

Ref : CP/G06/4 VI

**Paper for meeting between LegCo Members and
The Ombudsman on 5 December 2001**

**Background brief on the recruitment of staff in connection with
the delinking of The Ombudsman from the Administration**

Purpose

This paper provides a summary of discussions by LegCo Members on the recruitment of staff to The Ombudsman's Office in connection with the delinking of The Ombudsman from the Administration.

Discussion at meetings between LegCo Members and The Ombudsman

2. LegCo Members have all along been pressing for the independence of the Office of The Ombudsman. The concern has been raised repeatedly at meetings between Members and The Ombudsman.

3. At the meeting on 14 December 1999, Members expressed worries that 79 of the 90 posts in The Ombudsman's Office were filled by civil servants. As civil servants were subject to redeployment back to Government departments, the overwhelmingly large percentage might give rise to apprehension on the independence of investigations. Members stressed the need for independence to be seen to be achieved. The Ombudsman assured Members that the independence of the work of the Office was demonstrated by its performance, and it was the integrity and culture of an organization that mattered rather than the status of its staff. Nevertheless, she informed Members that in order to achieve greater flexibility in resource management and to enhance the image of independence, she was actively planning for the delinking of her Office and was working against a target of achieving one-line-vote arrangements in the 2001/02 financial year.

4. The subject matter remained the prime concern of Members during two subsequent meetings on 13 June 2000 and 5 December 2000. At the meeting in June 2000, Members were concerned with the large proportion of two-third of the investigators being civil service secondees and the phenomenon of civil servants under investigation by civil servants. Members pressed for a timetable for an expeditious recruitment of non-civil service staff. The Ombudsman advised that the delinking proposals had been submitted to the Administration in May 2000. She explained that the delinking would have to be conducted in a progressive manner and it was not possible to set a rigid timetable to avoid impact on her Office's operation. When the concern was discussed again at the meeting on 5 December 2000, The Ombudsman advised

that the Office had drawn up a recruitment plan to replace serving civil servants, and a phased programme of two years was proposed to avoid disrupting services to the public and to give sufficient learning curve and guidance to new recruits. Some Members considered the proposal of two years still too long, while others concurred that a transitional period was required for the delinking. On the reason for the serving civil servants not choosing to stay and continue to serve the Office, The Ombudsman advised that financial considerations only allowed the Office to employ staff and offer salaries at market level, and this was less attractive than the favourable employment conditions enjoyed by civil servants in general.

Discussion by the LegCo Panel on Administration of Justice and Legal Services

5. At the meeting of the LegCo Panel on Administration of Justice and Legal Services on 26 April 2001, members were informed of the proposed amendments to The Ombudsman Ordinance (Cap. 397) to formalize the delinking of The Ombudsman's Office. Members were advised that the Office would gradually replace the civil servants serving on secondment to the Office by contract staff, and it was anticipated that the 74 serving civil servants in the Office would be released by phases over the next 24 months.

Discussion by the Bills Committee on The Ombudsman (Amendment) Bill 2001

6. To formalize the delinking exercise, the Administration introduced The Ombudsman (Amendment) Bill 2001 in May 2001 to make The Ombudsman a corporation sole to enable it to operate in a mode independent of the Administration. In the course of scrutiny of the Bill, members of the Bills Committee expressed concern on the pay and conditions of service of The Ombudsman's staff. Members took the view that the pay and conditions of service of The Ombudsman and her staff should be determined by a management committee instead of the Chief Executive as proposed in the Bill. Members also considered there to be a need for specification of the broad principles of administrative arrangements, such as the remuneration of The Ombudsman's employees being not better than that of comparable ranks in the civil service.

7. Although the Administration did not agree with the proposal for a management committee to determine the pay and conditions of service of The Ombudsman's staff, the Administration accepted the suggestion for such power to be vested in The Ombudsman and introduced a Committee Stage Amendment to transfer the power of approving the terms and conditions of appointment for staff from the Chief Executive to The Ombudsman. This proposal was premised on the understanding that The Ombudsman would

adhere strictly to the "no better than" principle in determining the remuneration package for staff of the Office in comparison to that received by civil servants of comparable ranks, and the Director of Administration would be consulted on any proposed changes. The agreed understanding would be specified in the Memorandum of Administrative Arrangements.

8. Members of the Bills Committee also expressed concern about possible staff redundancy arising from the delinking of The Ombudsman from the Administration. The Ombudsman assured members that no staff member would be rendered redundant after the delinking as most existing staff members were general grades officers seconded from the Government and they would return to the Government for re-posting. The Bills Committee requested The Ombudsman to report the staffing arrangements to LegCo after the enactment of the Bill to ensure that there would not be any staff redundancy problems, and The Ombudsman undertook to do so at the current meeting. In addition, the Bills Committee also recommended that should Members wish to pursue the matter after receiving the updated from The Ombudsman, the matter could be referred to the LegCo Panel on Manpower for follow-up.

Complaints Division
Legislative Council Secretariat
30 November 2001