, Mr Steven HO and Mr LUK Chung-hung pointed out that:

- (a) the implementation of the National Security Law was irrelevant to the agenda of the FC meeting today;
- (b) although Members' freedom of speech and debate before the LegCo or a committee was protected by the Legislative Council (Powers and Privileges) Ordinance, it did not mean that members could commit acts of secession, subversion of state power or those endangering national security. Such acts were also in breach of the Basic Law and the contents of the oaths of allegiance to HKSAR taken by Members; and
- (c) discussions on the Government's financial proposals at FC meetings were not supposed to involve offences related to the National Security Law.

24. The Chairman said that to address members' concerns, he would request the Legal Service Division of the Legislative Council Secretariat to examine the impact of the National Security Law on members for words spoken before the LegCo or a committee. Given that the examination took time and discussions on financial proposals should not involve violation of the National Security Law, the Chairman directed that the meeting be continued.

**Item 6 — FCR(2020-21)8
CAPITAL WORKS RESERVE FUND**

HEAD 710 — COMPUTERISATION

Inland Revenue Department

**New Subhead "Enhancement and Relocation of Information
Technology Systems and Facilities of the Inland
Revenue Department"**

25. The Chairman advised that this item sought the approval of FC for the creation of a new commitment of \$742,463,000 for the enhancement and relocation of information technology ("IT") systems and facilities of the Inland Revenue Department ("IRD") for the new Inland Revenue Tower ("IR Tower") in the Kai Tak Development Area.

Cost effectiveness of the project

26. Mr YIU Si-wing enquired about the life expectancy and depreciation period of the existing and enhanced IT systems and facilities of IRD respectively, as well as the comparison of maintenance expenditure before and after depreciation. As for the 85 posts that could be made redundant upon the implementation of the proposed project, Mr YIU enquired about the percentage of these posts in the overall establishment of IRD and the work/deployment arrangements for these posts. Mr Kenneth LEUNG asked if IRD would increase manpower, including management staff, to handle the increasingly heavy taxation and IT matters.

27. Mr WU Chi-wai requested the Administration to explain in detail the reasons for IRD's enhancement of its IT systems and facilities, including whether it was because of technical constraints or difficulties in management and maintenance of the existing systems. He also enquired whether the 85 posts that could be made redundant were frontline posts that could be made redundant in relation to the enhancement of systems and facilities.

28. Under Secretary for Financial Services and the Treasury ("USFST") and Deputy Commissioner of Inland Revenue (Operations) ("DCIR(O)") responded that:

- (a) the eTax System, the main IT system of IRD, was launched in 2008 for providing electronic filing ("e-filing") of tax returns for individuals and other electronic services ("e-services"). Owing to constraints of the existing systems, IRD planned to enhance its IT systems so as to provide more dedicated e-services and the estimated life expectancy of the new systems would be about eight to ten years;

- (b) IRD would also enhance the functionalities of the eTax System in the short term to support users of "iAM Smart" to open accounts in the eTax System and allow taxpayers to upload accounting and financial data;
- (c) the implementation of the proposed project would save up a non-recurrent expenditure of \$46.05 million that would otherwise be required for upgrading the existing hardware and software in IRD and bring about annual savings in recurrent expenditure of \$87,372,000 from 2029-2030 onwards;
- (d) upon the implementation of the proposed project, paper-based and manual workflow processes would be significantly reduced in light of the improvement in e-services and it was expected that 85 posts could be made redundant, including Assistant Taxation Officers, Clerical Assistants, etc. Some posts that could be made redundant were held by contract staff, while the remaining posts would be deleted mainly by natural wastage or deployment;
- (e) IRD would continue to review the demand for manpower and make appropriate deployment and, at this stage, there was no plan to alter the organization structure of IRD nor increase manpower, including management staff; and
- (f) information about depreciation of IT systems would be provided after the meeting.

[Post-meeting note: The supplementary information provided by the Administration was issued to members vide LC Paper No. FC297/19-20(01) on 6 October 2020.]

29. In response to Mr WU Chi-wai's further enquiry, Deputy Secretary for Financial Services and the Treasury (Treasury) 2 advised that the existing eTAX System did not allow electronic submission of financial information by companies, and tax representatives were also unable to file tax returns by way of e-filing, so it was necessary to launch new tax portals to facilitate and encourage taxpayers in adopting e-filing. Permanent Secretary for Financial Services and the Treasury (Treasury) supplemented

that the existing internal operating systems of IRD completed updating and came into operation in 2017, and funding was reserved a few years before commissioning for kick starting the related work. Similarly, the Government had to apply for funding now to further digitise the workflow processes of the Department and migrate the IT systems to the Government's cloud service platform several years later. By that time, the existing systems would have actually been in use for about seven to eight years. Therefore, the funding proposal today fit the purpose of the Department to enhance service quality and the cost effectiveness of the systems, rather than investing in obsolete technologies or a wastage of resources.

30. Mr Charles Peter MOK and Ms Tanya CHAN pointed out that, according to the discussion paper, the proposed development and enhancement of IT systems of IRD covered six activities (i.e. develop a Business Tax Portal, replace the eTAX System with an Individual Tax Portal, develop a Tax Representative Portal, leverage cloud services to accommodate all of IRD's systems after office relocation, extend the workflow technology and relocation of IT systems and facilities). They requested the Administration to provide the contents and cost breakdown of each activity (including non-recurrent expenditure and recurrent expenditure). Mr MOK enquired whether the proposed new commitment of \$742,463,000 covered the expenditure required for the six activities. Given that the proposed project would be implemented in phases over six years from 2020-2021 to 2025-2026, Mr MOK was concerned as to whether the Administration had taken into account financial implications of technology development in the long run.

31. Ir Dr LO Wai-kwok expressed support for the project and enquired about the respective non-recurrent expenditure for relocating IRD's IT systems and facilities to the new IR Tower and enhancing IRD's IT systems and facilities as a percentage of the total project expenditure, as well as how IRD would minimize service interruption to the public during the enhancement and relocation of the systems.

32. Regarding the implementation of the project, USFST advised that:

- (a) the proposed project comprised the development of three systems respectively for business taxpayers, individual

taxpayers and tax representatives, relocation and re-provision of IT infrastructure and facilities to the new IR Tower, the leverage of cloud services to accommodate all of IRD's systems after office relocation and extension of the application of workflow technology for improving IRD's internal communication and work efficiency;

- (b) to minimize service interruption to the public during relocation, tasks such as system development and relocation would be conducted in phases;
- (c) it was expected that Phase 1 of the Business Tax Portal would be completed in March 2021 to facilitate uploading of financial data by users, and the enhancement of functionalities of the eTAX System would be completed in March 2022;
- (d) IRD planned to conduct the first phase of relocation in December 2022. At that time, most staff members, personal computers and documents would be relocated to the new IR Tower, and staff would continuously provide services to the public via high-speed networks connected to the existing IT systems; and
- (e) the second phase of relocation was expected to take place in March 2023. By then, all IT systems would be migrated to the cloud service platform. During the relocation, e-services to the public would inevitably be affected temporarily. IRD would conduct rigorous tests and simulations for the new systems in advance to minimize the time required for service suspension. IRD would also formulate a contingency plan to ensure that the old systems could continuously be used in case any interruption occurred during migration to the Government's cloud service platform.

33. Regarding non-recurrent expenditure, USFST and DCIR(O) replied that:

- (a) \$131 million, \$74 million and \$44 million would be required for developing a Business Tax Portal, an Individual Tax Portal

and a Tax Representative Portal respectively;

- (b) \$351 million would be used to leverage the Government's cloud services to accommodate all systems;
- (c) \$51 million would be required for extending the application of workflow technology; and
- (d) \$91 million would be used to relocate and re-provision IRD's IT infrastructure and facilities to the new IR Tower.

USFST undertook to provide the contents and cost breakdown of each of the aforesaid activities after the meeting for members' reference.

[Post-meeting note: The supplementary information provided by the Administration was issued to members vide LC Paper No. FC297/19-20(01) on 6 October 2020.]

34. Mr Tony TSE expressed support for the Administration to improve work efficiency by adopting technologies. He enquired about the progress of the relocation of the three office buildings at Wan Chai Government Offices Compound (including the relocation of IRD to the new IR Tower in the Kai Tak Development Area). He was of the view that IRD should enhance the public and stakeholders' understanding of its e-services, in particular, how these enhanced services would improve efficiency and facilitate users. Ir Dr LO Wai-kwok also raised concern as to how e-services of IRD would facilitate users after the enhancement.

35. USFST advised that IRD planned to relocate to the new IR Tower in the Kai Tak Development Area by late 2022 to early 2023. As for the improvement to IRD's existing e-services, USFST pointed out that the proposed project would streamline the processes of e-filing of tax returns for individual taxpayers, while the new portals would have a more user-friendly design to deliver better user experience, thereby encouraging different types of taxpayers to adopt e-filing of tax returns. Furthermore, the "iAM Smart" platform would provide one-stop personalized digital government services, enabling users to conduct online government and commercial transactions with a single digital identity and authentication for the new tax portals. These upgraded functionalities would also greatly

improve the attractiveness and user-friendliness of IRD's e-services.

36. Mr Kenneth LEUNG enquired about the percentage of salaries tax payers currently using e-filing of tax returns for individuals in the total number of salaries tax payers and, in the long run, whether IRD had any plan to require taxpayers to use these e-filing service for individuals.

37. USFST responded that, at present, e-filing of tax returns for individuals was used by about 25% of taxpayers. By streamlining e-filing processes and improving design and functionalities of the portals, IRD wished to encourage different types of taxpayers to adopt e-filing of tax returns. For the time being, IRD had no plan to compulsorily require taxpayers to use e-filing of tax returns for individuals.

Confidentiality of information and protection of personal privacy

38. Mr Tony TSE urged the Innovation and Technology Bureau to examine how various departments would, in compliance with protection of privacy and relevant laws, share with each other information and data separately collected, in order to match up with the vision of developing Hong Kong into a smart city.

39. USFST pointed out that the Inland Revenue Ordinance ("IRO")(Cap. 112) had secrecy provisions concerning tax information in place. IRD was obliged to preserve secrecy and was not allowed to share such information with other departments.

40. Mr HUI Chi-fung, Mr WU Chi-wai and Mr Kenneth LEUNG pointed out that, pursuant to Articles 60, 61 and 62 of the National Security Law, the National Security Law should prevail where provisions of the laws of the HKSAR were inconsistent with the National Security Law. In addition, the relevant departments of the HKSAR Government should provide necessary facilitation and support to the Office for Safeguarding National Security of the Central People's Government in HKSAR ("Office on National Security ") in performing its mandate. These members requested the Administration to elaborate in writing the mechanism and procedures to be adopted by IRD in handling future requests from the Office on National Security for provision of tax information of individuals or organizations, while such requests might violate the information secrecy

provisions under IRO, and how IRD would ensure the protection of sensitive commercial information and personal privacy.

41. USFST reiterated that, in accordance with the information secrecy provisions under IRO, IRD should preserve secrecy of tax information obtained. At present, established procedures were in place for IRD to handle requests from law enforcement departments for provision of tax information of individuals or organizations for the purpose of investigation or collection of evidence. IRD would also seek legal advice from the Department of Justice ("DoJ") when necessary. USFST undertook to provide written information after the meeting for members' reference.

[Post-meeting note: The supplementary information provided by the Administration was issued to members vide LC Paper No. FC297/19-20(01) on 6 October 2020.]

42. Mr Kenneth LEUNG enquired whether Automatic Exchange of Financial Account Information ("AEOI") concerning taxation matters between IRD and tax authorities of different jurisdictions was conducted through the same electronic channel and transmission standard and, after the implementation of AEOI by the Organization for Economic Co-operation and Development ("OECD"), whether OECD had requested Hong Kong to follow up or revise information exchanged in light of results of peer reviews or system security incidents. He requested IRD to clarify whether the same transmission standard applied when members of the public and commercial organizations submitted information to IRD; if not, whether IRD would consider unifying the transmission standard.

43. Chief Systems Manager (Inland Revenue), IRD ("CSM(IR)) advised that OECD developed a common transmission system for exchange of information among different tax authorities. In exchanging information, Hong Kong and other relevant tax jurisdictions had to fulfill the secrecy requirements set by OECD. At local level, IRD set up an independent information exchange system to collect and store information of members of the public and commercial organizations. All information transmitted would be encrypted by using Public Key Infrastructure ("PKI"). PKI technology was also used when members of the public and commercial organizations submitted information to IRD, and the transmission standard was similar to that of the information exchange system. He added that

IRD would definitely conduct security risk assessment and security check before introducing any new IT system, and would carry out biennial review and continuously monitor the systems to ensure system security.

Application of information technology and cloud services

44. Mr WU Chi-wai enquired whether the cloud services for accommodating IRD's IT systems would be an independent platform or a hybrid cloud service platform of the Government. He also asked if IRD would apply blockchain technology to ensure better protection of taxpayers' privacy and sensitive commercial information.

45. Mr Charles Peter MOK pointed out that a hybrid cloud platform would enable user departments to operate and upgrade their systems at lower cost, as well as shortening the time for procuring and installing the systems. He enquired whether IRD would relocate part of the IT systems to the Government's hybrid cloud service platform in order to improve cost effectiveness of the systems.

46. USFST and DCIR(O) replied that IRD would conduct the second phase of relocation in March 2023 and migrate all IT systems to the Government's Cloud platform, but the systems would be independent from the platforms of systems of other bureaux/departments. CSM(IR) supplemented that IRD would proactively consider relocating suitable systems not involving tax information (such as "Bonny" chatbot service) to the Government's hybrid cloud service platform. DCIR(O) pointed out that blockchain technology was generally used in multi-party transactions. Given that IRD's systems were mainly used for receiving, encrypting, storing and analyzing tax information of taxpayers, blockchain technology would not be adopted at this stage. IRD would study the feasibility of using blockchain technology if necessary.

47. Mr WU Chi-wai requested the Administration to elaborate specifically IRD's proposed use of big data analytics and other innovative technologies, such as robotic automation and machine learning, to improve internal communication and work efficiency. In addition, he enquired whether the Administration would set out in the contract that contractors must provide IRD with the latest hardware and software.

48. USFST advised that the existing Workflow Management System of IRD could only be applied to the operation of individual units and coordination across different units was limited. Extending the existing System to cover more automatic workflow processes across different units in IRD would improve communication amongst business units and work efficiency. In addition, IRD begun using data analysis tools to select cases for tax investigation and on-site audit over ten years ago. IRD anticipated that when the upgrading of the systems was completed and the new tax portals came into operation, the authorities would be able to collect a large volume of electronic data. By then, big data and artificial intelligence technologies would be more effectively applied to analyze information of taxpayers and commercial organizations with a view to more effectively combating tax avoidance. USFST and CSM(IR) advised that IRD would conduct tendering exercise according to the Government's procurement policy and adopt higher technical weighting in tender assessment, so as to ensure that the most advanced, stable and secure IT technologies were used in the hardware and software as well as services procured. Furthermore, the tender document would state expressly that contractors were required to update the operating system and software in a timely manner to ensure the use of latest hardware and software.

49. The meeting was suspended at 10:44 am and resumed at 10:58 am.

Voting on FCR(2020-21)8

50. At 11:22 am, the Chairman put item FCR(2020-21)8 to vote. At the request of members, the Chairman ordered a division. The Chairman declared that 19 members voted in favour of and 16 members voted against the item and no member abstained from voting. The votes of individual members were as follows:

For:

Mr Abraham SHEK Lai-him
Ms Starry LEE Wai-king
Mr WONG Kwok-kin
Mr Steven HO Chun-yin
Mr MA Fung-kwok
Mr POON Siu-ping
Ms YUNG Hoi-yan

Mr WONG Ting-kwong
Dr Priscilla LEUNG Mei-fun
Mr Michael TIEN Puk-sun
Mr YIU Si-wing
Mr LEUNG Che-cheung
Ir Dr LO Wai-kwok
Mr CHAN Chun-ying

Mr LUK Chung-hung
Mr Vincent CHENG Wing-shun
Ms CHAN Hoi-yan
(19 members)

Mr LAU Kwok-fan
Mr Tony TSE Wai-chuen

Against:

Mr James TO Kun-sun
Ms Claudia MO
Dr KWOK Ka-ki

Prof Joseph LEE Kok-long
Mr WU Chi-wai
Dr Fernando CHEUNG
Chiu-hung

Dr Helena WONG Pik-wan
Mr CHU Hoi-dick
Dr Pierre CHAN
Mr HUI Chi-fung
Mr KWONG Chun-yu
(16 members)

Mr Alvin YEUNG
Mr LAM Cheuk-ting
Ms Tanya CHAN
Dr CHENG Chung-tai
Mr Jeremy TAM Man-ho

51. The Chairman declared that the item was approved.

**Item 7 — FCR(2019-20)26
RECOMMENDATION OF THE ESTABLISHMENT
SUBCOMMITTEE MADE ON 7 MAY 2019**

**EC(2018-19)35
HEAD 92 — DEPARTMENT OF JUSTICE
Subhead 000 Operational expenses**

52. The Chairman advised that this item sought the approval of FC for the recommendation of the Establishment Subcommittee ("ESC") made at its meeting on 7 May 2019 regarding EC(2018-19)35 as follows:

- (a) to create one permanent post of Deputy Principal Government Counsel ("DPGC") (DL2); and
- (b) (i) to create one permanent post of Principal Government Counsel ("PGC") (DL3);
(ii) to upgrade one permanent post of Assistant Principal Government Counsel ("APGC") (DL1) to DPGC (DL2); and

- (iii) to create one supernumerary post of DPGC (DL2) to strengthen legal support at the directorate level in the Department of Justice ("DoJ").

53. The Chairman said that ESC had spent about 1 hour and 33 minutes on deliberating on the above proposal. The Administration had also provided an information paper. No member had requested that part (a) of the aforesaid proposal (i.e. creation of a permanent post of DPGC) be put to vote separately at the FC meeting.

Voting on part (a) of FCR(2019-20)26

54. At 11:29 am, the Chairman put to vote part (a) of the item FCR(2019-20)26 (i.e. the proposal to create a permanent post of DPGC) first. At the request of members, the Chairman ordered a division. The Chairman declared that 21 members voted in favour of and 17 members voted against the proposal, and no member abstained from voting. The votes of individual members were as follows:

For:

Mr Abraham SHEK Lai-him	Mr Tommy CHEUNG Yu-yan
Mr WONG Ting-kwong	Ms Starry LEE Wai-king
Dr Priscilla LEUNG Mei-fun	Mr WONG Kwok-kin
Mr Michael TIEN Puk-sun	Mr Steven HO Chun-yin
Mr YIU Si-wing	Mr MA Fung-kwok
Mr LEUNG Che-cheung	Mr POON Siu-ping
Ir Dr LO Wai-kwok	Ms YUNG Hoi-yan
Mr CHAN Chun-ying	Mr LUK Chung-hung
Mr LAU Kwok-fan	Mr Kenneth LAU Ip-keung
Mr Vincent CHENG Wing-shun	Mr Tony TSE Wai-chuen
Ms CHAN Hoi-yan	
(21 members)	

Against:

Mr James TO Kun-sun	Prof Joseph LEE Kok-long
Ms Claudia MO	Mr WU Chi-wai
Mr Charles Peter MOK	Dr KWOK Ka-ki
Dr Fernando CHEUNG Chiu-hung	Dr Helena WONG Pik-wan
Mr Alvin YEUNG	Mr CHU Hoi-dick
Mr LAM Cheuk-ting	Dr Pierre CHAN
Ms Tanya CHAN	Mr HUI Chi-fung
Dr CHENG Chung-tai	Mr KWONG Chun-yu
Mr Jeremy TAM Man-ho	
(17 members)	

55. The Chairman declared that this part of the proposal was approved.

Creation of one permanent post of Principal Government Counsel in the Secretary for Justice's Office

Relation between the proposed post and the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region

56. Ms Claudia MO, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr CHU Hoi-dick, Mr WU Chi-wai and Mr SHIU Ka-chun expressed concern about the implementation of the National Security Law. They pointed out that upon passage by the Standing Committee of the National People's Congress ("NPCSC") on 30 June 2020, the National Security Law took effect on the same day and was listed officially in Annex III to the Basic Law, prevailing over other laws of Hong Kong. They were worried that the provisions of the National Security Law were unclear, allowing those in power to have too much power and room to interpret the legislation. In addition, the Chief Executive ("CE") could designate judges to hear cases relating to national security. All these were likely to impact on judicial independence, human rights protection as well as the principles of a high degree of autonomy and "One Country, Two Systems" in Hong Kong.

57. Mr CHU Hoi-dick pointed out that according to the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), LegCo Members enjoyed freedom of speech and debate in the Council or proceedings before a committee, and such freedom of speech and debate should not be liable to be questioned in any court or place outside LegCo. However, he was worried that such freedom of speech and debate might be interfered with as a result of the implementation of the National Security Law.

58. Dr KWOK Ka-ki enquired whether DoJ had consulted the Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region ("the Office on National Security") or the National Security Adviser to the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region ("HKSAR") on the creation of the proposed post. Ms Claudia MO asked about the purpose of creating the proposed post.

59. Director of Administration and Development, Department of Justice ("DAD/DoJ") responded that the PGC post proposed to be created in the Secretary for Justice's Office ("SJO") would take up the strategic

co-ordination work, the international, regional, mainland and local liaison work, and the overall policy development in respect of arbitration and mediation matters, as well as dispute resolution and deal making services, and would provide DoJ with high-level support, benefitting all walks of life and all sectors of the economy without boundary, including the accounting, banking, engineering sectors, etc. The two staffing proposals for the Policy Affairs ("PA") Sub-division of the Legal Policy Division ("LPD") were made to increase its manpower having regard to its increasing workload generally. The three proposed posts were dedicated posts with specific responsibilities. She supplemented that the Administration had consulted the Panel on Administration of Justice and Legal Services of LegCo on the staffing proposals concerned as early as in December 2018, and the Panel members generally supported the proposals. She emphasized that such staffing proposals were made in the light of the work of DoJ and had nothing to do with the newly implemented National Security Law.

60. Dr KWOK Ka-ki and Dr Fernando CHEUNG queried whether the proposed post indeed had nothing to do with the National Security Law. Dr KWOK enquired whether officers of DoJ could ignore the National Security Law when the relevant work of DoJ involved law reform and policy issues. In response, DAD/DoJ reiterated that the above staffing proposals were made having regard to the operational needs of DoJ, and had nothing to do with the National Security Law. Nevertheless, if new laws were implemented in Hong Kong, officers of DoJ could not ignore those laws. She stressed that it was necessary and worthwhile to create the proposed post. Engaging itself globally, the post would be responsible for promoting Hong Kong as a leading centre for international legal and dispute resolution services in the Asia-Pacific region.

61. Solicitor General, Department of Justice ("SG/DoJ") added that the National Security Law, which was made by NPCSC as authorized by the National People's Congress ("NPC") for establishing and improving the legal system and enforcement mechanisms for HKSAR to safeguard national security, aimed to restore stability to Hong Kong and help Hong Kong get back on track. It should not be regarded as a blow to the rule of law. He further said that law enforcement work would be carried out by the relevant law enforcement agencies while DoJ would give legal advice at the request of various government bureaux and departments (including the law enforcement agencies).

62. Mr James TO said that as stipulated in the National Security Law, it should prevail where other laws of Hong Kong were inconsistent with it. Article 29 of the National Security Law had aroused widespread concern

among the international community as it concerned foreign countries or institutions, organizations or individuals outside the mainland, Hong Kong and Macao of the People's Republic of China. He enquired whether DoJ had conducted a macro review of the civil litigation cases, cases relating to human rights issues or the taxation agreements signed with other countries, etc. in order to identify those laws of Hong Kong that were related to or contradicted the National Security Law. SG/DoJ responded that he understood the member's concern, but the major responsibilities of the three proposed posts were not related to the work portfolio mentioned by Mr TO.

63. Dr Junius HO said that he supported this staffing proposal. He considered that the directorate officers in government departments should be conversant with the National Security Law in order to respond to queries raised by the public and Members, as well as criticisms possibly made by the Five Eyes alliance (i.e. the United Kingdom ("UK"), the United States ("US"), Canada, Australia and New Zealand) and other countries on the National Security Law. DAD/DoJ responded that she noted Dr HO's views.

Impact of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region on the development of Hong Kong into a centre for dispute resolution services

64. Dr KWOK Ka-ki asked about the major clients of Hong Kong when it became a centre for international legal and dispute resolution services; whether these clients would be the countries expressly supporting the National Security Law at the meeting of the United Nations Human Rights Council (including approximately 50 countries such as North Korea, Cuba, Pakistan and Iran); and the total trade volume and turnover between Hong Kong and these countries.

65. Dr KWOK Ka-ki also referred to Article 29 of the National Security Law, which provided that "a person who steals, spies, obtains with payment, or unlawfully provides State secrets or intelligence concerning national security for a foreign country or an institution, organisation or individual outside the mainland, Hong Kong and Macao of the People's Republic of China shall be guilty of an offence; a person who requests a foreign country or an institution, organisation or individual outside the mainland, Hong Kong and Macao of the People's Republic of China, or conspires with a foreign country or an institution, organisation or individual outside the mainland, Hong Kong and Macao of the People's Republic of China, or directly or indirectly receives instructions, control, funding or other kinds of support from a foreign country or an institution, organisation or individual outside the mainland, Hong Kong and Macao of the People's

Republic of China, to commit any of the following acts shall be guilty of an offence" and the acts referred to therein included engaging in hostile activities against HKSAR. He enquired whether soliciting foreign countries or institutions or private enterprises outside the mainland, Hong Kong and Macao of the People's Republic of China to come to Hong Kong to resolve disputes (including by way of arbitration) would be regarded as colluding with foreign countries or external elements and endangering national security; and whether the Administration would explain to foreign institutions or individuals about the things to take note of when coming to Hong Kong to do business or resolve disputes in order to ensure that they would not commit an offence.

66. SG/DoJ responded that he did not consider encouraging foreign institutions or individuals to come to Hong Kong to resolve disputes (including by way of arbitration) would constitute collusion with foreign countries or external elements to endanger national security. SG/DoJ and Principal Government Counsel (Secretary for Justice's Office), Department of Justice ("PGC(SJO)/DoJ") emphasized that observing laws was very important, and foreign companies and their employees had to comply with the local laws when making investments, doing business or conducting arbitration in other jurisdictions.

67. Dr CHIANG Lai-wan pointed out that the general principles of the National Security Law were to safeguard national security, and to prevent, suppress and impose punishment for the offences of secession, subversion, organization and perpetration of terrorist activities, and collusion with a foreign country or with external elements to endanger national security in relation to HKSAR, with a view to maintaining prosperity and stability of HKSAR. She considered that the worries of some members that foreign investors did not dare to come to Hong Kong to do business or resolve disputes as a result of the implementation of the National Security Law were unfounded. Many places around the world had laws relating to national security. Foreign investors did not need to worry at all as long as they did not commit the above offences. However, she believed that Members and the public would continue to raise similar queries. In this connection, she urged the Administration to collect more information or data on cases and laws relating to national security in overseas countries, so as to address the worries of the public.

68. In response to the comments made by Dr CHIANG Lai-wan, Dr Fernando CHEUNG pointed out that many places around the world had indeed made laws relating to national security. However, as shown by the campaign for the independence of the state of California in US in 2019 and the Scottish independence referendum in 2014, the local citizens could

freely organize and participate in activities fighting for independence, including expressing their views through referendums, and such acts were not regarded as illegal in those places.

69. Mr Martin LIAO declared that he was an arbitrator of the Hong Kong Bar Association, and his name was on the Bar List (Arbitrators). He took part in arbitration work and handled arbitration cases currently in the capacity of an arbitrator. He considered that some members' remarks were only speculations. He pointed out that the National Security Law mainly targeted at offences of secession, subversion, organization and perpetration of terrorist activities, and collusion with a foreign country or with external elements to endanger national security. He believed that most arbitrators would not take part in the aforesaid activities. In particular, he pointed out that many arbitrators had extensive experience in arbitration in major Mainland cities, such as Beijing, Shanghai and Shenzhen. He held the view that in the long run, the National Security Law could bring peace to Hong Kong and was conducive to developing Hong Kong into a leading arbitration centre in the Asia-Pacific region, which was very important to Hong Kong. He further said that Singapore had also enacted the Internal Security Act. Although its provisions were no less lenient than the National Security Law, it had not deterred arbitrators from conducting arbitrations in Singapore. On the contrary, since June 2019, the social movement in Hong Kong had caused arbitrators to worry about whether Hong Kong was still a safe place to conduct arbitration. He hoped that the chaotic situation in Hong Kong could come to an end as soon as possible, so that arbitrators could be rest assured to work in a safe environment.

70. Dr Fernando CHEUNG and Dr KWOK Ka-ki pointed out that Hong Kong was ranked the third most preferred seat of arbitration in the 2015 International Arbitration Survey conducted by the Queen Mary University of London, but dropped out of the top three in the 2018 International Arbitration Survey. Moreover, in their joint statement issued at the meeting of the United Nations Human Rights Council, 27 countries (including UK, Australia, Canada, New Zealand, Switzerland, France and Japan, etc.) expressed their opposition to the implementation of the National Security Law and grave concern about the human rights situation in Hong Kong, and they urged the Chinese Government to re-consider the implementation of the National Security Law.

71. Dr Fernando CHEUNG said that the implementation of the National Security Law would undermine "One Country, Two Systems" and Hong Kong's high degree of autonomy, and might even deprive Hong Kong people of human rights protection, hence affecting the international

community's perception of Hong Kong. With Hong Kong becoming one of the Chinese cities in the Guangdong-Hong Kong-Macao Greater Bay Area ("the Greater Bay Area"), he queried whether Hong Kong could still maintain and further consolidate its status as a credible, fair and neutral arbitration centre, and what support the proposed post would provide in this respect to enable Hong Kong to seize the opportunities to provide legal and dispute resolution services ahead of its competitors.

72. Dr KWOK Ka-ki pointed out that the legal sector (including the non-permanent judges of the Court of Final Appeal ("CFA")) was also worried about the impact to be brought by the National Security Law to judicial independence in Hong Kong. He requested the Administration to provide information explaining the changes in the status and capability of Hong Kong as a leading centre for international legal and dispute resolution services in the Asia-Pacific region upon the implementation of the National Security Law, and whether the Administration would assess the changes in the views and comments of foreign organizations or consulate generals in Hong Kong on the rule of law and legal services in Hong Kong upon the implementation of the National Security Law; if so, what the specific timetable was.

73. Mr CHAN Chi-chuen was also concerned about Hong Kong falling out of the top three most preferred seats of arbitration. He said that according to the relevant statistics in the International Arbitration Survey, preferences for a seat of arbitration were primarily determined by four factors: its general reputation and recognition; the neutrality and impartiality of its legal system; the national arbitration law; and its track record in enforcing agreements to arbitrate and arbitral awards. Therefore, whether the judicial system was sound, neutral and impartial would affect the status of Hong Kong as an arbitration centre. Nevertheless, the process of making the National Security Law, the definition of "national security" as given by the Central Government and the establishment of the Office on National Security had aroused criticisms from the international community. He was also worried that arbitrators might have access to information concerning national security or State secrets without their knowledge when handling disputes between different countries or regions, hence breaching the law inadvertently. In this connection, he enquired how the Administration would ensure that the public and the international community had confidence in the legal system and judicial independence in Hong Kong, so as to consolidate and enhance Hong Kong's status as the most preferred seat of arbitration; and whether the Administration had reviewed if the drop in Hong Kong's ranking was due to problems with the promotion work or the dispute resolution services.

74. In response, SG/DoJ stated that he did not concur with the criticisms made by Members relating to "One Country, Two Systems" and human rights protection in Hong Kong. He pointed out that the social situation in Hong Kong last year had caused tourists and businessmen to worry about their personal safety in Hong Kong, which had a negative impact on Hong Kong as an international dispute resolution centre. The National Security Law had been made to ensure the steady and enduring growth of "One Country, Two Systems", as well as to restore stability to Hong Kong and put Hong Kong back on track as soon as possible, with a view to maintaining Hong Kong's long-term prosperity and stability. Moreover, as provided in the National Security Law, human rights should be respected and protected in HKSAR. The rights and freedom which the residents of HKSAR enjoyed under the Basic Law and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong should be protected in accordance with the law. He further indicated his agreement that perception was very important. Hence, the Government would comprehensively review the situation of the rule of law and the legal system in Hong Kong after the implementation of the National Security Law, and would keep abreast of the international landscape, such as the development of the Sino-US trade war and the COVID-19 epidemic while continuing to promote the international legal and dispute resolution services of Hong Kong.

75. SG/DoJ further referred to the statement issued earlier by the Chief Justice of CFA that since taking office, he had not at any stage encountered or experienced any form of interference by the Mainland authorities with judicial independence in Hong Kong, including the appointment of judges, and that judicial independence was guaranteed under the Basic Law and was a main component of the rule of law in Hong Kong. He also pointed out that the legal sector was not worried in this regard. Moreover, DoJ had been maintaining communication with the two legal professional bodies, and with the legal sector through committees in relation to arbitration and mediation. It had received the views of stakeholders on various laws (including the National Security Law) or the business environment on different platforms to keep abreast of the latest information, and such work would go on. For example, in response to the feedback of arbitration service users, the Administration made amendments to the Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) Rules (Cap. 609C) to allow the Hong Kong International Arbitration Centre ("HKIAC") to waive certain fees in arbitration cases where the amounts in dispute were small, so as to enhance the attractiveness of Hong Kong as an arbitration seat and encourage more people to use the services in Hong Kong.

76. Dr CHIANG Lai-wan considered that Hong Kong's status as a leading international legal and dispute resolution centre in the Asia-Pacific region had not come easily. She criticized some members for making speeches to tarnish the reputation of Hong Kong which might deter overseas investors from coming to Hong Kong for doing business or conducting arbitration. In response, SG/DoJ reiterated that whether doing business or using dispute resolution services, enterprises had to abide by the applicable laws (including those relating to national security) of different jurisdictions.

77. Mr WU Chi-wai pointed out that as provided in the National Security Law, it should prevail over other laws of Hong Kong, and it was an offence to contravene the National Security Law for both Hong Kong people and foreigners, which had aroused concerns among international investors and businessmen. He queried whether the arbitration court or arbitrators could still hand down neutral and fair rulings if the dispute resolution case involved the National Security Law after its implementation. He asked about the strategies the Administration would adopt under such circumstances to explain to the international community and the various sectors and dispel their doubts, so as to persuade them to choose the services in Hong Kong, and to raise the ranking of Hong Kong in the International Arbitration Survey amid the present keen competition.

78. SG/DoJ responded that arbitration and mediation were alternative dispute resolution means other than court litigation. For cross-jurisdictional commercial disputes in particular, once a dispute arose and both parties did not wish to resolve the dispute in court, they might resolve it by means of arbitration or mediation. He emphasized that both parties participated in the arbitration process entirely of their own volition, and he did not think national security issues would be involved. In fact, dispute resolution centres around the world also had regulations to deal with national security issues. He further said that the international arbitration survey concerned was not conducted on a yearly basis, and the Government did not know when the next ranking survey would be conducted. He pointed out that when selecting the seat of arbitration, the parties to a dispute would take into consideration factors such as the availability of talents in the seat and its strength, whether the seat was safe, and its legal framework for arbitration and mediation, and in this respect, Hong Kong had a sound legal framework. However, their preference for Hong Kong as the seat of arbitration would definitely be affected if Hong Kong could not return to stability.

79. SG/DoJ further pointed out that when selecting the seat of arbitration, the parties to a dispute would also consider the user experience and the local judicial system. Citing an arbitration case as an example, he said that the winning party had chosen and successfully applied to the Hong Kong court to enforce the arbitration award by exercising a mandatory enforcement order against the assets of a Mainland state-owned enterprise in HKSAR. It showed that in the eyes of many users, Hong Kong was still a society upholding the rule of law, having a sound legal system and enjoying judicial independence. He supplemented that in the face of rapid development of and keen competition from other dispute resolution centres, DoJ had proposed as early as in 2018 to increase manpower to strengthen the provision of legal support services at the directorate level, including doing more explanation work to keep the international community abreast of the latest development of the legal system and judicial work in Hong Kong

80. PGC(SJO)/DoJ added that:

- (a) to become a centre for international legal and dispute resolution services, it was necessary to satisfy various conditions, including having sound dispute resolution laws and systems, sufficient legal talents (including arbitrators) and IT talents, appropriate arbitrator training and IT systems, etc. Hong Kong had all along enjoyed advantages in these areas, and the Administration would continue to develop and promote these advantages;
- (b) HKIAC issued a press release this week emphasizing that Hong Kong had a sound legal system and its neutrality remained unchanged, and that Hong Kong was still regarded by the arbitration sector as a neutral and effective seat of arbitration. The National Security Law did not have any impact on the status of Hong Kong as an arbitration centre;
- (c) DoJ would keep up with the times, raising the international profile of Hong Kong in deal-making and dispute resolution through organizing, or co-organizing with international and local organizations and groups, international events, conferences, training courses, etc. At the same time, it would also invite people around the world to visit Hong Kong to see for themselves the stability of Hong Kong, and explain and clarify misunderstandings over issues of concern to the international community, so as to encourage them to use the services in Hong Kong;

- (d) Hong Kong had won the bid for organizing the International Council for Commercial Arbitration Congress 2022. The Congress, being the largest regular conference dedicated to international arbitration, was renowned for its significant contribution to international dispute resolution. Hosting the Congress in Hong Kong would help enhance its status as a leading centre for international legal and dispute resolution services;
- (e) the Government was developing an e-arbitration and e-mediation platform for online dispute resolution ("ODR") services and the platform would be used for resolving disputes between parties in any part of the world, including commercial and investment disputes involving the Belt and Road ("B&R") economies, as well as disputes between China and other countries; and
- (f) in recent years, Hong Kong had been spearheading the development of an ODR framework for Micro, Small and Medium Enterprises ("MSMEs") in business to business transactions under the Economic Committee ("EC") of Asia-Pacific Economic Cooperation ("APEC"). In this regard, Hong Kong had been organizing workshops and policy discussions to develop the APEC Collaborative ODR Framework and its Model Procedural Rules. The Framework and the Procedural Rules were endorsed by EC of APEC, on a pilot basis, in August 2019. The ultimate goal was to develop an ODR platform under APEC.

81. Taking the 17th Willem C Vis (East) International Commercial Arbitration Moot ("VEM") held earlier as an example, SG/DoJ pointed out that despite the outbreak of the COVID-19 pandemic, the competition had been successfully held in Hong Kong through an online video platform this year. With a total of 400 odd students from top law schools around the world taking part and prominent leaders in the legal field sitting as adjudicators, this competition demonstrated the capability and strength of Hong Kong in lawtech.

82. Mr Alvin YEUNG said that the National Security Law prevailed where the laws of Hong Kong were inconsistent with it. The National Security Law also provided that the courts of HKSAR should obtain a certificate, which should be binding on the courts, from CE to certify whether an act involved national security when such question arose in the

adjudication of a case. He was concerned that State funds were involved in B&R projects, and if disputes arose over the commercial activities and dealings under these projects, such disputes might involve national security. According to the provisions of the National Security Law, CE had the right to determine the contents of the disputes as endangering national security. He enquired how the Administration would convince overseas investors to come to Hong Kong for arbitration under such circumstances.

83. PGC(SJO)/DoJ responded that international commercial arbitration was very common, covering disputes arising from general sale and purchase agreements, service contracts and transportation of goods, etc. The dispute resolution work would depend on the specific circumstances of each case and generally would not pose any threat to national security. He further said that whenever a new law was implemented in Hong Kong, there might be queries or worries in society, which was understandable. Therefore, the Government would proactively carry out relevant explanation and promotion work. In particular, he referred to the COVID-19 Online Dispute Resolution Scheme which had been established under the Anti-epidemic Fund and launched on Monday (29 June). The Scheme covered disputes arising out of or in relation to COVID-19 directly or indirectly and encouraged enterprises, especially MSMEs, and the public to resolve disputes through an online platform, thereby strengthening Hong Kong's lawtech capability.

84. Mr Alvin YEUNG pointed out that as provided in Article 38 of the National Security Law, "[t]his Law shall apply to offences under this Law committed against the Hong Kong Special Administrative Region from outside the Region by a person who is not a permanent resident of the Region". He asked whether it was necessary for persons who were not permanent residents of HKSAR to study the National Security Law before coming to Hong Kong to do business or using the legal services in Hong Kong.

85. SG/DoJ responded that dispute resolution services were provided to a diverse range of clients, including enterprises, investors and organizations or individuals involved in disputes. Therefore, publicity, promotion and explanation work was very important. He pointed out that when doing business, making investments or conducting arbitration in different jurisdictions, enterprises, whether multinational or state-owned, were required to study and comply with the local laws (including criminal laws, civil laws, and laws relating to accounting, money laundering, privacy protection and national security) of other countries, provinces or states.

86. Mr WU Chi-wai referred to Article 63 of the National Security Law which stipulated that "[t]he law enforcement and judicial authorities and their staff who handle cases concerning offence endangering national security under this Law, or the law enforcement and judicial authorities of the Hong Kong Special Administrative Region and their staff who handle other cases concerning offence endangering national security, shall keep confidential State secrets, trade secrets or personal information which they come to know in the process of handling such cases". He was concerned that dispute resolution services might involve confidential information and the mechanism on confidentiality. He also asked how the Administration would deal with the inconsistencies between the provisions of Article 63 and those of Articles 61 and 62 of the National Security Law, if any, and how such inconsistencies would affect its decision-making.

87. SG/DoJ and PGC(SJO)/DoJ responded that it was not appropriate for them to provide any legal advice on this occasion, but DoJ would handle individual cases according to their specific circumstances. Regarding the confidentiality of information in the dispute resolution (whether arbitration or mediation) process relevant to this staffing proposal, HKSAR had a fairly sound legal framework, with relevant regulations expressly provided in the Arbitration Ordinance (Cap. 609) and Mediation Ordinance (Cap. 620).

88. Mr WU Chi-wai pointed out that some enterprises in Hong Kong involved funds from the Mainland or were State units (such as those with a military background). He enquired that if these enterprises conducted arbitration in Hong Kong, whether the relevant arbitration awards would be revoked by the Office on National Security due to involvement with State units or national security. SG/DoJ responded that Mr WU's question involved complicated legal issues, and the answer would depend on the facts and evidence of each case. He further explained that as the assets of a party to a dispute might belong to a certain institution of a country or region in accordance with the local laws and such assets might also be in another jurisdiction, the relevant arbitration award might not necessarily be enforced in the chosen seat of arbitration. In this connection, Dr Junius HO pointed out that as provided in the National Security Law, the courts of HKSAR should obtain a certificate from CE to certify whether an act involved national security when such question arose in the adjudication of a case.

89. At 12:49 pm, the Chairman declared that the meeting be suspended. At 2:30 pm, the meeting resumed. The Deputy Chairman took the chair.

Measures relating to the Belt and Road Initiative and the Guangdong-Hong Kong-Macao Greater Bay Area Plan

90. Referring to paragraph 11 of EC(2018-19)35, Dr Fernando CHEUNG pointed out that the Administration considered it necessary to formulate in the future a comprehensive and sustainable strategy so as to make the best of the new opportunities for legal and dispute resolution services that had arisen or would arise for Hong Kong in light of various national policy initiatives, including the B&R Initiative ("BRI") and the Greater Bay Area Plan. Hence, there was an immediate need to take forward new initiatives and projects that went beyond the normal "promotional events" with a view to enhancing Hong Kong's presence, reputation and influence in the field of deal making as well as legal and dispute resolution services, so that Hong Kong could enhance its traditional role as a provider of international legal and dispute resolution services as well as develop into an ideal hub for deal making. Dr Fernando CHEUNG requested the Administration to give specific details on the new initiatives and work strategies to be implemented.

91. Mr SHIU Ka-chun referred to paragraphs 12 and 13 of EC(2018-19)35, which stated that the Central People's Government had given clear policy endorsement for the establishment of a credible, neutral, fair and effective dispute resolution body for resolving international disputes arising from B&R projects, and that DoJ had also established a Task Force on Belt and Road Dispute Resolution to consider and advise on the resolution of international disputes concerning B&R projects, and any matters incidental thereto. However, Mr SHIU pointed out that there existed in B&R projects many uncertainties, such as the China-India border standoff, and the African country Tanzania's revocation of a loan agreement with China in April 2020. He asked whether the Administration had made a critical assessment of the prevailing situation as well as the changes in the international political landscape and adjusted the work strategies accordingly; if so, what the details were, and what adjustments had been made to the work strategies over the past six months; if not, what the reasons were.

92. PGC(SJO)/DoJ responded that:

- (a) with the launch of BRI as well as the national development plan for a world-class city cluster in the Greater Bay Area, there were increasing activities in trading, investment, financing as well as infrastructure and construction projects, etc. amongst enterprises on the Mainland and in B&R countries. Disputes therein would arise inevitably;

- (b) in the past year, the Government observed keen competition from other international legal and dispute resolution service centres in the region for the growing opportunities arising from BRI. They had been promoting their international legal and dispute resolution services aggressively in Mainland China. Hence, the Government considered that speedy and positive steps were required to recover lost ground;
- (c) a Task Force on Belt and Road Dispute Resolution with participation of those from the legal and dispute resolution profession had been established by DoJ to consider and advise on the establishment of dispute resolution rules/a dispute resolution body in Hong Kong for the resolution of international disputes concerning B&R projects, and any matters incidental thereto, with a view to capitalizing on the opportunities arising from BRI;
- (d) DoJ was also working towards securing the right for Hong Kong dispute resolution experts and organizations to provide their services or establish offices in the Greater Bay Area. It was making arrangements for representatives of Hong Kong's dispute resolution sector to visit cities in the Greater Bay Area to promote their services in fields such as intellectual property and investment disputes, and to promote the resolution of such disputes in Hong Kong, including the provision of training for mediators on intellectual property and investment mediation;
- (e) in September 2019, DoJ, together with the Department of Justice of Guangdong Province and the Office of the Secretary for Administration and Justice of the Macao Special Administrative Region, held the first Guangdong-Hong Kong-Macao Bay Area Legal Departments Joint Conference in Hong Kong. The parties established a joint conference mechanism among the legal departments to explore areas for collaboration and regularly exchange views on legal issues and related collaboration. The first task was to promote the better use of mediation services in the Greater Bay Area, and to establish some unified standards, best practices and best criteria, etc. for mediation services in the Greater Bay Area; and
- (f) DoJ, the Ministry of Commerce and the State-owned Assets Supervision and Administration Commission of the State

Council worked in collaboration to establish a permanent tripartite platform for Mainland enterprises and the Hong Kong legal profession, and organized a seminar in Beijing in November 2019. At the seminar, Mainland enterprises indicated the difficulties and problems they encountered in "going global", while the Hong Kong legal profession explained what legal services and support Hong Kong could offer, as well as Hong Kong's advantages in dispute resolution.

93. PGC(SJO)/DoJ supplemented that the Administration had been attentive to the international situation and development in taking forward various strategic tasks, including strengthening exchange and liaison with Mainland enterprises and the Hong Kong legal profession. As for the border issue between China and India, it was a matter of national defence and diplomacy which should be handled at the national level, and was not within the scope of DoJ's responsibilities and capabilities.

94. Mr WONG Ting-kwong considered that the social environment in Hong Kong last year had posed a negative impact on local and foreign investment. However, the Administration's new initiatives focused on the Asia-Pacific region, B&R countries and the Greater Bay Area, and seemed not to pay much attention to regions such as Europe, South America and Oceania.

95. In response, SG/DoJ and PGC(SJO)/DoJ explained that while the discussion paper expounded more on B&R projects and the Greater Bay Area Plan, it did not mean that the Administration had given up other markets. For instance, DoJ organized a capacity building workshop on ODR under APEC in Chile of South America last year. It also held seminars in Europe and US to promote the dispute resolution services of Hong Kong.

Specific work and performance indicators

96. Mr SHIU Ka-chun said that the implementation of the National Security Law had seriously eroded the rule of law, the common law system and the basis of judicial independence in Hong Kong. In addition to Members from the pro-democracy camp, the international community (including countries such as UK, US, Australia and Japan), legal experts and academics, etc. also had openly expressed their grave concern about the implementation of the National Security Law, worrying that it would undermine "One Country, Two Systems" and the high degree of autonomy. He enquired whether the Administration had set any performance

indicators for the proposed post, such as bringing Hong Kong's ranking back to the top three most preferred seats of arbitration in the International Arbitration Survey; whether the Administration had assessed if it was necessary to adjust the duties and work strategies of the proposed post under the latest circumstances; if so, what the details were; if not, what the reasons were; and whether the Administration would need to keep increasing the manpower if no significant work achievement was seen after the creation of the proposed post.

97. SG/DoJ responded that he did not concur with the word "eroded" which Mr SHIU Ka-chun had used. He held the view that after the implementation of the National Security Law, Hong Kong continued to adopt the common law system while the independence of the judiciary and the spirit of the rule of law remained unchanged. He considered that decision makers in commercial activities and legal service providers had not changed their views of and confidence in Hong Kong's legal system which had been long established.

98. PGC(SJO)/DoJ supplemented that as far as the work effectiveness of the proposed post was concerned, the ranking in the International Arbitration Survey was not the only indicator. The Government would also examine the actual data provided by HKIAC, such as the numbers of activities, conferences or seminars held, the number of participants and their feedback. Moreover, the Government would, by studying the comments or reports made by academic institutions or international media, making reference to the overall performance and rankings of Hong Kong in relevant international surveys, and keeping close communication with the industry to understand the needs and views of the industry and the international community in relation to Hong Kong's international legal and dispute resolution services, so as to review and assess the effectiveness of various measures and activities.

99. Mr WU Chi-wai referred to paragraph 10 of EC(2018-29)35, in which the Administration stated that there was a strong need to systematically establish and enhance Hong Kong's presence, reputation and influence on the Mainland and in other parts of Asia, as well as other jurisdictions (in particular those in the B&R region). He asked about the Administration's actual work and performance in this respect in the past, and the specific duties of the proposed post in the future.

100. SG/DoJ and PGC(SJO)/DoJ said that in the past few years, the Government had monitored the international development closely. It had also organized a number of activities for promoting the legal and dispute resolution services of Hong Kong, explaining to the participants the

strengths of Hong Kong and encouraging them to use Hong Kong's services. DoJ would continue to push forward and step up relevant promotional activities and efforts, and the specific work included:

- (a) in December 2018, DoJ, together with the International Centre for Settlement of Investment Disputes of the World Bank Group and the Asian Academy of International Law, co-organized in Hong Kong Asia's first "Investment Law and Investor-State Mediator Training Course". World-renowned speakers had been invited to speak on topics such as investment law and mediation skills for investment disputes and share their experience. The Government would regularly organized these training courses in the future;
- (b) DoJ and the Supreme People's Court signed in 2019 the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region. Under the Arrangement, Hong Kong became the first jurisdiction outside the Mainland where parties to arbitral proceedings seated in Hong Kong and administered by designated arbitral institutions in Hong Kong were allowed to apply to the Mainland courts for interim measures, including property preservation, evidence preservation and conduct preservation. Since the Arrangement came into effect on 1 October 2019, many cases had been handled involving hundreds of millions of dollars. The Arrangement helped enhance the attractiveness of Hong Kong as a seat of arbitration for Mainland-related disputes, and brought positive effects to Hong Kong's arbitration services;
- (c) while many competitions around the world had been forced to cancel due to the COVID-19 pandemic, the 17th VEM was successfully held in Hong Kong through an online platform, fully demonstrating the strength of Hong Kong in lawtech; and
- (d) besides VEM, the Administration was also actively developing an e-arbitration and e-mediation platform for ODR services and promoting through APEC the use of the ODR platform among MSMEs.

Appointment of arbitrators and conduct of arbitrators

101. Mr Dennis KWOK said that many overseas law societies and bar associations had voiced out their concern over the National Security Law, pointing out that it had caused serious damage to the rule of law and "One Country, Two Systems" in Hong Kong. As the international community could hardly have confidence in Hong Kong, the status of Hong Kong as the most preferred seat of arbitration would gradually be replaced by Singapore. Hence, he considered that increasing manpower by the Administration would not help. Moreover, Mr KWOK said that as relayed to him by some local barristers and solicitors, the arbitration rules of some arbitration centres were not flexible, making it difficult for them to be appointed as arbitrators and to accumulate relevant experience.

102. Noting Mr KWOK's views, SG/DoJ and PGC(SJO)/DoJ said in response that one of the main duties of the proposed post was to provide assistance to the sector, and enhance the overall coordination and promotion work of DoJ on mediation and arbitration. As a general principle, if the parties to arbitral proceedings were of different nationalities, the arbitrator could not be a person having the same nationality as either party. Therefore, the Administration understood the concern raised by the sector that it was difficult for arbitrators in Hong Kong with Chinese nationality to be appointed to handle arbitral proceedings involving Mainland parties. Upon follow-up by DoJ and the sector, the arbitration centre concerned had revised the applicable guidelines and made improvement having regard to the special circumstances of Hong Kong arbitrators. According to the statistics of HKIAC, the number of appointed arbitrators who were Hong Kong permanent resident and/or of Chinese nationality had been on a rising trend. Moreover, the list of arbitrators providing ODR services recently promoted by the Administration included many local arbitrators.

103. Mr Dennis KWOK requested the Administration to provide the list of arbitrators appointed by the Hong Kong office of the International Court of Arbitration of the International Chamber of Commerce, and the number of arbitrators on the list who were Hong Kong permanent residents and/or of Chinese nationality. He also asked whether there was an increase in the number of such arbitrators. PGC(SJO)/DoJ responded that the information could only be provided with the consent and help of that organization.

[*Post-meeting note:* The supplementary information provided by the Administration was circulated to members on 21 October 2020 vide LC Paper No. FC7/20-21(01).]

104. Dr Junius HO concurred with the views of Mr Dennis KWOK that many organizations operated behind closed doors and adopted a high threshold, making it difficult for local arbitrators to be appointed. He urged the Administration to formulate relevant policies and performance indicators, and put in more resources to nurture and assist local arbitrators, so that they could be treated fairly. In response, PGC(SJO)/DoJ said that he noted Mr HO's views and would continue to maintain communication with the relevant arbitration centres and follow up the cases concerned.

105. Mr Jeremy TAM said that he received a request for assistance and the case concerned the failure of an arbitrator to disclose before the arbitration his/her close relationship with an expert witness of one of the parties. They were business partners of a company 10-odd years ago, which was discovered after the arbitration concluded. Subsequently, the arbitration centre received a complaint about the matter. While the centre acknowledged that the arbitrator had not fully disclosed his/her interests, it considered that it was not necessary to impose sanctions on the arbitrator or cancel his/her licence. The person seeking assistance could neither overturn the arbitration award nor make an appeal. He enquired whether parties to arbitration were not allowed to appeal against arbitration awards; and what policies the Administration had put in place to ensure that arbitrators observed the relevant code of conduct, including the requirement to avoid conflict of interests, so as to ensure the arbitration awards were fair and impartial.

106. SG/DoJ responded that it was not appropriate for him to comment on individual cases on this occasion, but generally speaking, an arbitrator's award was final and legally binding. However, under limited special circumstances, if a disputing party believed that there was a problem, it might provide grounds to prevent the enforcement of the award in accordance with the relevant legal principles. He supplemented that the latest Arbitration Ordinance, which was based on the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, served to unify the legislative regimes for domestic and international arbitration by reforming Hong Kong's arbitration law to bring it in line with the international standards, hence attracting more people to come to Hong Kong for international arbitration.

Proposed upgrading of one permanent post of Assistant Principal Government Counsel to Deputy Principal Government Counsel and creation of one supernumerary post of Deputy Principal Government Counsel in Policy Affairs Sub-division of Legal Policy Division

107. Mr HUI Chi-fung pointed out that the Administration proposed to upgrade one permanent post of APGC to DPGC and to create one supernumerary post of DPGC for a period of five years in PA Sub-division of LPD, and that there were four units, including the China Law Unit, under PA Sub-division. He queried whether the work of the proposed posts would not involve any matter relating to the National Security Law. He further asked whether the proposed posts would deal with election-related issues, given that Hong Kong people were currently worried about the impartiality of elections. Moreover, as pointed out in paragraph 66 of EC(2018-19)35, the Policy Affairs Unit 2("PAU2") served as a firewall within DoJ by ensuring that CE and CE-in-Council would be able to receive independent and impartial legal advice when required. Mr HUI requested the Administration to explain specifically how PAU2 could serve as a firewall and what independent advice had been provided in the past.

108. SG/DoJ responded that:

- (a) as the National Security Law had now been included in Annex III to the Basic Law, it was part of the laws of HKSAR. If the legal services provided or the legal issues that needed to be dealt with by DoJ involved Hong Kong's existing laws (including the National Security Law), the relevant units in DoJ had to deal with the legal matters concerned. However, the proposed increase in manpower was not due to the implementation of the National Security Law;
- (b) the proposed posts were not responsible for handling election-related matters. Returning Officers would decide whether candidates were validly nominated in accordance with the legal requirements and the relevant procedures. If legal support or advice was required, it would be provided by the Constitutional Development and Elections Unit under the Constitutional Affairs Sub-Division of LPD in DoJ;
- (c) if a division or unit in DoJ had provided advice to a policy bureau/department on a matter earlier, PAU2 would serve as a firewall within DoJ by providing independent legal advice to another government unit in order to avoid possible conflict of roles or interests; and
- (d) for instance, for a concluded criminal case with final appeal results, if the convicted person wished to request the court for a retrial of the case by furnishing new evidence, he or she

might make a petition to CE. Under such circumstances, the Prosecutions Division of DoJ would not provide legal advice to CE in order to avoid conflict of interests. Instead, PAU2 would be responsible for considering the new evidence furnished by that person and providing independent legal advice to CE, including advising on whether the case had sufficient grounds for a retrial.

Interpretation by the Standing Committee of the National People's Congress of the Basic Law regarding the case of the Democratic Republic of the Congo & Others v. FG Hemisphere Associates LLC

109. Dr CHENG Chung-tai referred to the judgement made by CFA on 8 June 2011 regarding the case of the Democratic Republic of the Congo & Others v. FG Hemisphere Associates LLC. In the judgement, the judge decided to request NPCSC for an interpretation of Articles 13(1) and 19 of the Basic Law (i.e. issues concerning state immunity). Citing the Congo case as an example, Dr CHENG pointed out that it concerned a lawsuit filed by a US company against a Mainland enterprise and issues such as diplomatic immunity, and that the National Security Law had a wide scope and prevailed over other laws of Hong Kong. He enquired how, under such circumstances, similar cases would be dealt with and how the reputation of Hong Kong would be rebuilt to restore the confidence of overseas investors in choosing Hong Kong as the seat of arbitration. He also asked about the legal support which Hong Kong, as an international arbitration centre, could provide to enterprises on the Mainland or in other countries.

110. Mr WU Chi-wai enquired about the problems which might be encountered by the arbitration court or arbitrators/mediators in handling commercial dispute resolution cases which involved national security after the implementation of the National Security Law, and whether there was a chance for them to breach the law inadvertently.

111. In response, SG/DoJ said that the Congo case referred to by Dr CHENG Chung-tai was a civil litigation case. At that time, the litigants opted to resolve the dispute through the courts of Hong Kong and an appeal was lodged to CFA against the judgement. As the dispute in the case involved state sovereign immunity issues, which were foreign affairs outside the limits of the autonomy of HKSAR, CFA subsequently sought an interpretation of the provisions of Articles 13(1) and 19 of the Basic Law by NPCSC in respect of such issues in accordance with the Basic Law, so as to resolve the dispute in the case. This case, however, was not related to the National Security Law. He considered that as far as the

Congo case was concerned, the provisions of the Basic Law became clearer upon interpretation by NPCSC. No such issues and disputes had arisen in other litigation cases since 2011, which showed that the interpretation allowed enterprises and banks to have a clearer and more accurate understanding of Hong Kong laws and relevant legal principles when making commercial decisions. He emphasized that the sound legal system of Hong Kong provided the basis for decision-makers in commercial activities to make arrangements for commercial acts and activities.

Other concerns

112. Dr KWOK Ka-ki pointed out that after the National Security Law came into effect, the Police carried out a search of an eatery with a Lennon Wall at Shau Kei Wan and warned its staff that the eatery might have violated the National Security Law. As a result, the eatery had to close for cleaning up the Lennon Wall. He enquired what assistance DoJ could offer to the persons concerned in similar cases, and what advice the Administration would give to foreigners planning to come to Hong Kong for doing business or resolving disputes. In response, SG/DoJ stressed that any foreigners who came to Hong Kong for doing business or travelling were required to abide by the local laws. Moreover, in choosing a seat of arbitration, parties to a dispute would take into consideration the strengths of and services available in a place. As an arbitration centre, Hong Kong possessed a strong and mature professional team comprising providers of legal advice and legal services, and it was believed that they could help parties to a dispute to decide whether to choose Hong Kong as their seat of arbitration. The proposed post of PGC would be tasked to coordinate work in this respect.

113. Dr Junius HO considered that the question raised by Dr KWOK Ka-ki was related to the "yellow economic circle", which was irrelevant to the item under discussion. He also urged Members to familiarize themselves with the National Security Law. He particularly referred to Article 22 which was about the offence of subversion, pointing out that any person should not interfere in or disrupt the performance of duties and functions in accordance with the law by the body of power of HKSAR (including LegCo).

Voting on part (b) of FCR(2019-20)26

114. At 4:11 pm, the Deputy Chairman put to vote part (b) of the item FCR(2019-20)26, i.e. the proposal to create a permanent post of PGC; upgrade one permanent post of APGC to DPGC; and create one

supernumerary post of DPGC. At the request of members, the Deputy Chairman ordered a division. The Deputy Chairman declared that 27 members voted in favour of and 20 members voted against the proposal, and no member abstained from voting. The votes of individual members were as follows:

For:

Mr Abraham SHEK Lai-him	Mr Tommy CHEUNG Yu-yan
Mr WONG Ting-kwong	Mr CHAN Hak-kan
Mr WONG Kwok-kin	Mr Paul TSE Wai-chun
Mr Steven HO Chun-yin	Mr Frankie YICK Chi-ming
Mr YIU Si-wing	Mr MA Fung-kwok
Mr LEUNG Che-cheung	Ms Alice MAK Mei-kuen
Mr KWOK Wai-keung	Mr Christopher CHEUNG Wah-fung
Ms Elizabeth QUAT	Mr Martin LIAO Cheung-kong
Mr POON Siu-ping	Dr CHIANG Lai-wan
Mr Jimmy NG Wing-ka	Dr Junius HO Kwan-yiu
Mr Holden CHOW Ho-ding	Mr SHIU Ka-fai
Mr Wilson OR Chong-shing	Mr CHEUNG Kwok-kwan
Mr LUK Chung-hung	Mr LAU Kwok-fan
Mr Tony TSE Wai-chuen	
(27 members)	

Against:

Mr James TO Kun-sun	Prof Joseph LEE Kok-long
Ms Claudia MO	Mr WU Chi-wai
Mr Charles Peter MOK	Mr CHAN Chi-chuen
Dr KWOK Ka-ki	Mr Dennis KWOK Wing-hang
Dr Fernando CHEUNG Chiu-hung	Dr Helena WONG Pik-wan
Mr IP Kin-yuen	Mr Alvin YEUNG
Mr CHU Hoi-dick	Mr LAM Cheuk-ting
Mr SHIU Ka-chun	Ms Tanya CHAN
Mr HUI Chi-fung	Dr CHENG Chung-tai
Mr KWONG Chun-yu	Mr Jeremy TAM Man-ho
(20 members)	

115. The Deputy Chairman declared that this part of the proposal was approved.

Item 8 — FCR(2020-21)12

2019-20 JUDICIAL SERVICE PAY ADJUSTMENT

116. The Deputy Chairman advised that this item sought the approval of FC for an increase in pay by 5.63% for judges and judicial officers ("JJO") with effect from 1 April 2019. The Administration Wing under the Chief Secretary for Administration's Office consulted the Panel on Administration of Justice and Legal Services on the proposal on 27 April 2020. The Panel spent about 14 minutes in deliberating the proposal.

117. The Deputy Chairman declared that he was a member of the Standing Commission on Civil Service Salaries and Conditions of Service.

Impact of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region on the judicial system

Recruitment and retention of talents

118. Dr KWOK Ka-ki pointed out that the National Security Law stipulated that CE should designate a number of judges to handle cases concerning offence endangering national security and the term of office should be one year; a judge should not be designated to adjudicate such cases if he or she had made any statement or behaved in any manner endangering national security. He requested the Administration to assess whether the National Security Law would bring about negative impact on attracting and retaining talents. He also enquired whether the impact of the National Security Law would be one of the factors of consideration in judicial remuneration review ("JRR").

119. Mr CHAN Chi-chuen considered that the implementation of the National Security Law might have negative impact on maintaining the principle of judicial independence in Hong Kong and undermine the confidence of judicial officers. The Administration might have to attract and retain talents with better remuneration packages.

120. Director of Administration ("DA") responded that:

- (a) this item was to propose a pay increase of 5.63% for JJOs with effect from 1 April 2019;
- (b) recommendations on JRR had all along been made by an independent Standing Committee on Judicial Salaries and Conditions of Service ("Judicial Committee") to CE;
- (c) before arriving at the recommendations, the Judicial Committee would take into account a basket of factors, uphold the principle of judicial independence and consider that judicial remuneration should be sufficient to attract and retain talents in order to maintain an independent and effective judicial system in Hong Kong which upheld the rule of law;
- (d) apart from an annual remuneration review, the Judicial Committee would also conduct a Benchmark Study every five years to check whether judicial pay was kept broadly in line with the movements of earnings of legal practitioners over time;
- (e) after reviewing the findings of the 2015 Benchmark Study, the Judicial Committee considered the recommendation of improving certain conditions of service of JJOs in 2016, which took effect in 2017; and
- (f) the extension of retirement age of JJOs in 2019 would also help attract and retain talents.

121. Dr CHENG Chung-tai pointed out that Articles 3 and 6 of the National Security Law stipulated respectively that the executive authorities, legislature and judiciary of HKSAR should effectively prevent, suppress and impose punishment for any act or activity endangering national security, and a resident of HKSAR who stood for election or assumed public office should confirm in writing or take an oath to uphold the Basic Law and swear allegiance to HKSAR in accordance with the law. He enquired whether JJOs would have to sign after appointment the document

as mentioned in Article 6 of the National Security Law in the future, or whether relevant provisions would be included in their employment contracts.

122. DA advised that judges of the courts at all levels, when assuming office, should take an oath to uphold the Basic Law, swear allegiance to HKSAR, be attentive to duties, abide by the law, etc. in accordance with the Basic Law and the Oaths and Declarations Ordinance (Cap. 11). The arrangement for oath-taking would continue to take place after the implementation of the National Security Law. In response to Dr CHENG Chung-tai's enquiry on the nationality of judges and their immediate family members, DA advised that Article 90 of the Basic Law stipulated that the Chief Justice of CFA and the Chief Judge of the High Court should be Chinese citizens who were permanent residents of HKSAR with no right of abode in any foreign country. When assuming office, JJOs of the courts at all levels must also swear to uphold the Basic Law and swear allegiance to HKSAR in accordance with Article 104 of the Basic Law. The National Security Law did not impose any conditions on the nationality of judges and the Judiciary had not kept any statistics on nationalities of JJOs.

123. Ms Claudia MO enquired about the progress of JRR for the coming year (i.e. 2020-2021), the wastage rates of JJOs in the past three to five years and the actual differential between judicial pay and earnings of legal practitioners. Owing to the huge difference between the remuneration of judicial officers and private practitioners, as well as the political pressure following the implementation of the National Security Law, Ms MO raised concern as to how the Judiciary would recruit and retain talents.

124. DA advised that the Judicial Committee had already commenced the work of 2020-2021 JRR. Just as in the past, after taking into account a basket of factors, the principle of judicial independence and the position of the Judiciary, it would make recommendations on JJOs' pay adjustment rate to CE. She further said that 32 judges left the Judiciary during 2014 to 2019, with most of them left after reaching their retirement ages and seven judges left for other reasons. At the request of Ms MO, DA undertook to provide the reasons for the departure of the seven judges after the meeting.

[*Post-meeting note:* The supplementary information provided by the Administration was issued to members vide LC Paper No. FC262/19-20(01) on 4 August 2020.]

125. DA advised that, according to the findings of the 2015 Benchmark Study, the Judicial Committee noted a clear trend of widening differential between judicial pay and earnings of legal practitioners. For judges of the Court of First Instance of the High Court ("CFI"), the findings indicated that judicial pay had been consistently lower than earnings of comparable legal practitioners over the years, and the differential further widened in recent years. Taking into account the persistent recruitment difficulties and the widening pay gap, the Judicial Committee recommended an upward pay adjustment of 6% for judges at the CFI level and above and an upward pay adjustment of 4% for JJOs below the CFI level. The latest pay gap would be announced upon the completion of the Benchmark Study conducted in 2020. She continued that, apart from remuneration, other benefits, such as medical benefits, housing allowance, children education allowance, extension of retirement age, etc., would also help attract and retain talents.

Upholding the principle of judicial independence

126. Mr CHU Hoi-dick, Dr KWOK Ka-ki and Mr HUI Chi-fung raised concern over the impact of the National Security Law on the judicial system and judicial officers in Hong Kong, in particular, how judicial independence would be consistently upheld. Mr HUI was of the view that, in terms of the enforcement of the National Security Law, the executive authorities of Hong Kong had the authority to select judges to adjudicate cases, and cases could be tried without a jury, etc. He queried whether Hong Kong could maintain an independent and effective judicial system to uphold the rule of law.

127. Dr Junius HO expressed support for the item and considered that the National Security Law would not affect judicial independence of HKSAR. He suggested that the Administration should explain in detail the provisions of the National Security Law to Members to alleviate their concerns.

128. DA advised that:

- (a) the National Security Law expressly stated that the Law was enacted for the purpose of safeguarding national security, maintaining prosperity and stability of HKSAR and protecting the lawful rights and interests of the residents of HKSAR under the principle of "One County, Two Systems", "Hong Kong people administering Hong Kong" and a high degree of autonomy;
- (b) the Basic Law stipulated that HKSAR enjoyed independent judicial power, including that of final adjudication; and
- (c) in accordance with Article 85 of the Basic Law, the courts of HKSAR should exercise judicial power independently, free from any interference; even though the National Security Law stipulated that CE should designate a number of judges to handle cases concerning offence endangering national security, this would not undermine the principle of judicial independence.

Judges in charge of handling cases concerning offence endangering national security

129. Mr HUI Chi-fung and Mr CHAN Chi-chuen enquired whether the remuneration packages of judges who were designated to handle cases concerning offence endangering national security by CE pursuant to Article 44 of the National Security Law would be different from those of other judges. Mr HUI queried that, when designating judges, CE would take political factors into account, thus affecting the confidence of JJOs in the judicial system of Hong Kong, rendering it more difficult to recruit and retain talents. Mr CHAN enquired about the details relating to the appointment of judges to handle cases concerning offence endangering national security, in particular, during their terms of office, whether these judges still had to adjudicate other types of cases, and whether consideration would be given to providing additional allowance to these judges as they might face the risk of being sanctioned by foreign countries.

130. Ms Claudia MO requested the Administration to clarify whether CE had to designate judges to handle cases concerning offence endangering national security among incumbent judges, and whether the remuneration packages of these judges would be the same as those of other judges.

131. Dr KWOK Ka-ki enquired about the eligibility and/or requirements for judges to handle cases concerning offence endangering national security, especially the objective standards used to determine whether these judges were familiar with national affairs.

132. DA advised that:

- (a) the proposed pay adjustment that FC was currently deliberating was applicable to all judges appointed by CE, including judges in charge of handling cases concerning offence endangering national security; the remuneration packages of the latter would be equivalent to those of other judges at the same level;
- (b) pursuant to Article 88 of the Basic Law, judges should be appointed by CE on the recommendation of an independent Judicial Officers Recommendation Commission; the Judiciary would continuously be responsible for arrangement for trying individual cases;
- (c) before designating judges to handle cases concerning offence endangering national security, CE would seek advice from the Committee for Safeguarding National Security of the HKSAR and the Chief Justice of CFA;
- (d) the Judiciary had all along solved the problem of manpower shortage by open recruitment and the overall recruitment results were still positive, except for difficulties encountered in recruiting judges of CFI due to a wider differential with earnings of legal practitioners; and
- (e) the Administration would provide supplementary information in respect of the enquiry made by Mr KWOK after the meeting.

[*Post-meeting note:* The supplementary information provided by the Administration was issued to members vide LC Paper No. FC262/19-20(01) on 4 August 2020.]

Prohibition against judges' return to private practice in Hong Kong

133. Dr Junius HO considered that, apart from solely relying on remuneration package, work prospects and satisfaction were also important for attracting and retaining high-calibre talents to serve as JJOs. He was of the view that the Administration should consider relaxing the prohibition against judges' return to private practice to attract and retain excellent talents to take up posts of JJOs, so as to alleviate the problem of judicial manpower shortage.

134. DA agreed that it could not simply rely on remuneration package to attract and retain talents, and that other factors (such as workload) were also important. Therefore, the Government all along provided sufficient resources to the Judiciary; the Judiciary would also regularly conduct open recruitment and create additional posts to alleviate the problem of judicial manpower shortage.

135. The meeting was suspended at 4:34 pm and resumed at 4:44 pm.

Voting on FCR(2020-21)12

136. At 5:43 pm, the Deputy Chairman put item FCR(2020-21)12 to vote. At the request of members, the Deputy Chairman ordered a division. The Deputy Chairman declared that 22 members voted in favour of and 12 members voted against the item and 5 members abstained from voting. The votes of individual members were as follows:

For:

Mr Tommy CHEUNG Yu-yan	Mr WONG Ting-kwong
Mr WONG Kwok-kin	Mr Steven HO Chun-yin
Mr Frankie YICK Chi-ming	Mr YIU Si-wing
Mr LEUNG Che-cheung	Ms Alice MAK Mei-kuen
Mr KWOK Wai-keung	Mr Christopher CHEUNG Wah-fung

Ms Elizabeth QUAT	Mr POON Siu-ping
Ir Dr LO Wai-kwok	Dr Junius HO Kwan-yiu
Mr Holden CHOW Ho-ding	Mr SHIU Ka-fai
Mr CHEUNG Kwok-kwan	Mr LUK Chung-hung
Mr Kenneth LAU Ip-keung	Mr Vincent CHENG Wing-shun
Mr Tony TSE Wai-chuen	Ms CHAN Hoi-yan
(22 members)	

Against:

Ms Claudia MO	Mr Charles Peter MOK
Mr CHAN Chi-chuen	Mr Dennis KWOK Wing-hang
Dr Fernando CHEUNG	Mr IP Kin-yuen
Chiu-hung	
Mr Alvin YEUNG	Mr CHU Hoi-dick
Mr SHIU Ka-chun	Ms Tanya CHAN
Dr CHENG Chung-tai	Mr Jeremy TAM Man-ho
(12 members)	

Abstained:

Mr James TO Kun-sun	Dr Helena WONG Pik-wan
Mr LAM Cheuk-ting	Mr HUI Chi-fung
Mr KWONG Chun-yu	
(5 members)	

137. The Deputy Chairman declared that the item was approved.

Item 9 —FCR(2020-21)21

HEAD 90 —LABOUR DEPARTMENT
New Subhead "Implementation of the Reimbursement of Maternity
Leave Pay Scheme"

Item 10 — FCR(2020-21)14A
RECOMMENDATION OF THE ESTABLISHMENT
SUBCOMMITTEE MADE ON 28 MAY 2019

EC(2019-20)2
HEAD 90 —LABOUR DEPARTMENT
Subhead 000 Operational expenses

138. The Deputy Chairman advised that the two items were both related to the increase in maternity leave ("ML"). To make good use of meeting time and reduce repeated questions, FC would combine the discussion of the two items and put them to vote separately. The first item FCR(2020-21)21 invited FC to approve a supplementary provision of \$165.7 million in 2020-2021 and an annual recurrent funding of \$524 million in 2021-2022 and onwards to appoint a processing agent in order to implement the Reimbursement of Maternity Leave Pay Scheme ("RMLP Scheme") for the proposed extension of statutory ML under the Employment Ordinance (Cap. 57). The Labour and Welfare Bureau consulted the Panel on Manpower on the development of a new Disbursement Information System ("DIS") by the Government for implementing the proposed extension of statutory ML. The Panel spent around 55 minutes on deliberating the proposal. The second item FCR(2020-21)14A invited FC to endorse the recommendation of ESC made at its meeting held on 28 May 2019 in respect of EC(2019-20)2 for the creation of one permanent post of Chief Labour Officer ("CLO")(D1) in the Labour Department ("LD") to take forward various new measures to enhance statutory ML. Some members requested separate voting for the proposal at a FC meeting. ESC spent about 1 hour and 22 minutes on the deliberation of the recommendation.

139. At the invitation of the Deputy Chairman, Mr Vincent CHENG, Chairman of the Panel on Manpower, briefed members on the results of the Panel's discussion on the development of a new DIS by the Government for implementing the proposed extension of statutory ML. Mr CHENG advised that the Panel on Manpower discussed the Administration's plan to develop a new DIS for implementing the proposed extension of statutory ML at its meeting held on 21 January 2020. Members had no objection in principle to the Administration's submission of the proposal to FC. Some members were concerned that the legislative proposal for extending statutory ML would become effective only after the arrangements for reimbursement of maternity leave pay ("MLP") (including the development of the DIS) were finalized and implemented, while it was currently expected that the reimbursement arrangements would be implemented by end of 2021. Members urged the Administration to expedite relevant preparatory work and shorten the time for various exercises in respect of the development of the DIS. The Administration advised that the whole

DIS plan was already under a tight schedule. Members requested the Administration to provide additional information on the recurrent staff cost and the time needed for implementing different exercises in relation to the DIS when submitting the funding proposal to FC.

Appointing a processing agent to implement the Reimbursement of Maternity Leave Pay Scheme

Implementation schedule of the Reimbursement of Maternity Leave Pay Scheme

140. Mr Vincent CHENG said that he hoped LegCo could pass the Employment (Amendment) Bill 2019 ("the Bill") as soon as possible at its meeting to be held next week (8 July), so that the RMLP Scheme would be implemented early. With only about two weeks left before the recess of LegCo, he was concerned about the corresponding measures that the Administration would take if the funding application was approved by FC today while the Bill was not yet passed. He also enquired that, apart from speeding up the implementation of the RMLP Scheme, whether there would be any other advantages in outsourcing the administration of the Scheme to a private sector processing agent, and whether the Administration could undertake to implement the RMLP Scheme earlier by the end of 2020.

141. In response, Secretary for Labour and Welfare ("SLW") advised that:

- (a) the Government previously undertook that, subject to the passage within the current LegCo term of the Bill and funding approval for the DIS originally planned to be developed by LD, LD would implement the RMLP Scheme by end-2021 and handle employers' applications, and the preparatory work (including the development of the DIS) would take about 18 months;
- (b) when the Panel on Manpower deliberated on the Bill, Members urged the Government to implement the Bill and the RMLP Scheme early. In response to the common expectations of Members and the community, the Government

decided to outsource the administration of the RMLP Scheme to a private sector processing agent, covering tasks such as the development, operation and maintenance of the DIS, instead of relying on LD for its direct administration as originally planned. LD already consulted the Efficiency Office and drew reference from relevant information and basic principles of the Employment Support Scheme as well as other government subsidy schemes;

- (c) outsourcing the administration of the RMLP Scheme to a private sector processing agent not only would help speeding up the implementation of the Scheme, it would be more efficient as well if the processing agent was also responsible for any necessary adjustments or updates of relevant systems and schemes in the future;
- (d) the RMLP Scheme was a regular scheme. Drawing reference from past tendering exercises of similar nature and scale, the tendering exercise would generally take about six months. It was estimated that it took around three months for the appointed processing agent to complete the preparatory work. The Government anticipated that employers would seek reimbursement some time after the Bill came into effect, so it was expected that the Bill would become effective about one year earlier than originally scheduled; and
- (e) once the funding application and the Bill were passed, the Government would immediately initiate relevant procedures and follow up the arrangements for implementing the Bill, with a view to implementing the Bill by the end of 2020 and the RMLP Scheme within the first half of 2021.

142. Mr KWOK Wai-keung criticized that some Members repeatedly called for a quorum at the LegCo meeting held last week and maliciously caused the abortion of the meeting. As a result, the Bill was unable to be passed last week. He urged Members supporting the extension of statutory ML to cooperate and approve the Bill as soon as possible, so as to meet the aspirations of the people. He also enquired whether the Administration would buy time for early completion of various preparatory

and tendering work to ensure the implementation of the RMLP Scheme in early 2021.

143. Mr CHAN Chi-chuen disagreed with Mr KWOK Wai-keung's criticism that some Members hindered the legislation of the Bill. He pointed out that even if the Bill passed Second Reading, it still had to be considered by the Committee of the whole Council which had to submit a report accordingly, before it could be read the Third time. He therefore considered that there was indeed not enough time to complete the scrutiny of the Bill at the LegCo meeting held last week.

144. In response, SLW advised that if the Bill could not be passed within the current LegCo term, the tendering and relevant preparatory work relating to the RMLP Scheme would have to be suspended as according to the Government's established procedures, the Government should not enter into any service agreement with a processing agent prior to the passage of the Bill and relevant funding application. Therefore, he urged members to approve the funding application and the Bill as soon as possible.

Reasons for outsourcing the administration of the Reimbursement of Maternity Leave Pay Scheme to a private sector processing agent

145. Mr CHAN Chi-chuen and Dr Fernando CHEUNG advised that they were delighted to see a large reduction in the time needed for implementing the RMLP Scheme by the Administration. They enquired when and why the Administration suddenly decided to outsource the administration of the RMLP Scheme to a private sector processing agent. Dr CHEUNG enquired about the difference between relying on LD for its direct administration of the RMLP Scheme as originally planned while only outsourcing the development of the DIS to a private sector processing agent, and the current practice of outsourcing the administration of the entire RMLP Scheme to a processing agent.

146. In response, SLW explained that:

- (a) relying on LD for its direct administration of the RMLP Scheme as originally planned would involve a number of internal government procedures, including the search for an office location, recruitment of additional staff, provision of

training, system design and operational tests and so on, and longer time was therefore needed;

- (b) citing examples of the Caring and Sharing Scheme launched in 2018 by the Government to give cash handout of \$4,000 to each eligible resident in Hong Kong and the Financial Secretary's announcement on 15 August 2019 which invited the Community Care Fund to consider providing one-off living subsidies to low-income households not living in public housing and not receiving Comprehensive Social Security Assistance (colloquially known as the "N have-nots"), the two schemes respectively took about 10 to 17 months from preparation to receiving applications. As for the programme involving one-off living subsidies to the "N have-nots", the Government was unable to find an office location and carry out renovation until the end of March 2020, and it was only open for applications from today (2 July) onwards;
- (c) on the contrary, the Government conceptualized the Employment Support Scheme in early April 2020, and was able to start receiving applications from the third week of May and grant subsidies by batches from June onwards, this proved that outsourcing relevant work to a private sector processing agent could significantly reduce the time needed for implementation;
- (d) as regards the Employment Support Scheme, the private sector processing agent engaged some 200 staff members. If the Government was to recruit an addition of 200-odd civil servants, it would have to identify a place of around 20 000 sq ft in size for setting up an office, followed by renovation works. Therefore, it would be relatively more flexible to appoint a private agent to take charge of relevant work; and
- (e) after gaining and drawing reference from relevant experience, the Government decided to outsource the administration of the RMLP Scheme to a private sector processing agent in order to speed up the implementation of the Scheme and meet the expectations of the community.

147. Dr Helena WONG enquired whether the DIS to be developed by the processing agent engaged by the Administration and the associated software would be owned by the processing agent or LD. In response, SLW advised that details about operation and ownership had yet to be confirmed. Further consideration would be given by the Government after consultation with related parties. In general, information and data, etc. in relation to applications would be owned by the Government.

Service fee and administrative costs

148. Mr SHIU Ka-chun noted that the Commissioner for Labour proposed to seek a supplementary provision of \$165.7 million in 2020-2021 and an annual recurrent funding of \$524 million from 2021-2022 onwards for meeting the funding requirements for reimbursement of MLP and payment of service fee to a processing agent, as well as other administrative costs for implementing the RMLP Scheme, while the Administration estimated that some 27 000 female employees each year would benefit from the proposed extension of ML. As for the service fee for the processing agent and administrative costs, he enquired about:

- (a) the level of service fee received by a processing agent in general;
- (b) the estimated number of employees to be employed by the appointed processing agent;
- (c) the number of civil servants required for LD to directly administer the RMLP Scheme as originally planned by the Government; and
- (d) whether the Government had laid down any regulations or requirements on working hours, salaries, paid leave or other staff benefits, etc. in relation to the processing agent, so as to protect employees of the processing agent from being exploited.

149. Ms Claudia MO enquired whether an annual recurrent funding of \$524 million was additional expenditure resulting from outsourcing the administration work to a processing agent.

150. In response, SLW advised that:

- (a) the \$524 million was an additional annual recurrent expenditure estimated by the Government on implementing the RMLP Scheme, including service fee for the processing agent and contingency, etc.; regarding the permanent post of CLO to be created in LD to take forward various new measures to enhance statutory ML, the related financial implications were set out in EC(2019-20)2;
- (b) administrative costs of other subsidy schemes accounted for around 5% to over 10% of the total amount of subsidy or reimbursement, while the administrative costs of some universities even amounted to about 15% to 25%;
- (c) the Government considered it prudent to set the service fee for the processing agent at 10% of the reimbursement amount each year, i.e. \$47 million annually, but the actual figures would depend on the outcome of the tendering exercise; and
- (d) the processing agent would decide in accordance with the service contract its manpower and resources needed and whether to make use of artificial intelligence technology, etc.; the Government believed that the processing agent to be appointed would have relevant experience, engage professional technical staff and treat its employees well in compliance with labour laws.

151. Commissioner for Labour supplemented that, after deciding that a processing agent would be appointed to take forward relevant work concerning the RMLP Scheme, the Government did not estimate the number of civil servants required if the work was to be administered by the Government, but drawing reference from similar projects in the past, such as the Work Incentive Transport Subsidy Scheme, the Government had to

additionally recruit some 200 civil servants to handle a similar number of cases.

Cap on the reimbursement of maternity leave pay

152. Ms Claudia MO pointed out that CE proposed in the 2018 Policy Address to extend the statutory ML under the Employment Ordinance from the current 10 weeks to 14 weeks; if a female employee was entitled to statutory MLP, the employer might apply to the Government for reimbursement of the additional four weeks' MLP paid to the employee, subject to a cap of \$36,822 per employee. Some Members considered it unfair to higher-paid pregnant employees and recommended the Administration to raise the cap on reimbursement of MLP, yet some officials did not accept the recommendation at that time on grounds of the need to ensure proper use of public money. However, the Government recently decided to substantially raise the cap to \$80,000 per employee, an increase of nearly two times. While she considered that the Administration was right in doing so, she enquired about the reasons for the huge increase in the cap on reimbursement of MLP.

153. In response, SLW advised that the Government took the opinions of Members and the community to increase the cap on additional four weeks' MLP to \$80,000. He would give a further account of the details at the LegCo meeting to be held next Wednesday.

Justifications for the creation of one post of Chief Labour Officer in the Labour Department

154. Dr Helena WONG advised that she agreed to the Administration's outsourcing of the administration of the RMLP Scheme to a private sector processing agent to expedite relevant work relating to the implementation of the RMLP Scheme, but she had reservations over the proposed creation of one permanent post of CLO in LD. She enquired about the reasons for creating the post of CLO and its specific duties.

155. In response, SLW advised that the Government outsourced relevant work concerning the implementation of the RMLP Scheme to a processing agent, yet it did not shift the related responsibilities. Under the ML proposal, public money would be used recurrently to reimburse employers

for the additional four weeks' MLP paid to employees in accordance with the Employment Ordinance. To take forward this measure, the Government had to design and develop a new DIS, monitor the processing agent's processing of RMLP applications from employers, review the implementation of the Scheme and the cap on additional MLP, etc. All these important tasks involved high-level policy coordination and leadership, and a CLO was therefore needed to take up these directorate-level responsibilities.

Issues concerning meeting procedures

156. Dr Helena WONG enquired whether there was precedent in the past that the Administration applied for funding from FC for a financial proposal relating to the implementation of a bill while the bill was not yet passed by LegCo. She considered that the Administration should re-arrange the order of FC's agenda items and submit the related funding application after the Bill was passed by LegCo.

157. In this connection, the Deputy Chairman advised that ESC discussed the issue raised by Dr Helena WONG at a related meeting. He pointed out that the Administration should have taken into account the time required for deliberation on each item when arranging the order of agenda items, but owing to the considerable number of items, he believed that it would be difficult for the Administration to accurately predict the deliberation time for each item.

158. Deputy Secretary for Financial Services and the Treasury (Treasury) 1 (DSFST(T)1) advised that the Financial Secretary would submit an Appropriation Bill to LegCo each year, seeking authority for the appropriation of a sum out of the General Revenue Account for financing the estimated services of the Government in the coming financial year. However, as the estimates made under the 2020 Appropriation Bill did not cover the funding required for the reimbursement of MLP and the expenditure related to appointing a processing agent for the implementation of the RMLP Scheme, the Government applied for a supplementary provision from FC under section 8 of the Public Finance Ordinance (Cap. 2). He continued that it was difficult for the Government to estimate the time required for deliberation and passage of each item, so there might be time lags in the arrangement for the order of agenda items.

SLW and DSFST(T)1 advised that, even if FC approved the funding application at the meeting today, the Government undertook to utilize the funding only after the passage of the Bill.

159. At 6:27 pm, the Deputy Chairman advised that if members considered that FC could put the agenda items FCR(2020-21)21 and FCR(2020-21)14A to vote at the meeting today, he would extend the meeting for 15 minutes and put the items to vote after members who were waiting for their turn to raise questions had finished asking their questions.

160. Mr WONG Ting-kwong advised that the meeting today was originally scheduled to end at 6:30 pm and he believed a number of members had already left the Legislative Council Complex. He was worried that a quorum was not present if the items were put to vote at the moment.

161. The Deputy Chairman advised that he noted the opinion of Mr WONG Ting-kwong, and as there were still some members waiting for their turn to raise questions, he would not put the items to vote at the meeting today.

162. At 6:28 pm, the Deputy Chairman declared that the meeting be ended.

Legislative Council Secretariat
26 February 2021