

Extract from the minutes of Establishment Subcommittee meeting on 15.11.2000

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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.

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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.

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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

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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.

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

Admin the SCDCS, 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.

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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.

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