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Establishment Subcommittee of the Finance Committee

**Minutes of the 2nd meeting
held at the Conference Room A
on Wednesday, 7 December 2005, at 8:30 am**

Members present:

Hon LI Fung-ying, BBS, JP (Chairman)
Hon KWONG Chi-kin (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
Dr Hon David LI Kwok-po, GBS, JP
Hon CHEUNG Man-kwong
Hon SIN Chung-kai, JP
Hon WONG Yung-kan, JP
Hon Howard YOUNG, SBS, JP
Hon Abraham SHEK Lai-him, JP
Hon WONG Kwok-hing, MH
Hon MA Lik, GBS, JP
Dr Hon KWOK Ka-ki
Hon WONG Ting-kwong, BBS
Hon Patrick LAU Sau-shing, SBS, JP

Public Officers attending:

Miss Elizabeth TSE, JP	Deputy Secretary for Financial Services and the Treasury (Treasury)
Miss Jennifer MAK, JP	Deputy Secretary for the Civil Service
Mr Alfred FOK	Principal Executive Officer (General), Financial Services and the Treasury Bureau (The Treasury Branch)
Mr Andrew WONG, JP	Permanent Secretary, Chief Executive's Office
Ms Angelina KWAN	Senior Administrative Officer, Chief Executive's Office
Mrs Magdalen WONG	Chief Executive Officer (Administration),

Mr Stephen LAM, JP	Chief Executive's Office
Mr Clement MAK, SBS, JP	Secretary for Constitutional Affairs
	Permanent Secretary for Constitutional Affairs
Mr Patrick NIP, JP	Acting Director, Beijing Office
Mr Arthur HO, JP	Head, Hong Kong Guangdong Cooperation Coordination Unit
Mr Philip YUNG, JP	Deputy Secretary for Commerce, Industry and Technology (Commerce & Industry)
Mr Michael WONG, JP	Deputy Secretary for Security
Mr Peter LEUNG, JP	Director, Hong Kong Economic and Trade Affairs, Guangdong
Mrs Susan MAK, JP	Deputy Director of Administration
Miss Annie TAM, JP	Director of Administration and Development, Department of Justice
Mr Frederick MA, JP	Secretary for Financial Services and the Treasury
Mr Kevin HO, JP	Permanent Secretary for Financial Services and the Treasury (Financial Services)
Mr Gordon JONES, JP	Registrar of Companies
Mr Charles BARR	Deputy Law Officer (Civil Law)
Ms NIP Sai-lan, JP	Deputy Secretary for Housing, Planning and Lands (Planning and Lands)
Mr CHAN Tin-chu	Assistant Secretary for Housing, Planning and Lands (Planning and Lands) (Building)1
Mr WU Moon-hoi, JP	Director of Buildings
Mr CHEUNG Hau-wai, JP	Deputy Director of Buildings

Clerk in attendance:

Ms Rosalind MA	Senior Council Secretary (1)8
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Staff in attendance:

Ms Pauline NG	Assistant Secretary General 1
Ms Guy YIP	Council Secretary (1)1
Ms Caris CHAN	Senior Legislative Assistant (1)1
Mr Frankie WOO	Legislative Assistant (1)2

Action

The Chairman drew members' attention to two information papers provided by the Administration before the meeting. Paper No. ECI(2005-06)6 provided an overview of the establishment position of civil service directorate posts and the posts being planned for creation and deletion in the 2005-06 legislative session. Paper No. ECI(2005-06)7 set out the latest changes in directorate establishment approved since 2002. According to the Administration, the changes arising from the five

proposals to be considered at the meeting, if endorsed, would result in an increase of six permanent posts and two supernumerary posts.

EC(2005-06)6 Proposed reorganization of the Chief Executive's Office with effect from 1 February 2006 to provide better support to the Chief Executive

2. The Chairman informed members that the Panel on Public Service and the Panel on Constitutional Affairs were consulted on the proposal at a joint meeting on 21 November 2005.

3. Mr CHEUNG Man-kwong remarked that the Chief Executive (CE) had made no genuine effort to respond the calls of the community at large, as evident in his indifferent attitude towards the request of some Legislative Council (LegCo) Members after the public rally on 4 December 2005 for a meeting to discuss public views on the political reform and their pursuit of universal suffrage. He recalled that when the Administration justified its proposals for the creation of a post of Information Coordinator (IC) in 1998 (which was subsequently deleted in 2002) and a post of Director of CE's Office (DCEO) in 2002, it had highlighted the need for enhancing communication with the LegCo. However, after all these years, no improvements had been made in this respect. Mr CHEUNG commented that unless CE attached greater importance to strengthening communication with the LegCo, he could not envisage how the creation of additional directorate posts in the CE's Office would improve the current situation. Mr CHEUNG said that Members of the Democratic Party were of the view that the current staffing proposal for reorganization of the CE's Office was not justified and therefore would not give their support to it.

4. In response, the Permanent Secretary, CE's Office (PS, CEO) pointed out that CE had responded promptly to the pursuit of participants of the rally at a media session held on the same day. In brief, CE assured the participants that he had heard their voices and shared their feelings and pursuit. As to the proposed IC post, PS, CEO explained that the IC would be responsible for the communication and public relation (PR)-related work of the CE's Office to ensure that PR strategies for major government policies and programmes would be effectively formulated and implemented in a timely and coordinated manner. Under the current structure, DCEO as the head of the CE's Office was responsible for a wide range of functions. Based on past experience, the range of duties under DCEO's charge was in practice too wide for one person to handle effectively, as the volume of work was too large and the nature of work involved demanded a wide range of skills and experiences not readily found in one individual. The proposal would provide dedicated support at senior directorate level to take charge of duties in different aspects. With the creation of the additional directorate posts, DCEO could focus on assisting CE in political work and in strengthening the liaison and communication with various political parties and groups, including the LegCo.

5. Responding to Mr WONG Kwok-hing's enquiry on the operational need of

and division of responsibilities between the IC post and the Assistant Director (Media) (AD(M)) post, PS, CEO explained that under the current staffing structure, AD(M) assisted DCEO in the communication and PR-related work of the CE's Office. Under the current staffing structure, the Director of Information Services had to be roped in, on many occasions, to help steer the Government's overall PR strategy in addition to her duties as the Head of the Information Services Department. This, in the Administration's view, was not sustainable. The CE's Office needed a dedicated person at senior directorate level to formulate and coordinate communication and PR-related work. The IC would be underpinned by the AD(M) and other staff in the Media Section in handling PR and media related work under the proposed structure.

6. The item was voted on and endorsed.

EC(2005-06)7 Proposed establishment of a Mainland Affairs Liaison Office under the Constitutional Affairs Bureau of the Government Secretariat and to set up additional offices in Shanghai and Chengdu with effect from 1 April 2006 and consequential changes in the Offices of the Chief Secretary for Administration and the Financial Secretary, Beijing Office and the Hong Kong Economic and Trade Offices

7. The Chairman informed members that the Panel on Commerce and Industry and the Panel on Constitutional Affairs were consulted on the proposal at their meetings on 15 and 21 November 2005 respectively.

Deployment of Immigration Officers to the Mainland offices

8. Mr Howard YOUNG and Mr James TIEN expressed support to the Administration's proposal to establish a Mainland Affairs Liaison Office and additional Economic and Trade Offices (ETOs) in Shanghai and Chengdu. They were of the view that the establishment of additional Mainland offices would strengthen the provision of assistance to Hong Kong residents in the Mainland. Noting that the Administration proposed to deploy Immigration Officers to the ETO in Guangdong (GDETO) to expand its functions, Mr YOUNG enquired whether and when similar staff arrangement would be made for the Shanghai ETO and Chengdu ETO. Mr CHEUNG Man-kwong and Mr WONG Ting-kwong expressed similar concern.

9. In reply, the Secretary for Constitutional Affairs (SCA) said that functions of the Mainland offices would not be confined to economic and trade related issues. As the majority of requests for assistance in the past few years originated from the Guangdong Province, the initial plan of the Administration was to deploy Immigration Officers to GDETO to provide relevant assistance within the five provinces covered by GDETO. Requests for assistance from areas outside GDETO's coverage, i.e. the remaining 26 provinces, autonomous regions and municipalities, would continue to be handled by the Beijing Office (BJO). The

Mainland offices in the proximity of the location where assistance was sought would assist BJO. SCA advised that in the long run, consideration would be given to extending the provision of such services to the Shanghai and Chengdu ETOs. The Administration would review the need for such services and take forward the matter progressively in the light of operational experience.

10. While expressing support to the Administration's proposal, Mr CHEUNG Man-kwong was of the view that the deployment of Immigration Officers to Shanghai and Chengdu ETOs should be arranged as soon as possible. Mr CHEUNG pointed out that LegCo Members fully appreciated that the demand for assistance from Hong Kong residents in distress were not confined to trade and business matters and hence would support proposals put forward by the Administration for allocating additional resources to strengthen its services in this regard. Mr WONG Ting-kwong shared Mr CHEUNG's view.

11. SCA pointed out that the Administration shared members' concern about the functions of and resource allocation for the Mainland offices. He advised that the Administration would keep these matters under review and endeavour to provide the needed assistance to residents in distress where feasible. Referring to the assistance that could be rendered to Hong Kong residents in the Mainland, SCA remarked that Mainland offices could assist Hong Kong residents who encountered problems such as loss of identity document, loss of monies and need for contact information of legal service providers etc. Staff of the Mainland offices would try their best to provide assistance as far as practicable to those who sought help and respond to enquiries in a prompt and helpful manner.

Assistance provided to Hong Kong enterprises and professional bodies

12. Mr James TIEN noted that apart from establishing economic and trade ties with Mainland authorities to facilitate cooperation, the Mainland offices also aimed to support Hong Kong enterprises, as described in paragraph 18 of the paper. He enquired whether such support included practical assistance to Hong Kong enterprises, in particular in providing information of latest local trade policies, regulations on labour and environmental protection and legal requirements on business operation in the Mainland, etc.

13. SCA said that it was crucial for the Mainland offices to establish and maintain close ties with relevant Mainland authorities to keep abreast of the latest economic development and trade requirements for the promotion of trade between Hong Kong and the Mainland, as well as the implementation of measures to enhance cooperation, such as the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA). Referring to paragraph 18(f), SCA pointed out that one of the functions of the ETOs was to support Hong Kong enterprises through facilitating them in obtaining information on business operation in the Mainland, in particular on local trade policies, regulations and latest economic development. Responding to Mr James TIEN's further enquiry on the availability of professional legal service in the Mainland, SCA and the Director, GDETO (D, GDETO) confirmed that the Mainland offices could provide Hong Kong enterprises with contact information of

local law firms.

14. D, GDETO supplemented that GDETO had made available the latest information on commerce and trade-related policies/regulations and the economic developments in the Guangdong Province through a weekly newsletter published every Friday. The newsletter was sent by e-mail to over 250 major chambers of commerce and quasi-governmental organizations in Hong Kong, and was also uploaded to GDETO's website to facilitate public access. In order to enhance Hong Kong investors' understanding of the latest investment environment of the Guangdong Province, GDETO also organized seminars and invited Mainland officials as speakers. In this connection, the Acting Director, BJO (D, BJO) said that BJO had maintained close liaison with the Hong Kong business and trade associations in Beijing. Referring to the recent promulgation of the Provisions on the Administration of the Employment of Taiwan, Hong Kong and Macao Residents in the Mainland by the Ministry of Labour and Social Security (MLSS), D, BJO advised that a briefing by MLSS officials was arranged shortly after the promulgation so that Hong Kong business and trade associations could be updated on a timely basis of the latest requirements under the regulation and exchange views with MLSS officials in this regard.

15. Ir Dr Raymond HO supported the Administration's proposal. In establishing closer economic and trade ties with the Mainland, Ir Dr HO was concerned whether the Mainland offices could provide assistance to the professional bodies in Hong Kong, so that they could leverage on the business opportunities available under CEPA. Mr Patrick LAU expressed similar concern.

16. In response, SCA said that the Administration was committed to facilitating Hong Kong investors and professional bodies alike in making the best use of the business opportunities under CEPA. He assured members that the Mainland offices would endeavour to provide any assistance, where practicable, to Hong Kong investors and professional bodies in this regard. Responding to Mr Patrick LAU's enquiry on means to strengthen support to Hong Kong professionals in the bidding of building/construction contracts in the Mainland, SCA advised that while the Mainland offices could provide assistance through timely dissemination of relevant information on trade and business developments, interested enterprises or professionals would have to compete for the contracts in accordance with the relevant tendering procedures in the Mainland.

Cooperation with non-governmental organizations (NGOs)

17. Noting that GDETO would provide assistance to Hong Kong residents in distress in five provinces within its coverage, Mr WONG Kwok-hing was concerned whether it would be practicable for residents in distress to seek assistance if they encountered problems in cities like Shenzhen and Dongguan, given the geographical distance between these cities and GDETO. He suggested that the Administration should explore means for provision of services to Hong Kong residents in collaboration with offices of NGOs in the Mainland, such as the office of the Hong Kong Federation of Trade Unions (HKFTU) in Shenzhen.

18. SCA welcomed Mr WONG's suggestion. He advised that the Administration had been working along this direction. D, GDETO added that GDETO held regular meetings with NGOs in the Guangdong Province on a quarterly basis to facilitate exchange of views and information, as well as to identify areas for cooperation in the provision of services to Hong Kong residents in the Mainland. He assured members that staff of GDETO would continue their efforts in maintaining close contacts with NGOs, including the offices of HKFTU in Guangzhou and Shenzhen and the one to be established in Dongguan.

19. Pointing out that offices of NGOs in the Mainland had been providing assistance to Hong Kong residents on referral from the Mainland offices, Mr WONG Ting-kwong opined that the Administration should actively explore ways to work in cooperation with NGOs instead of simply maintaining close contact with them. Mr WONG was concerned about the hardship of these NGOs given their lack of resources and requested the Administration to take into account the difficulties they were facing. SCA appreciated Mr WONG's concern and assured members that staff of the Mainland offices would be mindful of the need to maintain close contact as well as cooperation with offices of NGOs in providing assistance to Hong Kong residents.

Allowances for Hong Kong-based staff posted to the Mainland offices

20. Responding to Mr WONG Kwok-hing's enquiry about the determination of the rates of allowances for Hong Kong-based staff posted to the Mainland offices, SCA advised that the Administration had made reference to information on the cost of living such as rental levels in Beijing in working out the proposed rates of allowances for Hong Kong-based staff for approval of the Finance Committee in 1998 before the establishment of BJO.

21. The item was voted on and endorsed.

EC(2005-06)8 Proposed creation of five permanent posts of Administrative Officer Staff Grade C (AOSGC) (D2)/non-civil service positions at D2-equivalent to serve as administrative assistants to the Chief Secretary for Administration (CS), Financial Secretary (FS), and Secretary for Justice as well as press secretaries to CS and FS; to be offset by the deletion of five existing civil service posts of AOSGC (D2) with the same job responsibilities with immediate effect

22. The Chairman informed members that the Panel on Public Service and the Panel on Constitutional Affairs were consulted on the proposal at a joint meeting on 21 November 2005.

23. Noting that the proposed arrangement would not incur any additional cost nor involve creation of additional directorate posts, Mr James TIEN expressed support to the proposal.

24. The item was voted on and endorsed.

EC(2005-06)9 Proposed creation of three supernumerary posts of one Administrative Officer Staff Grade B (D3) for five years and one Administrative Officer Staff Grade C (D2) for four years in the Financial Services Branch of the Financial Services and the Treasury Bureau of Government Secretariat and one Deputy Principal Solicitor (DL2)/non-civil service position at DL2-equivalent for four years in the Companies Registry to take forward the rewrite of the Companies Ordinance with effect from the first half of 2006-07

25. The Chairman informed members that the Panel on Financial Affairs (FA Panel) was consulted on the proposal at the meeting on 7 November 2005.

Objectives of the rewrite exercise

26. Mr James TIEN appreciated the Administration's efforts in reducing the number of supernumerary directorate posts to be created for the exercise from four to three in response to members' concern expressed at the meeting of the FA Panel held on 7 November 2005. He indicated support for the proposal to rewrite the Companies Ordinance (CO) (Cap. 32) and stressed that the rewrite exercise should aim at updating the Ordinance to meet present day circumstances and improve the business environment of Hong Kong, for example, facilitating the use of electronic communications and simplifying procedures for the conduct of companies businesses.

27. In response, the Secretary for Financial Services and the Treasury (SFST) said that the rewrite exercise would enhance Hong Kong's status, competitiveness and attractiveness as a major international business and financial centre. He stressed that the objectives of the Administration were consistent with those expressed by Mr James TIEN. The Registrar of Companies (R of C) supplemented that one of the key objectives of rewriting CO was to make the Ordinance more user friendly, in particular to the business sector, by streamlining and modernizing its provisions and permitting the use of electronic communications so that it was attuned to the needs of the 21st century.

Composition of staff in the Companies Bill Team (CBT)

28. While expressing support to the proposal to rewrite CO, Mr KWONG Chi-kin was concerned about the composition of CBT. Referring to paragraph 35 of the paper on the ratio of policy staff to lawyers in the dedicated team for the

review of the United Kingdom (UK) Companies Act, Mr KWONG sought information on such ratio in CBT.

29. In reply, the Permanent Secretary for Financial Services and the Treasury (Financial Services) (PSFS) advised that there would be a total of 22 staff in CBT, including five policy staff, 16 lawyers and one clerical/secretarial staff. In other words, lawyers would form the majority of the staff in the team. He however pointed out that as some lawyers might also be involved in policy-related work in the rewrite exercise, it might not be practicable to draw a clear demarcation between policy staff and legal staff.

30. Noting that the proposed supernumerary posts would be time-limited with durations ranging from 48 months to 60 months, Mr KWONG Chi-kin was concerned whether the rewrite exercise could be completed timely so that no additional staffing resources would be sought for extension of the posts. In response, PSFS assured members that the Administration would endeavour to complete the rewrite exercise within the set timeframe. Given the complexity and the volume of the workload involved, PSFS pointed out that the exercise was expected to take about five years to complete. As the majority of staff in CBT were on internal redeployment, the wrapping up or final stage work to be carried out would be taken up by these staff if the work had not been completed before the expiry of the supernumerary posts created under the current proposal. Hence, the Administration did not envisage the need to extend the supernumerary posts.

Justifications for creating the supernumerary posts for the rewrite exercise

31. Dr KWOK Ka-ki doubted the justification for creating supernumerary directorate posts in the Financial Services and the Treasury Bureau, in particular, the post of Deputy Secretary (Financial Services)³ (DS(FS)³). Referring to the job description of the proposed DS(FS)³ post, Dr KWOK was of the view that the responsibilities could not compare with those of the two existing DS(FS)s in terms of both scope and complexity. He doubted the fairness in the distribution of work among the DS(FS)s and whether the proposed responsibilities, such as coordination and consultation for the legislative proposals, to be undertaken by the proposed DS(FS)³ could justify the creation of this supernumerary post for a period of 60 months. In this connection, Dr KWOK requested the Administration to quantify the work of the proposed DS(FS)³ post.

32. In response, SFST explained that having regard to the complexity of the tasks involved in the rewrite exercise and the fact that the proposals in the new Companies Bill would have profound implications on a wide spectrum of stakeholders in the community, it was essential for CBT to be headed by a senior directorate officer who would be responsible for ensuring its smooth running; coordinating concerted efforts among various stakeholders in preparing the new CO; organizing public consultations; leading the Administration's team to assist the LegCo in scrutinizing the legislative proposals, and so on. SFST advised that while it would not be practicable to quantify the workload of the proposed DS(FS)³ post, it was envisaged that the post-holder would be fully occupied with a wide range of

duties for the smooth and expedite preparation of the Companies Bill. SFST also pointed out that he himself and PSFS would oversee the distribution of work among the DS(FS)s and would assign tasks to the DS(FS) concerned if he/she had spare capacity to take up additional duties. He assured members that the Administration was committed to completing the rewrite exercise within the shortest possible timeframe and the supernumerary posts created for the exercise would be deleted in the event that the required tasks could be completed before the estimated timeframe of five years.

33. Dr KWOK Ka-ki was concerned that without a quantified workload for the supernumerary DS(FS)³ post, members of the Establishment Subcommittee (ESC) had no basis to assess the necessity and propriety for the creation of the post. To facilitate members' consideration of the staffing proposal, Dr KWOK requested the Administration to provide for members' reference, information on precedent cases where supernumerary directorate posts were created in policy bureaux to handle the coordination and consultation work of a single project or a law drafting/rewriting exercise.

34. In reply, SFST stressed that the Administration had critically examined the feasibility of absorbing the additional workload arising from the rewrite exercise through redeployment of existing staffing resources before putting forward the current proposal. As regards examples on the creation of supernumerary directorate posts, SFST recalled that in 2004, two supernumerary posts (one DS and one Principal Assistant Secretary) had been created in the Environment, Transport and Works Bureau to cope with the additional work arising from a possible merger of the Mass Transit Railway Corporation Limited (MTRCL) and the Kowloon-Canton Railway Corporation. PSFS added that a supernumerary DS post was also created to handle the additional work required for the preparation for listing of the MTRCL, which required drafting of legislation (the Mass Transit Railway Ordinance (Cap. 556)).

Keeping the new CO in line with international developments

35. Mr Abraham SHEK said that Members of the Alliance supported the proposed rewrite of CO. Noting that the Administration planned to complete the rewrite exercise within a timeframe of five years, Mr SHEK was concerned whether such a major exercise could be completed within the timeframe and whether the new CO would keep Hong Kong's company regulatory regime in pace with international developments, in particular on the accounting standards, in the coming five years. Mr SHEK was of the view that as there were no accounting professionals in the CBT, it would be a great challenge to the lawyers and policy staff to incorporate up-to-date international accounting requirements in the new CO under the rewrite exercise.

36. In reply, R of C advised that, as the major company law reform programmes in the UK and other major common law jurisdictions were in their final stages, it would be possible for Hong Kong to, where appropriate, use these examples as benchmarks with a fair degree of certainty that there would not be major changes for a considerable time to come. As such, the Administration considered that it was the

right timing to commence the rewrite exercise in order to benefit from the law reform experiences of other jurisdictions. Furthermore, it was proposed to place detailed, technical provisions, which were particularly susceptible to change, in schedules in order to facilitate speedy amendments as and when appropriate. R of C also pointed out that Hong Kong was fully in compliance with the international financial reporting standards (IFRS). Moreover, representatives of the Hong Kong Institute of Certified Public Accountants (HKICPA) participated in the formulation of IFRS by the relevant international organization. To facilitate compliance of small and medium enterprises with the necessary financial reporting requirements, HKICPA had formulated a small and medium-sized entity financial reporting framework so that enterprises which qualified for exemption under this framework could be exempted from the more onerous international requirements. However, he stressed that, given its status as a major business and financial centre, Hong Kong had to maintain very high corporate governance standards including financial reporting and disclosure standards.

37. Mr Abraham SHEK was of the view that while reference should be made to the legislation of other jurisdictions in preparing the new CO, the Companies Bill should be drafted having regard to the special circumstances of Hong Kong instead of blindly copying international requirements and practices in company regulation.

38. SFST agreed with Mr SHEK that Hong Kong's company law should suit local economic and social circumstances. Hence, it was not an acceptable option simply to copy, say, the UK Bill into Hong Kong's law books. R of C supplemented that as Hong Kong's company law was essentially based on that of the UK, it was only logical to have regard to the proposals in the UK Company Law Reform Bill in order not to reinvent the wheel. However, given the political, commercial and regulatory differences between the UK and Hong Kong, it would be necessary to consider the background to the UK proposals before deciding whether or not they could be adopted. Furthermore, UK company law reform was being increasingly driven by European Union Commercial Law directives which were not relevant to Hong Kong. In this respect, Hong Kong had the ability and freedom to consider company law reforms in other major common law jurisdictions such as Australia, particularly in the area of capital maintenance.

39. PSFS added that to ensure that the new CO would suit local circumstances, the Administration would involve relevant stakeholders in the course of the rewrite. These stakeholders included the relevant professional bodies (including the legal, accounting and chartered secretary professions), various chambers of commerce, market practitioners and company law academics. The Administration would issue a White Bill (which was expected to take about three years to prepare) so that interested parties and the public could comment on the proposals in a holistic manner. The Administration would also take into account the international developments in different areas of the company regulatory regime, including requirements on accounting and corporate governance.

Rewrite of winding-up provisions in CO

40. Noting that the winding-up provisions in CO would be dealt with in the second phase of the rewrite, Mr James TIEN enquired whether the total estimated cost of the rewrite exercise (which was estimated to be about \$89 million to \$91 million, to be spent over a period of five years) would cover the cost for the second phase of the rewrite as well.

41. In reply, R of C explained that the winding-up provisions in CO primarily dealt with companies in liquidation and were administered by the Official Receiver's Office (ORO). The current rewrite exercise would focus on the non-winding up provisions which affected the daily operation of more than 500 000 live companies. The winding-up provisions would be dealt with under a separate exercise. He also pointed out that in some common law jurisdictions, such as the UK, there was separate primary legislation to deal with the winding-up of companies.

42. Mr James TIEN opined that there were problems in the insolvency procedures under the existing provisions, affecting the interest of creditors during the liquidation of companies. He was of the view that if the winding-up provisions would not be covered in the current rewrite exercise, the FA Panel might have to follow up with the Administration on the details of the second phase of the rewrite.

43. Dr KWOK Kai-ki also expressed concern about the rewrite of the CO in two phases and Administration's plan to start the second phase of the rewrite was yet to be formulated. He doubted why the rewrite of the winding-up provisions could not be carried out in parallel with other provisions of CO under the current exercise.

44. In reply, PSFS advised that consideration had been given to rewriting the winding-up provisions under the current exercise. Nevertheless, having regard to the complexity of the insolvency law and the variety of possible scenarios involved in different insolvency cases, such as those involving liquidation of companies and those involving bankruptcy of individuals, the impact on and the interests of different parties involved (the insolvent parties and the creditors) had to be taken into account in streamlining the insolvency procedures. PSFS further pointed out that ORO had faced immense pressure from the surge in insolvency cases due to the adverse economic conditions over recent years and arrangements were being made to relieve the workload through outsourcing the more straightforward cases to private practitioners. Having confirmed with ORO that the rewrite of non-winding up provisions of CO would not affect the work of ORO under the winding-up provisions, the Administration considered it appropriate to work out details for the rewrite of the winding-up provisions upon smooth implementation of the outsourcing arrangements.

45. Responding to Dr KWOK Ka-ki's request for assigning the task of preparation for the rewrite of winding-up provisions to DS(FS)3 if he/she had spare capacity to do so, SFST responded that DS(FS)3 would be heavily involved in the complicated and onerous tasks for the rewrite exercise to be completed within the shortest timeframe possible. As such, the Administration expected CBT to work in

full gear and did not envisage that the supernumerary posts created for the exercise would have spare capacity for other tasks. PSFS supplemented that in practice, it was anticipated that DS(FS)3 would not be able to take up work related to the rewrite of the winding-up provisions. PSFS appreciated members' concerns for modernizing and simplifying the statutory provisions for insolvency and assured members that the Administration would keep in view the feasibility of expediting the work in this respect, subject to resources availability.

46. The item was voted on and endorsed.

EC(2005-06)10 Proposed conversion of two permanent posts of Government Building Surveyor (D2) from single-disciplinary to bi-disciplinary in the Buildings Department

47. The Chairman informed members that the Panel on Planning, Lands and Works was consulted on the proposal at the meeting on 25 October 2005. Members noted the written submission dated 5 December 2005 from the Hong Kong Institute of Surveyors on the proposal issued vide ESC10/05-06.

(Post-meeting note: The Administration's response to the submission was issued to members vide ESC11/05-06 on 13 December 2005.)

48. Ir Dr Raymond HO opined that the proposed conversion of the two Assistant Director (AD) posts from single-disciplinary to bi-disciplinary posts was made on the basis of the outcome of several reviews/studies conducted since 1998, taking into consideration comments received from various parties during staff consultation and relevant factors such as the operational needs of the department. Ir Dr HO supported the proposal and considered it the only viable alternative to ensure the best utilization of human resource of the Buildings Department (BD). The proposal would also provide officers in both the Building Surveyor (BS) grade and the Structural Engineer (SE) grade a fair chance for advancement based on work performance and competence. In his view, officers of both BS and SE grades had been engaged in the control of unauthorized building works (UBWs) and the safety of existing buildings through their work in the Existing Buildings (EB) Divisions. As such, officers of both grades should have the required experience, professional knowledge and competence to take up the work of the two AD posts.

49. Deputy Secretary for Housing, Planning and Lands (Planning and Lands) shared Ir Dr HO's view that the opening-up proposal was made on the basis of consistent findings of the Organization and Management Study in 1998, the study conducted by a Review Group led by the Deputy Director of Buildings in 2004 and an independent Consultancy Study commissioned by the Efficiency Unit (EU) in 2005. She pointed out that the proposal would bring about flexibility in human resource management of BD and improvements in service standard, which would be in the interest of the public. She hoped that officers of the professional grades in BD could appreciate the background and justifications for the proposal.

50. The Director of Buildings (D of Bldg) said that the departmental management recognized the importance of both BS grade and SE grade officers to the effectiveness of BD in discharging its core functions. He stressed that the proposal was made to facilitate the deployment of human resource at the senior management level in an efficient and effective manner to enhance regulatory control of existing buildings. He looked forward to the support and cooperation of officers of both grades in the implementation of the proposal.

51. Mr Patrick LAU objected to the Administration's proposal. He pointed out that while the Administration tried to justify the proposal on grounds of human resource management, the proposal was in fact put forward to deal with the advancement expectations among officers in the SE grade officers, whose number had increased significantly during the past years. Mr LAU drew members' attention to the recommendation of the Consultant commissioned by EU on the professional qualification for the two AD posts in question. The fact that the Consultant had specifically put down the minimum years of industry experience required of the two AD posts was illustrative of the importance of the requisite professional qualification and training on building design to discharge effectively their duties in the control of UBWs and the enforcement of the Buildings Ordinance to ensure the safety and hygiene of existing buildings. He cautioned that any mismatch of professional expertise in filling of the two posts would affect the work of BD in ensuring building safety, thus affecting the interest of the community at large.

52. In response, D of Bldg reiterated that having regard to the consistent findings of a number of studies/reviews conducted since 1998, the Administration was of the view that the two AD posts should become bi-disciplinary posts which could be filled by officers from BS or SE grades. First, the job competence requirements of the posts were largely administrative and managerial in nature and the possession of basic professional knowledge in building would be sufficient for the incumbents to discharge their duties. Moreover, based on operational experience, the two ADs were underpinned by staff from both the BS and SE grades in the six district sections under the EB Divisions. These sections were headed by a chief professional officer (D1) of either the BS grade or SE grade. Officers of the two grades had demonstrated their ability in leading the sections, which were responsible for duties related to the control of UBWs and safety of existing buildings. As such, the Administration was satisfied that the two AD posts in the EB Divisions should be opened to officers of the two grades.

53. Mr Patrick LAU requested the Administration to set out in clear terms the professional qualification and expertise required of the posts and to provide the criteria for filling the two posts. Ir Dr Raymond HO also urged BD to resolve the controversy among staff of the two professional grades by drawing up clear and objective criteria for filling the two AD posts. Mr Abraham SHEK appreciated the concerns and views of officers of the two professional grades and recognized their contribution in providing the core services of BD. Expressing his support to the Administration's proposal, Mr SHEK opined that the departmental management should be mindful of identifying the suitable and competent persons to take up the

AD posts.

54. While expressing doubts on the need for the proposal to be considered by ESC given that it did not involve any creation/deletion of directorate posts nor have any financial implications, Mr Howard YOUNG pointed out that Members of the Liberal Party had considered the merits of the proposal in detailed having regard to views from both the BS grade and the SE grade. They generally agreed with the principle of flexible use of human resource by providing a level-playing field for meritorious and competent officers in both professional grades to compete for advancement to the senior directorate level. Hence, they supported the Administration's opening-up proposal. Referring to his experience in the management of an airline company, Mr YOUNG pointed out that the competencies required of officers at the senior management level might not necessarily be confined to the professional qualification directly related to the core functions of the company concerned, as they would primarily be responsible for policy formulation and coordination instead of frontline execution. He nevertheless urged the Administration to be mindful of the importance of selecting the suitable officers for the posts.

55. Pointing out that the opening-up proposal was essentially a personnel management matter concerning the promotion arrangement in BD, Mr CHEUNG Man-kwong said that it would not be appropriate for LegCo Members to comment on or intervene into the internal matter of a government department. In addition to providing a level-playing field for all competent officers in advancement, Mr CHEUNG was of the view that it was also important to identify suitable officers to fill the AD posts so as to foster harmonious and cooperative atmosphere within the department. Mr CHEUNG said that having considered the relevant factors, Members of the Democratic Party supported the Administration's proposal.

56. In response, D of Bldg took note of members' concern and undertook to follow up their advice to draw up suitable criteria, such as professional knowledge and management experience, for filling the two posts to ensure that the right officers would be selected to take up the posts.

57. Mr WONG Ting-kwong noted with concern the staunch position of both the BS grade officers and the Hong Kong Institute of Surveyors against the Administration's proposal. Mr WONG pointed out that Members of the Democratic Alliance for the Betterment and Progress of Hong Kong were concerned whether the departmental management of BD had means to handle and resolve the controversy resulting from the dissenting views of the two professional grades, which might otherwise jeopardize the effective operation of the department and the safety of the public. Mr Patrick LAU shared Mr WONG's view that the opening-up proposal had affected the harmonious working relationship among staff of BD and doubted whether staff cooperation in the provision of services of the department could be maintained.

58. In reply, D of Bldg explained that the departmental management was fully aware of the dissenting views of the two major professional grades in BD on the

opening-up proposal. He stressed that it was the responsibility of the departmental management to maintain communication with the staff side, with a view to getting their support and understanding after thorough explanation on the justifications and rationale of the proposal. He assured members that the departmental management would continue its work in this respect and believed that the professional grade officers would appreciate the rationale of the proposal in the long run.

59. Noting that BD would review the opening-up of another AD post, i.e. the AD/Support post, after three years, Mr WONG Ting-kwong was concerned whether the upcoming review would again bring about controversy among professional grade officers. Mr CHEUNG Man-kwong also urged the Administration to try its best to contain staff sentiments so that the upcoming review would be conducted in a more harmonious manner. Mr Howard YOUNG nevertheless doubted why the post of AD/Support would not be opened-up under the current proposal.

60. In response, D of Bldg advised that in accordance with the consistent recommendations of the Review Group and the independent Consultancy Study, the SE grade officers might not currently have the extensive experience in legislation and litigation matters required of the AD/Support post. However, given the recent deployment of SE grade staff to the Support Division to handle legislative and litigation work, they should in time gain the necessary experience. The opening-up of the AD/Support post was therefore recommended to be reconsidered after three years. He assured members that the departmental management would take forward the upcoming review in full consideration of staff feedback and relevant factors.

61. Mr Patrick LAU thanked members for their understanding of the concerns of the staff side. He was however not convinced of the justifications provided by the Administration for opening-up the two AD posts and reiterated his objection to the proposal.

62. The item was voted on and endorsed.

63. The Subcommittee was adjourned at 10:45 am.