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Panel on Home Affairs

Background brief prepared by the Legislative Council Secretariat

Appointment of the Chairperson of the Equal Opportunities Commission

Purpose

This paper provides background information on issues raised by members of the Panel on the Home Affairs relating to the appointment of the Chairperson of the Equal Opportunities Commission (EOC), including concerns about the criteria and procedure for the appointment of the EOC Chairperson.

Composition of EOC

2. EOC is a statutory body established under the Sex Discrimination Ordinance (SDO) on 20 May 1996. EOC is responsible for the implementation of SDO, the Disability Discrimination Ordinance and the Family Status Discrimination Ordinance. EOC is headed by an executive Chairperson, the post of which is pitched at the rank equivalent to Point 8 on the Government Directorate Pay Scale.

3. Under section 63 of SDO, the Chief Executive (CE) shall appoint a Chairperson and not less than four or more than 16 other members to be members of EOC, and they cannot be public officers. The members of EOC form its governing body with authority to perform the functions and exercise the powers of EOC. According to section 2(2) of Schedule 6 of SDO, a member of EOC shall be appointed for a term not exceeding five years.

4. Under section 1 of Schedule 6 of SDO, the Chairperson may not, without the special approval of CE, hold any office of profit other than his office as Chairperson. The Chairperson shall be appointed on a full-time basis whereas other members of EOC may be appointed on a full-time or part-time basis.

5. Section 63 and Schedule 6 of SDO are in **Appendix I**.

Appointment of previous EOC Chairpersons

Period of appointment

6. As detailed in **Appendix II**, with the exception of Mrs Patricia CHU, the last EOC Chairperson, the initial period of appointment for the three previous EOC Chairpersons, i.e. Dr Fanny CHEUNG, Ms Anna WU and Mr Michael WONG, was three years.

7. Dr CHEUNG was initially appointed for the period from 20 May 1996 to 19 May 1999. Her appointment was subsequently extended to 31 July 1999. After an initial appointment of three years, the second EOC Chairperson, Ms Anna WU, was re-appointed for one year from 1 August 2002 to 31 July 2003. Mr Michael WONG was originally appointed for the period from 1 August 2003 to 31 July 2006, but he resigned with effect from 7 November 2003.

Selection of the Chairperson

8. In his reply to an oral question raised by Dr Hon YEUNG Sum about the appointment of the EOC Chairperson at the Legislative Council (LegCo) meeting on 2 July 2003, the Secretary for Home Affairs (SHA) said that the Administration launched an open recruitment exercise for the post of the first EOC Chairperson. Advertisements were placed in local and overseas newspapers and a selection panel was set up. The first EOC Chairperson, Dr Fanny CHEUNG, was appointed by the then Governor upon the recommendation of the selection panel. According to media reports¹, Dr CHEUNG was taking unpaid leave and holding her professorship at the Chinese University of Hong Kong during her tenure as the EOC Chairperson.

9. In the same reply, SHA pointed out that the second Chairperson was appointed through “internal selection”. The Administration had not provided information about how the other EOC Chairpersons were selected for appointment.

Notice of re-appointment

10. The Government announced the appointment of the third EOC Chairperson, Mr Michael WONG, on 2 July 2003 to replace Ms Anna WU. According to Ms WU, the appointment was made known to her while she was on holiday overseas by a long distance call from the Home Affairs Bureau at 7:00 am on 2 July 2003.

¹ South China Morning Post dated 20 May 1999 and 23 July 1999

11. In the same reply to the oral question raised by Dr Hon YEUNG Sum referred to in paragraph 8 above, SHA pointed out that under the existing procedures, the Government was not required to give notice of re-appointment or otherwise to the incumbent Chairperson within a stated period prior to the expiry of his/her current term of office or to discuss with him/her the relevant arrangements. Although it was provided in the contract of the EOC Chairperson that CE may renew the contract with the Chairperson three months prior to the expiry of his/her current term of office, the contract did not impose a deadline by which discussions should be held with the Chairperson on reappointment or otherwise. This contract term had been adopted since the first Chairperson's term of office.

12. In his reply to a supplementary question raised by Dr Hon LO Wing-lok, SHA explained that Ms WU was re-appointed for one more year to complete the tasks within her term of office.

Appointment of a retired judge as the EOC Chairperson

13. CE gave approval for Mr Michael WONG to continue to receive pension during his term of office as the EOC Chairperson. In his reply to an oral question raised by Hon Albert HO about appointment of retired judges to public offices at the Council meeting on 22 October 2003, SHA said that the Administration attached great importance to the role of EOC and saw it as its partner. CE was empowered by law to appoint the EOC Chairperson as well as to determine the terms and conditions of appointment in order to ensure that the most suitable candidate could be found. In appointing Mr WONG, the Administration considered him an ideal candidate for the appointment because being a retired Justice of Appeal of the Court of Appeal of the High Court, Mr WONG was highly reputable and widely respected. Apart from his strong legal background, he had also been involved in community services.

14. SHA also explained that the Administration had taken into account that Mr WONG had to withdraw from his retirement and resign from various offices in the public and private sectors in order to devote himself to work full-time for EOC and to serve the community. After careful consideration of all the factors, CE considered Mr WONG the most suitable candidate and decided to accept his request of not suspending payment of his pension.

Appointment of the incumbent EOC Chairperson

15. The Government announced on 13 December 2004 that Mrs Patricia CHU would cease to be the EOC Chairperson on 15 December 2004, upon the expiry of her current term of appointment. According to the Government, Mrs CHU declined offer of re-appointment for personal reasons. According

to some media reports², however, Mrs CHU's departure was due to a breakdown in negotiation over the extension of her contract. While Mrs CHU asked for an extension of one year, the Government only offered a seven-month extension. Mrs CHU also reportedly said that "it would have been better if the Government had given her more notice of the termination of her service so we could better prepare a transition".

16. The Government announced on 15 December 2004 that CE had appointed Mr Raymond TANG as the EOC Chairperson for five years with effect from 12 January 2005. According to the press release issued by the Government, Mr TANG's strong legal background well qualified him for overseeing the work of EOC, i.e. to implement the three anti-discrimination ordinances.

Role of the Home Affairs Bureau

17. According to SHA, his responsibility in the appointment of the Chairperson of EOC lies only in recommending candidates for the consideration by CE.

Concerns about the appointment of the EOC Chairperson expressed at meetings of the Panel on Home Affairs

Resignation of Michael WONG

18. After Mr Michael WONG assumed the duty of the EOC Chairperson, the employment of the Director (Operations) designate was terminated by EOC. The incident had aroused controversy among the public. Mr WONG originally agreed to attend the meeting of the Panel on Home Affairs on 7 November 2003 to discuss relevant issues. On the day before the meeting, Apple Daily published a report on a private meeting attended by SHA, Mr Michael WONG, Dr Raymond WU and Mr Andrew LIAO on the night of 5 November 2003. Mr WONG held a press conference in the afternoon of 6 November 2003 to announce his resignation. He claimed at the press conference that he had been "deserted" and was a victim of "political persecution".

19. The incident of the termination of the employment of the Director (Operations) designate by EOC and the subsequent resignation of Mr Michael WONG as the EOC Chairperson have aroused concerns about the criteria and procedure for making appointment of the EOC Chairperson. The concerns expressed at meetings of the Panel on Home Affairs are summarized below.

² South China Morning Post dated 14 and 15 December 2004

Appointment criteria

20. Some Panel members queried the suitability of Mr WONG for the post since he had little experience in the work of promoting equal opportunities.

21. Some other Panel members pointed out that during his interview with the media, Mr Michael WONG had mentioned that he would substantially reduce the expenditure of EOC and downsize EOC. These members queried whether Mr WONG was appointed to carry out certain tasks, such as streamlining the establishment of EOC and revamping the objectives of EOC, during his tenure as the EOC Chairperson.

Appointment procedure

22. Most Panel members strongly felt that the Administration should take measures to enhance the transparency and openness of the appointment process of the EOC Chairperson. They suggested that consideration should be given to selecting the EOC Chairperson by open recruitment or requiring the selected person to meet with the Panel so that Member could assess the suitability of that person for the post.

23. The Administration responded that under the law, the appointment of the EOC Chairperson was made by CE. There was no requirement that the selected person had to first obtain the endorsement of LegCo Members before CE making the appointment. It might involve legislative amendments if this additional requirement was to be imposed. SHA, however, said that the Administration would give thought to the suggestion of selecting the EOC Chairperson through open recruitment.

Minutes of meetings

24. Members may wish to refer to the minutes of the meetings of the Panel on Home Affairs held on 7 November, 14 November and 9 December 2003 for further details.

Relevant questions and motion raised/moved at Council meetings

25. A list of the relevant questions and motion raised/moved at Council meetings is in **Appendix III**.

PART VII
EQUAL OPPORTUNITIES COMMISSION

General

63. Establishment of Commission

- (1) There is hereby established a body corporate to be called the Equal Opportunities Commission.
- (2) The Commission shall have perpetual succession and a common seal and shall be capable of suing and being sued.
- (3) The Chief Executive shall appoint to be members of the Commission— (*Amended 66 of 1999 s. 3*)
 - (a) a Chairperson; and
 - (b) not less than 4 or more than 16 other members,each being an individual who is not a public officer.
- (4) The members of the Commission shall form its governing body with authority, in the name of the Commission, to perform the functions and exercise the powers of the Commission.
- (5) The members of the Commission may be appointed on a full-time or part-time basis as the Chief Executive thinks fit except that the Chairperson shall be appointed on a full-time basis. (*Amended 66 of 1999 s. 3*)
- (6) The relevant provisions of Schedule 6 shall have effect with respect to the Commission and its members.
- (7) The Commission shall not be regarded as a servant or agent of the Government or as enjoying any status, immunity or privilege of the Government.
- (8) Part VII of the Interpretation and General Clauses Ordinance (Cap. 1) shall apply to the Commission and appointments to the Commission except in so far as that Part is inconsistent with the provisions of this Ordinance.
- (9) Every appointment under subsection (3) shall be notified in the Gazette.
- (10) The Chief Executive in Council may, by notice in the Gazette, amend subsection (3)(b) by substituting another number for any number appearing in that subsection. (*Amended 66 of 1999 s. 3*)

SCHEDULE 6

[ss. 63, 64, 67 & 90]

PROVISIONS WITH RESPECT TO THE COMMISSION AND
COMMITTEES AND THEIR MEMBERS

Members and procedure of Commission

- 1. Terms and conditions of appointment of Chairperson, etc.**
 - (1) Subject to subsection (2), the Chief Executive shall determine the remuneration and the terms and conditions of appointment of the Chairperson. (*Amended 66 of 1999 s. 3*)
 - (2) The Chairperson shall not, without the specific approval of the Chief Executive— (*Amended 66 of 1999 s. 3*)
 - (a) hold any office of profit other than his office as Chairperson; or
 - (b) engage in any occupation for reward outside the functions of his office.
 - (3) This section shall apply to any other member of the Commission who is appointed on a full-time basis as it applies to the Chairperson.
- 2. Terms of appointment of members of Commission**
 - (1) Subject to sections 1 and 5 and subsection (2), a member of the Commission shall hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to be a member, be eligible for reappointment.
 - (2) A member of the Commission shall be appointed for a term not exceeding 5 years.
 - (3) A member of the Commission may at any time by notice in writing to the Chief Executive resign his office. (*Amended 66 of 1999 s. 3*)

Terms of office of previous Chairpersons of Equal Opportunities Commission (EOC)

	Chairperson	Appointment Period	Remark
1.	Dr CHEUNG Miu-ching, Fanny, OBE, JP	20 May 1996 - 19 May 1999 <u>Extension of appointment:</u> 20 May 1999 - 31 July 1999	
2.	Ms WU Hung-yuk, Anna, SBS, JP ¹	1 August 1999 - 31 July 2002 <u>Re-appointment:</u> 1 August 2002 - 31 July 2003	
3.	Mr WONG Kin-chow, Michael, GBS, JP	1 August 2003 - 31 July 2006	Resigned with effect from 7 November 2003
4.	Mrs CHU YEUNG Pak-yu, Patricia, BBS, JP ²	15 December 2003 - 14 December 2004	Left the office on 15 December 2004

¹ Ms Anna WU was first appointed as an EOC member for a period of two years from 20 May 1996 to 19 May 1998, and re-appointed for a further period of two years from 20 May 1998 to 19 May 2000.

² Mrs Patricia CHU was first appointed as an EOC member for a period of two years from 1 August 2003 to 31 July 2005.

Appendix III

List of questions and motion raised/moved at Council meetings

Questions and motion raised/moved relating to the appointment of the Chairperson of the Equal Opportunities Commission (EOC) at previous Council meetings is set out below for members' easy reference.

Questions

Council meeting on 2 July 2003

2. Dr Hon YEUNG Sum raised an oral question on the procedure adopted for the appointment and re-appointment of the EOC Chairperson. The question and reply are available on the Council's website at "<http://www.legco.gov.hk/yr02-03/english/counmtg/hansard/cm0702ti-translate-e.pdf>".

Council meeting on 22 October 2003

3. Hon Albert HO Chun-yan raised an oral question on the appointment of retired judges to public offices. The question and reply are available on the Council's website at "<http://www.legco.gov.hk/yr03-04/english/counmtg/hansard/cm1022ti-translate-e.pdf>".

Council meeting on 12 November 2003

4. Dr Hon LAW Chi-kwong raised an oral question about the appointment of the Chairperson and members of EOC, and measures to safeguard the reputation of EOC and restore public confidence in EOC. The question and reply are available on the Council's website at "<http://www.legco.gov.hk/yr03-04/english/counmtg/hansard/cm1112ti-translate-e.pdf>".

5. Hon Emily LAU raised a written question relating to the Chief Executive's exercise of discretionary power to allow retired civil servants or judicial officers to continue to receive their pensions during their re-appointment to the public service. The question and reply are available on the Research and Library Services Information System and the Council's website at "<http://www.legco.gov.hk/yr03-04/english/counmtg/hansard/cm1112ti-translate-e.pdf>".

Council meeting on 19 November 2003

6. Hon Emily LAU raised an oral question on how the Government would follow up an allegation that the former EOC Chairperson, Mr Michael WONG, while in office, had divulged internal documents of EOC, including the

personal data of job applicants, to the media; details of the private meeting attended by SHA held on the night of 5 November 2003; and enhancement of EOC's credibility through a new appointment mechanism. The question and reply are available on the Council's website at "<http://www.legco.gov.hk/yr03-04/english/counmtg/hansard/cm1119ti-translate-e.pdf>".

Motion

Council meeting on 26 November 2003

7. Hon Fred LI moved a motion urging the Government to learn the lesson from the "Michael WONG Kin-chow incident" and take expeditious measures to restore public confidence in EOC. Hon LEE Cheuk-yan moved an amendment to the original motion requesting the Government to arrange for the proposed appointee for the post of the EOC Chairperson to attend hearings of the Legislative Council and answer questions from Members before making the appointment. The amendment was negatived. The Official Record of Proceedings of the meeting are available on the Council's website at "<http://www.legco.gov.hk/yr03-04/english/counmtg/hansard/cm1126ti-translate-e.pdf>".