

立法會
Legislative Council

LC Paper No. ESC12/00-01

(These minutes have been
seen by the Administration)

Ref : CB1/F/3/2

**Establishment Subcommittee of the Finance Committee
of the Legislative Council**

**Minutes of the 2nd meeting
held at the Chamber of the Legislative Council Building
on Wednesday, 15 November 2000, at 10:45 am**

Members present:

Hon CHAN Kwok-keung (Chairman)
Hon NG Leung-sing (Deputy Chairman)
Hon James TIEN Pei-chun, JP
Hon Eric LI Ka-cheung, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching
Hon Bernard CHAN
Hon Andrew WONG Wang-fat, JP
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon SZETO Wah
Hon LI Fung-ying, JP
Hon Henry WU King-cheong, BBS
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP
Dr Hon LO Wing-lok

Members absent:

Dr Hon David LI Kwok-po, JP
Hon Jasper TSANG Yok-sing, JP
Hon CHOY So-yuk

Public officers attending:

Mr Stanley YING, JP	Deputy Secretary for the Treasury
Mr D W PESCOD, JP	Deputy Secretary for the Civil Service
Mr K K LAM	Principal Executive Officer (General), Finance Bureau
Mrs Rebecca LAI, JP	Secretary for Financial Services
Miss Susie HO, JP	Deputy Secretary for Financial Services
Mr Esmond LEE	Principal Assistant Secretary for Financial Services
Mr E T O'CONNELL	Official Receiver
Miss Nancy LAW, JP	Administrator, Official Receiver's Office
Mr Ian WINGFIELD, GBS, JP	Law Officer (Civil Law)
Mr Peter H K CHEUNG, JP	Director of Administration and Development, Department of Justice
Mr Robin IP Man-fai, JP	Deputy Secretary for Constitutional Affairs
Mrs Betty CHU	Assistant Judiciary Administrator
Mr LI Wing	Chief Electoral Officer
Ms Esther LEUNG	Principal Assistant Secretary for the Treasury
Mr LUK Nai-man, JP	Deputy Commissioner of Inland Revenue
Mr CHAU Ho-man	Chief Assessor, Inland Revenue Department
Mrs Rosanna MAK	Assistant Director of Information Technology Services
Mr Alan CHU	Principal Assistant Secretary for Security
Mr P T CHOY, IDSM, JP	Deputy Director of Immigration
Ms Helen CHAN	Assistant Principal Immigration Officer, Immigration Department

Clerk in attendance:

Miss Polly YEUNG	Chief Assistant Secretary (1)3
------------------	--------------------------------

Staff in attendance:

Ms Pauline NG	Assistant Secretary General 1
Ms Alice AU	Senior Assistant Secretary (1)5
Ms Anita SIT	Senior Assistant Secretary (1)8

The Chairman informed members that Mr Kenneth TING Woo-shou and Mr LAU Ping-cheung had given notice of their withdrawal from the membership of the Subcommittee.

EC(2000-01)12

Proposed creation of one permanent post of Administrative Officer Staff Grade B (D3) in the Financial Services Bureau of Government Secretariat with effect from 5 February 2001 to oversee the Companies Section and the Retirement Schemes and Insurance Section

2. Noting that there had been only one Deputy Secretary (DS) post in the Financial Services Bureau (FSB) before February 1999 but currently, there were three DS posts, Mr James TIEN questioned whether such a significant increase in senior directorate posts was justified and whether it was compatible with the promulgated policy of containing the size of the civil service.

3. In response, the Secretary for Financial Services (SFS) said that the staff increase must be considered in the context of the changing circumstances of the financial markets since the onset of the Asian financial turmoil in late 1997. Apart from dealing with the aftermath of the turmoil, the Administration had recognized the need to strengthen the fundamentals of the local financial markets and hence, had introduced a series of reforms in the financial infrastructure and the regulatory framework. She remarked that the scope of work of FSB was highly transparent and the Bureau also discussed its policy initiatives and legislative proposals at least monthly with the Financial Affairs Panel. She further elaborated that FSB had introduced four bills to the Legislative Council since early 2000. The first reading of the composite Securities and Futures Bill was scheduled for late November this year and two other bills on banking were scheduled to be introduced shortly. Legislative proposals on company law and various subsidiary legislation on financial services were also in the pipeline. Adequate staffing support would be required for the implementation of these various reforms.

4. Mr James TIEN expressed doubt on the need to create the proposed Deputy Secretary (Financial Services) 2 (DS(FS)2) post on a permanent basis. He queried that the overall workload of FSB might be reduced substantially in two years' time as some of the major initiatives, such as the composite Securities and Futures Bill, the review of the Companies Ordinance, the Mandatory Provident Fund Schemes (MPFS) etc. would have been completed or fully implemented by then.

5. In response, SFS stressed that most of the initiatives would require on-going policy steer from the DS(FS)2 in the long term. For example, there would be an on-going review of the Companies Ordinance to keep the legislative framework abreast with the changes in the business environment. Indeed, in the past, the Administration had proposed amendments to the Companies Ordinance almost every year. As regards the MPFS, the DS(FS)2 in question would need to provide sustained policy input to monitor its implementation, to review and where necessary, to revise the relevant legislation.

6. Mr James TIEN sought clarification on the extent of input required of the DS(FS)2 on World Trade Organization (WTO) negotiations, bearing in mind that the Commerce and Trade Bureau (CIB), rather than FSB, was the policy bureau responsible for WTO matters. In response, SFS advised that financial services were one of the four categories of services under the agenda of WTO negotiations. FSB was responsible for formulating policies on trade matters in respect of financial services, including banking, insurance, securities and accountancy in consultation with the industries. The DS(FS)2 was required to collate and analyze information gathered in the consultation process and to attend the relevant WTO negotiations with important trading partners. She clarified that while the Trade and Industry Department under the CIB played an overall co-ordinating role in respect of WTO negotiations, the aforesaid work requirements fell within the purview of FSB. She further remarked that due to the heavy work schedule in Hong Kong, she herself, in the capacity of DS(FS)1, had not been able to attend any of the previous round of WTO negotiations held in Geneva. If retention of the DS(FS)2 post on a permanent basis was approved, the post-holder could hopefully attend the coming round of WTO negotiations to ensure that the interests of the local financial services sector would be adequately represented at these negotiations.

7. Noting that a comprehensive review of the role and functions of the Official Receiver (OR) would be undertaken, Mr NG Leung-sing queried why it was necessary to engage consultants to conduct the review, and enquired whether further increase in manpower resources in FSB would be required at a later stage as, according to the discussion paper, the review would likely result in significant changes to revamp the existing insolvency administration regime.

8. In response, SFS advised that there had been significant developments in overseas insolvency administration regimes in recent years while the existing legal framework in respect of the local insolvency regime was rather antiquated. Hence, the Administration considered it necessary to conduct a comprehensive review of the role and functions of the OR and those of the Official Receiver's Office (ORO). One major concern to be addressed in the review was the extent to which public resources should be put into administering insolvency and bankruptcy cases. Indeed, there had been criticisms that the public resources spent for such purposes were highly disproportionate to the ultimate amount of dividends available for distribution to creditors. SFS confirmed that the Administration did not have the requisite expertise or adequate in-house resources to carry out the study, and therefore had to commission consultants for the study. She further advised that while the Administration could not pre-empt the findings of the consultants, it was expected that the thrust of the proposals would be on streamlining and simplifying the existing procedures and practices for insolvency administration. As such, the Administration would not envisage that implementation of such proposals would have significant staffing implications on FSB. On the contrary, it would likely result in more efficient utilization of resources in the ORO. The Deputy Secretary for Finance Services (DS(FS)) informed members that tender

had been invited for the 14-month consultancy study which was scheduled to commence in late 2000 or early 2001.

9. Miss Emily LAU remarked that it had been said that the quality of the consultancy review of the Hong Kong Company Ordinance referred to in paragraph 5 of the discussion paper was unsatisfactory. Hence, the Standing Committee on Company Law Reform (SCCLR) had spent much effort on screening the proposals contained in the report. She therefore questioned whether the Administration had provided proper steer in the course of the consultancy study, and whether the study was value-for-money.

10. In response, SFS advised that the said consultancy review commenced in 1993 and had cost about \$15 million. In view of the voluminous nature of the Company Ordinance and the wide scope of issues involved, the consultants were advised to adopt a holistic approach and review the Ordinance in its entirety rather than section by section. While the consultants were required to undertake comprehensive consultation, they were given a free hand in the compilation of findings and the drawing up of proposals. This arrangement was different to some extent from the usual arrangement whereby a consultancy study was overseen by a steering committee within the Administration. Upon publication of the consultancy report, a major concern raised amongst the business sector was that if the existing Companies Ordinance was revamped in haste, the business sector would have difficulty in adapting to the new legal framework and confusions would arise. The SCCLR had thus decided to adopt a more pragmatic approach by prioritizing the proposals in the consultancy report for implementation. The SCCLR had recommended to take on board those proposals that were largely non-controversial, and had identified some other proposals in the consultancy report for further examination. Hence, the current plan of the Administration was to introduce legislative proposals relating to the company law reform in phases in the coming legislative sessions.

11. Miss Emily LAU sought further information on the extent to which the proposals in the consultancy report had been accepted. In reply, SFS said that such information would be available as and when legislative proposals relating to the company law reform were introduced to Legislative Council (LegCo). She remarked that the consultancy study had all along served as a very useful reference for the Administration and the SCCLR in pursuing the company law reform. DS(FS) supplemented that among the 62 recommendations for changes in the Companies Ordinance that had been put forward by the SCCLR, the majority were derived from proposals made in the consultancy report. There were further proposals in the consultancy report which the SCCLR considered worth pursuing in the light of the local circumstances. DS(FS) added that the SCCLR had found the review exercise of the Companies Ordinance a worthwhile undertaking as it provided an opportunity for the Committee to examine the Ordinance comprehensively. The Committee was satisfied in general with the progress and achievement made so far.

12. Mr Henry WU sought clarification on the working relationship between the existing Principal Assistant Secretary (Retirement Schemes & Insurance) (PAS(RS&I)) and DS(FS)1 and 2. In reply, SFS explained that PAS(RS&I) reported directly to DS(FS)2 for her portfolio of work while she also assisted DS(FS)1 in the administration and resource management matters of FSB. These administrative duties took up about one-fourth of the working time of PAS(RS&I).

13. In reply to Mr Henry WU's enquiry about the supernumerary post of Deputy Secretary (Financial Services)(Special Duties), SFS advised that the post had been created for six months up to May 2000 under delegated authority. The incumbent was responsible for taking the composite Securities and Futures Bill through the legislative process. The need for further retention of the post would be reviewed in due course having regard to the progress of the scrutiny of the bill by LegCo.

14. The item was voted on and endorsed.

EC(2000-01)13

Proposed creation of one supernumerary post of Administrative Officer Staff Grade B (D3) in the Official Receiver's Office for a period of two years with effect from 19 December 2000 to take forward a fundamental revamp and overhaul of its management system, to conduct an in-depth review of the procedures and practices in the administration of insolvency cases, and to develop a framework for implementing recommendations of a consultancy study to review the Official Receiver's role

15. Noting that the main thrust of the duties of the proposed Administrative Officer Staff Grade B (AOSGB) post, designated as Administrator, was to take forward reform measures in the ORO, Mr MAK Kwok-fung sought elaboration on the existing problems of the ORO. In reply, DS(FS) advised that a common issue identified in both the report of the Management Services Agency (MSA) issued in December 1999 and the report of the Director of Audit (D of Audit) issued in February 2000 was the weak management system in ORO and cumbersome and elaborate operational procedures. The main tasks of the Administrator were to introduce a new management culture in ORO and to formulate strategies to reform the operational systems of the department. While a consultancy study on the role and functions of the OR as a legal entity would be commissioned, the Administrator would be closely involved in the consultation exercise undertaken during the study and in assisting the OR in determining how the study should proceed having regard to the views received during the consultation.

16. Mr CHEUNG Man-kwong queried the necessity of creating the Administrator post as he noted that the ORO, being a rather small department, was already staffed by five directorate officers. He also questioned the justification for pitching the post at the D3 level.

17. In response, DS(FS) advised that all the directorate officers of the ORO were professional staff and they were already fully occupied with their various statutory duties. It was therefore necessary to provide the ORO with additional directorate support to take forward the required management reforms in the ORO. Having regard to the level of responsibilities and the nature of the duties of the Administrator post, the Administration considered it appropriate to pitch the post at the AOSGB rank (D3).

18. The OR supplemented that the numbers of corporate insolvency and personal bankruptcy cases in Hong Kong had increased tremendously over the past two years, and there were signs that a high level of insolvency and bankruptcy would sustain for a further few years. Given the resource constraints under the Enhanced Productivity Programme and the policy of containing the size of the civil service, it was envisaged that the ORO would continue to face very heavy workload with stringent resources. Against this background, the reports of the MSA and the D of Audit, followed by the Public Accounts Committee (PAC)'s report published in June 2000, strengthened the case for a senior and experienced Administrative Officer to take forward the required reforms to improve the efficiency of the ORO.

19. Miss Emily LAU confirmed that the PAC had examined the findings of the D of Audit on the ORO and concurred that there was an urgent need to conduct a management review for the ORO. PAC had also recommended that the Administration should consider whether additional directorate support should be provided for the OR to take forward the required management reforms.

20. Mr Eric LI said that since the onset of the Asian financial turmoil, there had been calls from the financial services sector to revamp the local insolvency administration regime as one could reasonably anticipate that the ORO, which dealt with some 90% of all compulsory insolvency cases in Hong Kong, would have to cope with a tremendous increase in workload in the aftermath of the turmoil. Indeed, there had been criticisms from the private sector about the efficiency of the ORO. He considered that since all the directorate officers in the ORO were legal or accounting professionals who might not be management experts, it was reasonable for the Administration to bring in a senior Administrative Officer with the requisite management skills and experience to revamp the management systems in the department. In this connection, he drew reference to the case of the Judiciary whereby LegCo Members had accepted the need for a Judiciary Administrator to oversee the management of the Judiciary. He however shared some members' concern about the cost-effectiveness of the proposed Administrator post, and thus suggested that the

Administration should in due course provide information on the savings that could be achieved as a result of the work of the Administrator post in the ORO. He also highlighted the concern of the accounting profession about the high cost incurred by ORO in administering insolvency cases and requested the Administration to provide relevant information for members' reference.

Admin 21. DS(FS) agreed to provide information on the public expenditure incurred in the work of ORO. As regards savings arising from the present proposal, she agreed to provide relevant information after the Administrator had been in post for a period of time.

Admin 22. Noting from the discussion paper that the workload of the ORO had increased manifold in recent years, Mr HUI Cheung-ching enquired about the numbers of cases that had been referred to and handled by the ORO and the time required for processing different categories of cases in the past three years. OR agreed to provide the information after the meeting, adding that the number of insolvency cases handled by the ORO had increased by 32% in financial year 2000/01 to date.

23. Members noted that the Administrator post had been created for six months in June 2000 under delegated authority and the present proposal sought to retain the post for a further period of two years. Mr CHEUNG Man-kwong commented that in virtually all the cases where the Administration had created a directorate post for six months under delegated authority, it would then seek approval for retention of the post permanently or for a further period. The Administration would also propose to retain the post at the same rank as it was first created under delegated authority. He also observed that under such proposals, the Administration would often try to impress members that the experience gained from the post justified the need for retaining the post at the existing rank and it seemed that no attempt was made to critically examine the proposed ranking. He therefore expressed grave concern that the Administration had made use of the delegated authority to circumvent the requirement to fully justify the ranking of a post.

24. Mr CHEUNG Man-kwong further queried why the Administration had not in the first place submitted a proposal to ESC and FC to create the Administrator post in early 2000 when the reports of the MSA and the D of Audit had already been issued, but had created the post under delegated authority in June 2000.

25. In response, the Deputy Secretary for Civil Service (DS(CS)) affirmed that each case of retention/creation of supernumerary/permanent posts was considered very carefully within the Administration, and that the creation of a directorate post for six months under delegated authority would by no means pre-empt the Administration or Members' assessment of the appropriate level of the post for subsequent retention. He further said that while the decision on the appropriate grading and ranking of a proposed post was essentially a matter

of judgement, the Finance Bureau (FB) and the Civil Service Bureau (CSB) acted as gate keepers to ensure that the grading, ranking and the duration of any proposed directorate post were fully justified on a functional basis. The Administration was also obliged to obtain the support of the Standing Committee on Directorate Salaries and Conditions of Service (SCDSCS) on the grading and ranking of any proposed permanent directorate post. As far as the proposed Administrator post was concerned, CSB was of the view that pitching the post at AOSGB(D3) level was appropriate having regard to the nature and complexity of the relevant work requirements.

26. On the creation of posts under delegated authority, DS(CS) further explained that the existing arrangement whereby the Administration was given the delegated authority to create directorate posts for a period not longer than six months had provided the Administration with the necessary flexibility to respond swiftly and effectively to operational needs, such as creation of a directorate post to handle an ad-hoc or a short-term project. Where there was a need for further retention of the directorate post, the bureau/department concerned had to work out the longer-term operational requirements and prepare the relevant staffing proposal for consideration by ESC/FC accordingly. He reiterated that all proposals on directorate posts lasting for more than six months were subject to the scrutiny by Members at the ESC and FC, having regard to the justification of each case on its merits.

27. In this connection, the Deputy Secretary for the Treasury (DS(Tsy)) echoed the views of DS(CS) and re-affirmed that the delegated authority given to the Administration to create directorate posts for not longer than six months had all along been exercised with due prudence. As regards the proposed grading and ranking of any directorate post, he confirmed that in each case, FB and CSB would consider the appropriate grading and ranking of a proposed post by comparing the level of responsibilities and the nature of duties of the post with those of the posts at the same level in other bureaux/departments. As far as the post in question was concerned, the Administration had, after careful consideration, come to the view that it was appropriate to create the post at the AOSGB(D3) level under delegated authority in June 2000. When the present proposal for retention of the post for two years was considered, the Administration had made a fresh assessment having regard to the longer-term operational requirements and the responsibilities of the Administrator post and accepted that AOSGB(D3) level was the appropriate ranking. He remarked that the Administration had made the best efforts to provide justification for pitching the post at AOSGB(D3) level by delineating the responsibilities and duties of the post in the present proposal.

28. As to why a proposal to create the Administrator post for two years had not been submitted to ESC and FC before the previous LegCo term ended on 30 June 2000, DS(FS) advised that although the report of D of Audit was published in February 2000, it was only in June 2000 that the PAC published its report on D of Audit's findings which confirmed the need for management

reform in ORO. In view of the lead time required for preparing a staffing proposal for submission to ESC and FC, and the urgent need to provide directorate support for the OR to take forward improvement measures in ORO, the Administration had created the Administrator post under delegated authority for six months. Mr Eric LI, Chairman of the PAC, informed members that the PAC had endeavoured to complete the examination of the D of Audit's report within a very tight timeframe and had submitted the PAC report to LegCo on 21 June 2000. He therefore appreciated that there might be practical difficulty for the Administration to put up a staffing proposal on the creation of the Administrator post to ESC and FC before the end of the previous LegCo term.

Admin

XX

29. Mr CHEUNG Man-kwong maintained his reservation about the necessity to pitch the post at the D3 level and reiterated his view that since the need to revamp the management system and to re-engineer the procedures and practices in ORO had already been established in early 2000, the Administration should have submitted a proposal on the Administrator post to ESC and FC for formal consideration before the end of the previous LegCo term. Noting that the creation of this post, if approved, would be reported to the SCDS, Mr CHEUNG asked the Administration to relay his concerns to the Committee. DS(CS) agreed. Mr James TIEN shared the concerns of Mr CHEUNG and suggested that the pros and cons of the practice whereby a supernumerary directorate post was first created under delegated authority and then, on many occasions, followed by a proposal for its further retention should be examined by the relevant Panel.

30. In reply to Mr James TIEN's enquiry on whether the Administrator post would be required on a permanent basis, DS(Tsy) advised that should there be a need to further extend the post or to convert it to a permanent post, a separate proposal would need to be first examined within the Administration, and then submitted to this Subcommittee and FC with all necessary details and justification.

31. Miss Emily LAU expressed grave concern about the backlog of outstanding winding up cases in the ORO and enquired about the present situation. Noting that one of the tasks of the Administrator was to design and implement a system to set objective performance targets for the ORO, Miss Emily LAU enquired about the progress of work and the preliminary targets, if any, that had been set so far. Mr James TIEN echoed the concerns of Miss LAU and sought information on the performance pledges in relation to the time frame for the processing of cases in the ORO.

32. On outstanding cases, OR advised that an undertaking had been given to the PAC that for cases that had been outstanding for over three years and where dividends were available for distribution, dividends would be paid by the end of April 2000. For similar cases that had been outstanding between one to three years, the dividends would be paid by end July 2000. The ORO had

achieved the above target for 96% and 95% respectively of the aforesaid two types of cases. The main reason for not achieving the target for the remaining cases was that litigation was still underway and dividends could not be paid out before completion of the relevant proceedings.

33. OR further advised that the ORO had agreed with the ORO Advisory Customer Service Group and issued performance pledges that for cases where dividends were available for distribution, the dividends would be paid within nine months after referral to the ORO, and for cases where no dividends were payable, the target was to wind up the cases in nine to 12 months. On the payment of dividends this year, the ORO had paid to creditors about \$230 million by end October 2000. This amount was about the sum of dividends paid out by the ORO over the last four years. Another major improvement achieved was the shorter time taken in obtaining release orders from the court for liquidated companies and for persons subject to bankruptcy orders. ORO added that with the support of the Administrator, the ORO had set up a time recording system with a view to establishing performance targets for officers dealing with insolvency cases in the ORO. The exercise would take six months to complete. OR remarked that the efficiency of the ORO had improved enormously over the past nine months.

34. Mr Henry WU sought elaboration on the need to conduct a fundamental review of the OR's role in the provision of insolvency administration services as referred to in paragraph 13(d) of the discussion paper. In reply, DS(FS) advised that the statutory role and functions of the OR were prescribed in the Companies Ordinance and the Bankruptcy Ordinance. Having regard to the changing socio-economic circumstances since the ORO was first set up in 1992 and growing public concern over the role of the Government in the administration of insolvency cases, the Administration considered that a fundamental review of the role and functions of the OR should be conducted taking into account the development in overseas insolvency administration regimes. It was envisaged that legislative amendments might be required as a result of the review.

35. Mr Henry WU expressed his general concern about the extensive use of consultancy services by the Administration and sought clarification on the role and the extent of influence of the Administrator over the aforesaid consultancy study. Miss Emily LAU also enquired about the strategy and approach to be adopted in the consultancy study having regard to the experience drawn from the consultancy review of the Companies Ordinance.

36. In reply, DS(FS) confirmed that the Administrator and the senior management of the ORO would brief the consultants on the background and objectives of the review, and would provide information on the operations of the ORO. The Administrator would also be actively involved in the consultation exercise for the study. Having regard to the views collected during the consultation exercise, the Administration would make a decision on

the direction to be pursued for the local insolvency administration regime and on this basis, the consultants would formulate various options on the future role and functions of the OR and the ORO. She remarked that while the Administration would provide the necessary steer, the consultants would be given due independence in drawing up their findings and proposals. DS(FS) also advised that the tendering exercise for the consultancy study was in progress and a provision of \$8 million had been earmarked in the 2000-01 Estimates for the study. In this regard, Mr Henry WU urged the Administration not to give pre-emptive instructions to the consultants which might unduly influence the latter in finalizing the proposals of the study.

37. The item was voted on and endorsed. Mr CHEUNG Man-kwong requested that his abstention be recorded.

EC(2000-01)14

Proposed creation of two permanent posts of Deputy Principal Government Counsel (DL2) in the Civil Division of the Department of Justice: one in the Commercial Law Team with effect from 1 December 2000 to strengthen the directorate support in complicated commercial law matters and one in the Insider Dealing Tribunal Team with effect from 12 December 2000 to provide continued directorate support to the Financial Services Bureau in relation to insider dealing cases

38. Members noted that the present proposal had been discussed by the Panel on Administration of Justice and Legal Services (AJLS) on 17 October 2000. Miss Margaret NG, Chairman of the Panel, reported that Panel members supported the proposal on account of the need to strengthen the legal services for the Government to cope with the new challenges brought about by the technological and economic developments, particularly in information technology and e-commerce. She stressed that for Hong Kong to remain competitive, its legal system must be kept abreast with these developments. In the course of discussion, Panel members had noted that the duties of the proposed Senior Assistant Law Officer (Civil Law)(Commercial) post were related to various new developments in the commercial sector, and therefore had suggested that the post should be filled by open recruitment.

39. The Law Officer (Civil Law) (LO(CL)) confirmed that the Department of Justice would seek approval to fill the post by open recruitment. In this regard, DS(CS) said that in principle, the CSB would not object to open recruitment to fill posts at promotion ranks provided that there was sound justification. CSB would consider the request and sought the advice of the Public Service Commission as appropriate.

40. Mr Henry WU referred to the major Government initiatives set out in paragraph 4(a) to (f), which were cited in the proposal to elucidate the significant increase in the complexity and range of the legal work undertaken by the Commercial Law Team. He pointed out that most of these initiatives had already been taken on board or under implementation and therefore questioned why such factors had been taken into account to justify the creation of a Deputy Principal Government Counsel (DPGC) post on a permanent basis.

41. In response, LO(CL) explained that a major requirement for the said new post was to handle legal matters relating to new commercial developments, particularly in the fast-changing broadcasting and telecommunications industries. New legal issues would continue to arise from new economic developments and changes and would result in work of an on-going in nature for the Commercial Law Team. While the legal framework for some of the initiatives listed in paragraph 4 of the paper had been established, these initiatives would continue to require legal input from the Commercial Law Team in the course of implementation. To ensure that proper legal services were provided for Government bureaux and departments in the light of new developments in the commercial fields, it was necessary to create a dedicated permanent DPGC post.

42. Referring to the fines levied by the Insider Dealing Tribunal (IDT) on "found insider dealers" as set out in Enclosure 4 to the discussion paper, Miss Emily LAU queried whether the existing sanctions on insider dealing could achieve the intended deterrent effect, bearing in mind that insider dealing was not punishable as a criminal offence under the existing legislation.

43. In reply, LO(CL) advised that the issue of criminalization of insider dealing practices had been considered by the Administration and the relevant proposal had formed part of the Draft Securities and Futures Bill published in April 2000. He envisaged that this would again be one of the major issues to be examined during scrutiny of the forthcoming Securities and Futures Bill by LegCo. As to whether the present sanctions provided sufficient deterrent effect on insider dealers, LO(CL) said that the level of fines levied on found insider dealers depended very much on the amount of disgorgement (maximum one time profit gained or loss avoided) in the case concerned. Indeed in some of the inquiries completed by the IDT, the fines had been higher than the disgorgement and the highest fine was \$25 million. He therefore considered that the level of fines levied should have provided disincentives to insider dealings. LO(CL) also confirmed that the tribunal decisions set out in Enclosure 4 to the discussion paper were final decisions after appeal, if any. However, there were two additional tribunal decisions that were the subject of judicial review for the time being and therefore had not been included in the Enclosure.

44. Mr Henry WU enquired about the staffing requirement of the Market Misconduct Tribunal (MMT) proposed to replace the IDT under the Securities

and Futures Bill. In reply, LO(CL) advised that as the MMT would have a wider purview than the IDT, he envisaged that additional staffing for the MMT would probably be required and this would be considered at a later stage. Mr Henry WU said that he would not object to providing additional staffing resources for the MMT if the new tribunal was tasked to taking up all insider dealing cases from the IDT as well as other cases of market misconduct.

45. Noting that there were currently two time-limited Senior Government Counsel (SGC) posts underpinning the DPGC post in the IDT, Mr Henry WU enquired about the planned arrangement for the said SGC posts. In reply, LO(CL) confirmed that if approval was given for the supernumerary DPGC post in the IDT to be retained on a permanent basis, the two supporting SGC posts would also be retained permanently. As these SGC posts were non-directorate posts, retention of these posts would be considered by the Administration internally according to established procedures.

46. In reply to Mr Henry WU's enquiries about the duties of the two posts of DPGC in the Commercial Law Team set out in Enclosures 2 and 3 of the discussion paper, LO(CL) explained that the division of responsibilities between the two DPGC posts was mainly based on subject areas; one would be broadly responsible for legal matters on telecommunications and broadcasting and the other for legal matters on securities and futures trading. He also clarified that item (8) of the job description in Enclosure 3 should read "performing such other duties as may be assigned from time to time by the Law Officer (Civil Law) and the Deputy Law Officer (Civil Law)(Commercial)". The term "Law Officer (Civil Law)" had been inadvertently omitted in the job description.

47. The item was voted on and endorsed.

EC(2000-01)15

Proposed creation of one supernumerary post of Justice of Appeal of the Court of Appeal of the High Court (JSPS 17) up to 28 September 2003 in the Judiciary to take up the judicial duties of a Justice of Appeal of the Court of Appeal of the High Court who has been appointed as the Chairman of the Electoral Affairs Commission

48. Mr Howard YOUNG expressed support for the present proposal on account of the need to ensure that the Judiciary was adequately staffed to perform its judicial functions. However, he expressed reservation on the need to appoint such a senior judicial officer as Mr Justice WOO Kwok-hing to lead the work of the Electoral Affairs Commission (EAC) in the next three years as no major territory-wide elections would take place during this period.

49. In response, the Deputy Secretary for Constitutional Affairs (DS(CA)) advised that in accordance with the relevant provisions under the Electoral Affairs Commission Ordinance (EACO) (Cap. 541), the person appointed as Chairman of the EAC must be a Judge of the High Court and he should be so appointed by the Chief Executive in consultation with the Chief Justice of the Court of Final Appeal. He also advised that the ranking of the replacement post as a result of the appointment of the Chairman of EAC would depend on the substantive ranking of the latter in the Judiciary. When Mr Justice WOO was first appointed as Chairman of EAC in September 1997, he was a Judge of the Court of First Instance and therefore the replacement post then created was of the same rank. Since Mr Justice WOO had been appointed as Justice of Appeal of the Court of Appeal on 21 January 2000, the replacement post under the present proposal was correspondingly pitched at the rank of Justice of Appeal of the Court of Appeal.

50. Mr CHEUNG Man-kwong expressed reservation on the present arrangement whereby the ranking of the replacement post would be correspondingly upgraded upon promotion of the judge appointed as Chairman of EAC. As the relevant provision under the EACO only required that the person appointed as Chairman of the EAC should be a Judge of the High Court, Mr CHEUNG questioned why it was necessary to appoint a Justice of Appeal of the Court of Appeal as in the case of Mr Justice WOO.

51. DS(CA) advised that in considering the appointment of the Chairman of the EAC, the Chief Executive had taken into account a number of factors including a candidate's familiarity with electoral matters and the public acceptance of the candidate. He stressed that the re-appointment of Mr Justice WOO to the position had been made in accordance with the relevant statutory procedures and requirements.

52. Noting that the current appointment of Mr Justice WOO was only up to September 2003, Mr CHEUNG Man-kwong further questioned the present arrangement on grounds of familiarity with electoral matters as Mr Justice WOO's term of appointment would not cover the next territory-wide District Council (DC) and LegCo elections. If Mr Justice WOO was not again re-appointed in September 2003, one could envisage that the new Chairman of EAC then appointed might not have sufficient time to familiarize himself/herself with electoral matters to provide adequate supervision for the next DC and LegCo elections.

53. In response, DS(CA) advised that the EAC comprised a chairman and two members and was provided with administrative support by the Registration and Electoral Office. While the Administration was not in a position to comment on the future appointment of the Chairman of EAC upon expiry of the current term in September 2003, the Administration was confident that the conduct of the next DC elections in 2003 and the next LegCo elections in 2004 would not be affected.

54. Mr Andrew WONG opined that the present proposal was justified. He recalled that in considering the EAC Bill, the then LegCo Members accepted that the Chairman of the EAC should be a Judge of the High Court and that a replacement for the judge appointed should be provided for the Judiciary accordingly. As regards the term of appointment, the relevant provision under the EACO provided that the appointment could last for three to five years. He also remarked that the appointment of the Chairman of the EAC did not fall within the purview of this Subcommittee.

55. Miss Emily LAU said that she had no objection to the present proposal as it sought to ensure that the work of the Court of Appeal would not be adversely affected due to the re-appointment of Mr Justice WOO. She however shared the concern of Mr CHEUNG about the ranking of the replacement post following the re-appointment of Mr Justice WOO to the position. She remarked that LegCo Members had not been consulted on the appointment of the Chairman of the EAC in the past, and suggested that the related issues be further discussed at the Constitutional Affairs (CA) Panel. Mr Andrew WONG said that he had no objection to pursuing the matter at the CA Panel.

XX

56. DS(CA) assured members that when the next appointment of the Chairman of the EAC was due, the Administration would take into account members' views.

57. Mr Mak Kwok-fung queried whether Mr Justice WOO would be required to attend to the work of the EAC on a full time basis as there would be no major elections to be held during his current term of appointment. In reply, DS(CA) said that there were a number of tasks required of the EAC in the years to come. For example, the EAC had to provide a comprehensive report on the 2000 LegCo elections. It was responsible for organizing the LegCo by-election for the Hong Kong Island to be held on 10 December 2000 and thereafter had to provide a report. In early to mid 2001, the EAC would conduct another voter registration exercise. The EAC also planned to conduct a comprehensive review on the overall electoral arrangements, having regard to the experience drawn from the 1998 and 2000 LegCo elections and the 1999 DC elections. In 2002 and 2003, the EAC would need to make preparations, such as the delineation of constituency boundaries and conducting public consultation, for the 2003 DC elections and the 2004 LegCo elections.

58. Noting that the replacement post created in the Judiciary when Mr Justice WOO was first appointed as Chairman of the EAC would lapse by 28 September 2000, Mr Howard YOUNG enquired about the staffing arrangement in the Judiciary during the period from 29 September 2000 to the actual creation of the proposed post. In reply, DS(CA) advised that the Administration had taken the earliest opportunity to submit the present proposal. The Assistant Judiciary Administrator supplemented that during the said period, Mr Justice WOO had endeavoured to allocate some time to hear

some appeal cases filed with the Court of Appeal.

59. Miss Margaret NG said that she supported the present proposal in consideration of the need to ensure that the work of the Court of Appeal would not be adversely affected. She recalled that at the Panel meeting to discuss the present proposal, members had asked whether Mr Justice WOO had devoted less time to the work of the Judiciary since he was appointed as Chairman of the EAC. The Administration answered in the affirmative, explaining that Mr Justice WOO would attend to the work of the Judiciary when he could find time to do so and in most cases, he was mainly involved in pre-trial work. However, after the Panel meeting, Miss NG said that Mr Justice WOO had openly criticized Panel members for making remarks about his work involvement in the Judiciary. As the account given by Mr Justice WOO about his judicial duties was quite different from what the Administration had informed the CA Panel, Miss NG sought clarification.

60. In response, the Chief Electoral Officer clarified that at the said Panel meeting, the Administration had explained that the work of the EAC was usually urgent and therefore must be attended to by the Chairman of the EAC without delay. Indeed, during the years from 1997 to 1999, Mr Justice WOO spent relatively less time on the work in the Judiciary as the work schedule of the EAC had been very heavy during this period. However, Mr Justice WOO, in making his remark after the Panel meeting, was probably referring to the situation from early 2000 till present when the work schedule of EAC had not been so heavy and had enabled him to spend more time on the work of the Judiciary during this period.

61. Miss Margaret NG stated that the comments made by members at the CA Panel meeting were well founded in the light of the information provided by the Administration at the Panel meeting.

62. The item was voted on and endorsed.

63. As two items on the agenda had not been dealt with and it was approaching 1:00 pm at this juncture, some members asked the Chairman about the meeting arrangement. The Chairman said that he intended to deal with all the agenda items at this meeting and DS(Tsy) confirmed that the Administration could stay on beyond 1:00 pm. In reply to Miss Emily LAU about the meeting duration, the Clerk confirmed that this ESC meeting had been scheduled in accordance with the normal 2-hour meeting time slot. While members appreciated that some meetings might last slightly longer, some members said that as they had other commitments after 1:00 pm and item EC(2000-01)17 might require considerable discussion, they suggested that the Subcommittee should adjourn at 1:00 pm and the remaining item(s) should be discussed at another meeting. The Chairman agreed.

EC(2000-01)16

Proposed creation of one supernumerary post of Chief Systems Manager (D1) in the Inland Revenue Department for a period of 24 months with effect from 1 December 2000 to plan, manage and co-ordinate the implementation of three major projects under its five-year Information Systems Strategy Plan

64. The item was voted on and endorsed.

EC(2000-01)17

Proposed retention of one supernumerary post of Deputy Director of Immigration (GDS(C)3) in the Immigration Department for a period of six months with effect from 1 January 2001 to lead and plan all necessary preparatory work for the introduction of a new generation of identity card and a new supporting computer system

65. On the urgency of this proposal, members noted that the supernumerary post of Deputy Director (Special Duties) created under delegated authority was due to lapse on 1 January 2001. After discussion, the Chairman directed that this proposal be considered at a special meeting to be held on 22 November 2000 at 9:00 am.

66. The meeting ended at 1:00 pm.

Legislative Council Secretariat
30 November 2000