

立法會
Legislative Council

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Establishment Subcommittee of the Finance Committee

**Minutes of the 6th meeting
held at Conference Room A
on Wednesday, 14 June 2006, 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 Howard YOUNG, SBS, JP
Hon Abraham SHEK Lai-him, JP
Hon WONG Kwok-hing, MH
Dr Hon KWOK Ka-ki
Hon WONG Ting-kwong, BBS
Hon Patrick LAU Sau-shing, SBS, JP

Members absent:

Hon SIN Chung-kai, JP
Hon WONG Yung-kan, JP
Hon MA Lik, GBS, JP

Public Officers attending:

Miss Amy 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)

Miss Leonia TAI Shuk-yiu	Principal Assistant Secretary for the Civil Service (Housing & Establishment)
Miss CHEUNG Siu Hing, JP	Deputy Secretary for Security
Mrs Apollonia LIU	Principal Assistant Secretary for Security
Miss Emma LAU Yin Wah, JP	Judiciary Administrator
Miss Vega WONG Sau Wai	Assistant Judiciary Administrator (Development)
Mrs Betty FUNG, JP	Deputy Secretary for Education and Manpower
Mr Byron LAM Saint Kit	Principal Assistant Secretary for Education and Manpower (Manpower Planning & Training)
Mr Thomas CHAN C Y, JP	Permanent Secretary for Housing, Planning and Lands (Housing)
Mr Kenneth MAK C Y, JP	Deputy Director of Housing (Corporate Services)

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 Alice CHEUNG	Senior Legislative Assistant (1)1
Mr Frankie WOO	Legislative Assistant (1)2

Action

The Chairman drew members' attention to the information paper No. ECI(2006-07)4 provided by the Administration on the changes in directorate establishment approved since 2002. According to the Administration, the changes arising from the four proposals to be considered at the meeting, if endorsed, would result in a net increase of three permanent posts (including one civil servant post and two Judges and Judicial Officers posts) and three supernumerary posts.

EC(2006-07)8 Proposed deletion of 31 obsolete ranks in various Bureaux/Departments and obsolete departments

2. The Chairman informed members that the Panel on Public Service was informed of the present proposal vide an information paper issued on 12 May 2006.
3. The item was voted on and endorsed.

EC(2006-07)9 Proposed creation of three permanent posts of two Judge of the Court of First Instance of the High Court (JSPS 16) under Judiciary and one Principal Executive Officer (D1) to head a new Secretariat, Commissioner on Interception of Communications and Surveillance, an increase in the establishment ceiling under Head 80 Judiciary in 2006-07 to \$368,601,920 for creating three non-directorate posts and provision of establishment ceiling in 2006-07 of \$5,287,260 to the new Secretariat for creating 16 non-directorate posts

4. The Chairman informed members that the Panel on Administration of Justice and Legal Services (AJLS Panel) and Panel on Security (Security Panel) were consulted on the proposal at the joint meeting on 22 May 2006.

5. Ms Margaret NG, Chairman of the AJLS Panel, said that at the joint meeting held on 22 May 2006, members of the AJLS Panel and the Security Panel generally had no objection to the proposal but had raised a number of concerns on its details. Ms NG pointed out that under the Interception of Communications and Surveillance Bill (the Bill), the authority for authorizing all interception of communications and the more intrusive covert surveillance operations would be vested in a member of a Panel of Judges (consisting of three to six judges of the Court of First Instance (CFI) of the High Court) and a Commissioner on Interception of Communications and Surveillance (the Commissioner) would be appointed as an independent oversight authority on the operation of the new regime. Referring to the significant increase in caseload after the implementation of a similar regime in Australia, Ms NG was concerned whether the additional judicial resources proposed (i.e. two posts of Judge of CFI of the High Court) would be sufficient to cater for the actual caseload when the new regime under the Bill came into operation.

6. In reply, the Deputy Secretary for Security (DS for S) said that while it would not be possible to forecast precisely the number of cases of interception of communications and covert surveillance at the present stage, an estimation of the number of such cases that would require judge's authorization under the new regime had been made on the basis of case statistics in the recent months. The current manpower requirement had then been worked out having regard to the impact of the work of judge's authorization as well as the Commissioner's work on judicial resources and the Judiciary considered this acceptable. She assured members that the Administration would keep under constant review the impact on judicial resources after the new regime had commenced operation.

7. Noting that the number of cases of interception of communications and covert surveillance in the last three months of 2005 was 178 and 28 respectively, Dr KWOK Ka-ki doubted whether the caseload figures in 2005 could provide adequate basis for the Administration in making a precise forecast of the cases that would require judge's authorization under the new regime.

8. In response, DS for S advised that according to the latest figures provided to the Security Panel in early June, the number of cases of interception of

communications and covert surveillance (for the three-month period from 20 February to 19 May 2006) of which would require judge's authorization under the new regime was 151 and 44 respectively. These figures were comparable to the caseload figures in the last three months of 2005. As such, the Administration considered that such information on caseload provided a reasonable basis for the forecast of caseload under the new regime.

9. Noting that the manpower requirement under the current proposal was worked out on the basis that the Commissioner would be a serving (instead of a retired) judge, Ms Margaret NG was of the view that if a retired judge was appointed as the Commissioner, more judicial resources could be allocated for handling of judge's authorization. In this connection, Ms NG sought information on the manpower planning should the Bill now under scrutiny be amended to the effect that the Commissioner should be a retired judge. Dr KWOK Ka-ki expressed similar concern about the position of the Commissioner.

10. DS for S explained that under the provision of the Bill, the Chief Executive might appoint a serving or a retired judge as the Commissioner. While the manpower requirement for the Judiciary under the current proposal had been worked out on the basis that the Commissioner would be a serving judge, the Administration would work out in collaboration with the Judiciary the necessary modifications to the manpower provision should any substantial changes to the position of the Commissioner be made upon completion of scrutiny of the Bill, such as the Commissioner could only be a retired but not a serving judge. She assured members that in making any modifications, the Administration and the Judiciary would take heed of the need of providing adequate manpower resources for handling judge's authorization (i.e. the Panel Judges) and the independent oversight authority (i.e. the Commissioner) under the new regime.

11. The Judiciary Administrator (JA) added that the Judiciary had carefully assessed the impact of the new regime on judicial resources. The current proposal for creation of two posts of Judge of CFI of the High Court was considered appropriate having regard to the impact of the new regime under the proposed legislative framework of the Bill. Nevertheless, JA drew members' attention that as stated in the staffing proposal, once a post of Judge of CFI of the High Court was created and filled to cater for the appointment of a serving judge as the Commissioner, it would not be possible to delete or freeze the post if subsequently a retired judge was appointed as the Commissioner, given the security of tenure of serving judges.

12. Responding to Ms Margaret NG's further enquiry, DS for S and JA clarified that they were referring to two different circumstances for the appointment of the Commissioner. JA had explained to members the situation where a serving judge had been appointed as the Commissioner but subsequently appointment was made for a retired judge to take up the post (as the current provision of the Bill permitted appointment of either a serving or retired judge as the Commissioner). The circumstance referred to by DS for S was where amendment would be made to the Bill to the effect that only a retired judge could be appointed as the Commissioner

and the Administration had to assess the necessary resources together with the Judiciary in that case.

13. Given that the Bill was still under scrutiny and the provision for the appointment of the Commissioner might be subject to changes, Dr KWOK Ka-ki doubted whether approval for staffing proposals arising from the new regime should be granted at the present stage. Dr KWOK opined that the Administration should be able to work out more realistic manpower requirements arising from the legislative proposal after the passage of the Bill and the implementation of the new regime.

14. In response, DS for S explained that the Administration's policy intention was that the Commissioner could be either a serving or retired judge. She said that given the impact of the legislative proposal under the Bill on resources requirement of the Judiciary, timely provision of sufficient resources was necessary to ensure that the work of the Judiciary as a whole would not be adversely affected. She advised that subject to approval by the Finance Committee (FC), the proposed posts would only be created upon the implementation of the new regime after the passage of the Bill. She further pointed out that taking into account the lead time for recruitment of CFI judges if the current staffing proposal was approved by FC and the Bill would be passed by August 2006, there would still be a time gap of a few months between the implementation of the new regime and the appointment of new CFI judges. The Judiciary would have to make special arrangements for judicial resources to cope with the work during the short gap.

15. JA supplemented that the Judiciary had provided detailed considerations on the requirement for additional judicial resources under the new regime in the proposal submitted to the Establishment Subcommittee (ESC). She pointed out that apart from and beyond the time which must be spent on judicial scrutiny, there were additional requirements on judicial resources arising from judge's authorization by Panel Judges under the Bill, such as the additional considerations in listing cases before Panel Judges arising from the need to allow room for flexibility in their diaries to attend to applications for judge's authorization on an urgent basis and to exclude them from hearing cases where in the course of investigation a judge's authorization had been obtained. Further, it should be noted that there were substantial areas of work which must be done by substantive CFI Judges and not by Deputy Judges. JA pointed out that it was necessary to minimize the time gap between the implementation of the new regime and the appointment of new CFI judges to reduce the impact on the work of the Judiciary.

16. Dr KWOK Ka-ki enquired whether the Administration had plans for reviewing the operation of the new regime. In reply, DS for S advised that the Administration would keep the operation of the new regime under constant review in close cooperation with the Judiciary but there was no definite timetable for conducting a review of the operation at the present stage. In response to Dr KWOK's request, DS for S undertook to provide updated information on assessment of the time spent and manpower requirement for judge's authorization to the relevant Panel in due course after the implementation of the new regime.

17. Mr Howard YOUNG appreciated the need for timely provision of the manpower resources required for judge's authorization and hence the urgency for the Administration to submit the current staffing proposal to ESC for consideration despite that scrutiny of the Bill giving effect to the proposed legislative framework had yet to be completed. He also expressed support to the proposed regime for regulating the conduct of interception of communications and the use of surveillance devices by the law enforcement agencies as this was an improvement to the existing system. Noting that the current proposal was worked out on the basis of appointment of a serving judge as the Commissioner, Mr YOUNG was concerned whether extra resources would become available if a retired judge was appointed as the Commissioner.

18. DS for S reiterated that the current staffing proposal was worked out on the basis that the Commissioner would be a serving judge. In the event that a retired judge was appointed as the Commissioner in the first place, the post of Judge of CFI of the High Court would not be filled initially but arrangement would be made to fill the post once subsequent appointment was made for a serving judge to take up the post.

19. Referring to the proposed organization structure of the Secretariat, Commissioner on Interception of Communications and Surveillance (the Secretariat), Ms Margaret NG opined that it appeared to her that the work of the Secretariat was of administrative rather than judicial nature. Ms NG therefore queried the propriety of creating a post of Judge of CFI of the High Court in the Judiciary as the Commissioner under the proposed regime. In her view, the staffing resources should be charged under the expenditure of the Security Bureau (SB) and the Commissioner, if necessarily a judge, should be deployed from the Judiciary on secondment to SB. In this connection, Ms NG sought information on the resource allocation arrangement for the additional manpower required, i.e. whether the staff costs would be chargeable to the expenditure of the Judiciary.

20. DS for S responded that the Administration would submit a paper to FC on 7 July 2006 to seek approval for the changes to the 2006-07 Estimates, including the creation of the new Head of Expenditure for the Secretariat and the supplementary provision for meeting the staffing proposal as detailed in the current submission and other expenses of the Secretariat. She explained that the position of the Commissioner was provided for under the legislative framework of the Bill and was not a position in the Judiciary. Nevertheless, taking into account the impact on the staffing of the Judiciary should a serving judge be appointed as the Commissioner (which was permitted under the current provision of the Bill), the current staffing proposal was submitted for creation of two additional posts of Judge of CFI of the High Court. While the two additional posts would be created under Head 80 – Judiciary and an increase in the ceiling placed on the total notional annual mid-point salary value of all non-directorate posts in the permanent establishment of Head 80 was proposed, DS for S and JA advised that SB would take the lead in seeking approval for the necessary resources arising from the implementation of the new regime in accordance with the established resource allocation mechanism for

government bureaux/departments.

21. Mr CHEUNG Man-kwong also expressed concern about the provision of resources for the Secretariat. Referring to the case of the incumbent Chairman of the Electoral Affairs Commission (EAC), Mr CHEUNG sought information on the relevant financial arrangement between the Judiciary and EAC in this regard.

22. In reply, the Deputy Secretary for Financial Services and the Treasury (Treasury) advised that all expenses related to the work of EAC would be charged to provisions set aside for the elections. JA explained that the Judiciary and the Constitutional Affairs Bureau (CAB) had made arrangement for virement of funds to the Judiciary. Responding to Mr CHEUNG Man-kwong's further enquiry on whether similar arrangement could be made between the Judiciary and SB for the work of the Commissioner, JA advised that the current assessment was that given the nature and estimated volume of work of the Commissioner, the duties would take up a substantial amount of the time of the judge. The aforesaid arrangement between the Judiciary and CAB would not be applicable for the present purpose.

23. Given that the duties of the Commissioner were sensitive and the regulation of interception of communications and surveillance fell within the purview of SB, Mr CHEUNG Man-kwong opined that it was inappropriate to charge the expenses arising from the new regime to the Head of Expenditure of the Judiciary. At Mr CHEUNG's request, the Administration undertook to provide supplementary information on provision of resources for implementation of the proposals under the new regime. Mr CHEUNG also urged the Bills Committee and the AJLS Panel to take this into account in examining the proposals under the new regime.

(Post-meeting note: Supplementary information provided by the Administration on paragraph 23 above was issued to members and all other FC members vide LC Paper No. ESC37/05-06 on 30 June 2006.)

24. Dr KWOK Ka-ki said that the Secretariat should be independent of the Judiciary as reflected from its proposed organization structure in the Administration's submission. He opined that the funding and administrative arrangement for the establishment and operation of the Secretariat should be made in accordance with such independent status.

25. In response, DS for S explained that as set out in the Administration's proposal, while additional judicial resources had to be provided to the Judiciary to cover the impact arising from the implementation of the new regime, the Commissioner was an independent oversight authority supported by his/her own Secretariat. The Secretariat would be headed by a Secretary ranked at the Principal Executive Officer level (D1) responsible for overseeing its day-to-day operation, which would not be part of the Judiciary. SB would perform the housekeeping function for the Secretariat. As explained earlier, SB would submit a paper to FC to seek approval for creation of the new Head of Expenditure for the Secretariat.

Admin 26. The item was voted on and endorsed. Ms Margaret NG and Mr CHEUNG Man-kwong requested that this item be voted on separately at the relevant FC meeting.

EC(2006-07)10 Proposed creation of one supernumerary post of Administrative Officer Staff Grade B (D3) in the Education and Manpower Bureau of Government Secretariat for a period of two years from 1 August 2006 to 31 July 2008 to enable the secondment of a civil servant to the Employees Retraining Board

27. The Chairman informed members that the Panel on Manpower was consulted on the proposal at the meeting on 30 May 2006.

28. Mr KWONG Chi-kin, the Deputy Chairman of the Panel on Manpower, said that while the Panel had no objection to the staffing proposal, members urged the Administration to complete the strategic review of the Employees Retraining Board (ERB) expeditiously so as to minimize the duration of the secondment and to fill the post of Executive Director/ERB by way of open recruitment.

29. The item was voted on and endorsed.

EC(2006-07)11 Proposed creation of two supernumerary posts of one Chief Estate Surveyor (D1) and one Chief Structural Engineer (D1) in the Housing Department for a period of two years up to 6 July 2008; and revision and redistribution of duties and responsibilities among some other directorate posts of the Department to take account of changes in operational needs

30. The Chairman informed members that the Panel on Housing (Housing Panel) was consulted on the proposal at the meeting on 9 May 2006.

31. While expressing support to the proposal, Mr Abraham SHEK enquired whether The Link Real Estate Investment Trust (The Link REIT) would have to bear the cost for the procurement of land leases and deeds of mutual covenant (DMCs). In this connection, he questioned why the Administration had not briefed the Housing Panel on the additional staffing resources required for the task in the first place during the introduction of the divestment project. Mr SHEK considered the current arrangement undesirable as the Administration only put forward additional staffing requirements after listing of The Link REIT. He urged the Administration to provide the Legislative Council (LegCo) with comprehensive information on the cost implications of its future projects before their implementation.

32. The Permanent Secretary for Housing, Planning and Lands (Housing) (PSH) explained that according to the agreement between the Housing Authority (HA) and The Link REIT, it was the responsibility of HA to complete the procurement of

formal land title for the divested properties. He pointed out that the work involved in the procurement of these land leases and DMCs was much more complex and onerous than originally anticipated. For instance, the work involved in modifying the plans of the retail and car-parking facilities (RC facilities) in line with the requirements under the Buildings Ordinance (Cap. 123).

33. The Deputy Director of Housing (Corporate Services) (DD of H (CS)) added that the Administration had briefed the Housing Panel on the need for HA to complete the procurement task during earlier briefings on the divestment project before the Initial Public Offering of The Link REIT. Nevertheless, the details of the task including the schedule for completion were not yet available during the early stage of the project. DD of H (CS) further advised that subject to LegCo's approval of the staffing proposal, the staffing costs involved would be borne by HA and the Administration would not seek funding approval from FC in this regard.

34. Mr Abraham SHEK also expressed concern about the time gap between the divestment of RC facilities to The Link REIT and the completion of all the relevant leases and DMCs by HA for transfer of ownership. Pointing out that transfer of ownership without completion of formal land title would not be accepted for transactions of other listed companies, Mr SHEK considered that the Administration had applied double standard in the listing of The Link REIT. Mr WONG Ting-kwong and Mr WONG Kwok-hing expressed similar view. Mr WONG Kwok-hing opined that the procurement of land leases and DMCs after the divestment of RC facilities was an inappropriate arrangement.

35. DD of H (CS) explained that given the long lead-time required to procure the legal title for the large number of properties under the divestment portfolio, by the time when The Link REIT was listed in November 2005, HA was only able to transfer to The Link REIT the formal legal title for 76 of the 180 facilities sold to The Link REIT. For the remaining properties, only beneficial ownership was transferred. Such a special arrangement had been agreed by the regulator i.e. the Securities and Futures Commissions (SFC) having regard to the particular circumstances of the sale which involved completed properties in use owned by HA as a statutory body. He further pointed out that although a master lease and a model DMC had been drawn up, in practice, a lot of modifications to the standard model were necessary to suit the particular circumstances of each estate. Negotiations with various concerned parties had to be conducted to sort out differences in opinion and to balance different interests among the parties. The staffing support of a Chief Estate Surveyor (CES) was considered necessary for taking forward the complicated and important tasks.

36. While expressing support to the proposed supernumerary Chief Structural Engineer (CSE) post, Mr WONG Kwok-hing questioned the need for creating the supernumerary CES post, in particular, why the Administration failed to envisage the directorate staffing requirement for co-ordinating the sale of residual Home Ownership Scheme (HOS) and Private Sector Participation Scheme (PSPS) flats. Mr WONG doubted whether the two supernumerary posts under the staffing proposal could be voted on separately so that members could choose to support only

one of the posts. Ir Dr Raymond HO commented that the Administration did not show enough political sensitivity in putting the two proposed supernumerary posts under one staffing proposal. Ir Dr HO expressed support to the proposed CSE post given the complexity and potentially significant implications of the Comprehensive Structural Investigation Programme to be supervised by the incumbent of the post. He therefore shared Mr WONG's view that the two proposed posts should be submitted separately as two proposals.

37. The Assistant Secretary General 1 advised that according to the provision of the Public Finance Ordinance (Cap. 2), any changes to be made to the approved estimates of expenditure should be proposed by the Financial Secretary (FS) and approved by FC. According to the established arrangement for submission of funding proposals, the Administration should only group related items under one proposal. It would be up to the Administration to consider and decide whether individual items under one proposal should be split into separate proposals for submission to FC and its subcommittees.

38. PSH explained that when HA planned for the restructuring and streamlining of Housing Department (HD)'s organization structure for reduction of its establishment between October 2002 and March 2007, there was no concrete planning on the sale of the residual HOS/PSPS flats. As such, HD had not made any staffing provision for this task under the initial plan to downsize its establishment. Moreover, the disposal arrangement for the residual HOS/PSPS flats had yet to be decided when HA reviewed HD's directorate structure in June 2004. The Administration had therefore not taken into account the work related to the upcoming sale of these HOS/PSPS flats in the original organization plan. He assured members that HD had critically examined the feasibility of internal redeployment of staff to absorb the additional workload and had only put forward the proposal for creation of two supernumerary directorate posts following an overall review of its manpower position.

39. Mr WONG Ting-kwong said that Members of the Democratic Alliance for the Betterment and Progress of Hong Kong supported the staffing proposals for creation of the two supernumerary posts. Mr WONG was however of the view that it would be more desirable if the Administration would put forward the two proposed posts under separate proposals for LegCo's consideration.

40. Noting members' concern, PSH said that the propriety or otherwise of putting forward the two proposed posts under separate proposals would have to be examined in consultation with FS.

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41. Mr Patrick LAU appreciated the need for directorate staffing support to manage and oversee the important tasks of HA. In this connection, Mr LAU indicated support of Members of The Alliance to the present proposal. Nevertheless, he was of the view that in taking forward restructuring and streamlining initiatives, the Administration should be forward-looking and take heed of the long-term operational needs of bureaux/departments.

42. Mr WONG Kwok-hing sought further details of the duties of the proposed CES post, such as whether the incumbent would be responsible for mapping out the way forward for possible divestment of HA's remaining commercial facilities. In reply, DD of H (CS) said that another CES in the Estate Management Division of HD was responsible for managing all non-domestic properties of HA including the non-divested commercial properties. The incumbent of this CES post would be responsible for mapping out the way forward for possible divestment of HA's remaining facilities.

43. Dr KWOK Ka-ki appreciated the operational requirements for the supernumerary CES and CSE posts. He opined that despite dissenting views held by some LegCo Members on the divestment project, Members would have no choice other than providing the staffing resources required for completion of the legal title to transfer ownership of the divested properties as these had already been sold to The Link REIT. Nevertheless, Dr KWOK was concerned about the possible legal liability on the Administration and/or HA in the event that the procurement of land leases and DMCs for all remaining properties could not be completed within the timetable made known to investors of The Link REIT, i.e. mid-2008. He was concerned about the Administration's manpower plan if the procurement of legal title for the divested properties and the sale of residual HOS/PSPS flats could not be completed before the expiry of the proposed CES post in July 2008.

44. In reply, PSH assured members that HA aimed to complete the procurement of the land leases and DMCs for the remaining properties in accordance with the agreed timetable, i.e. by mid-2008. In the event that HA failed to meet the target completion date, The Link REIT might take any actions it considered appropriate. Moreover, SFC might reprimand HA for failing to transfer the formal legal title to The Link REIT by the target date. On the Administration's manpower plan beyond July 2008, PSH advised that the majority of the land leases and DMCs were expected to be completed before the expiry of the supernumerary CES post. As for the sale of the residual HOS/PSPS flats, HA aimed to arrange for sale of the majority of these flats (beginning from early 2007) within 2008. The remaining work of the upcoming sale, if any, would be absorbed by the existing CES post in HD.

45. The item was voted on and endorsed. Mr WONG Kwok-hing requested that the item be voted on separately at the relevant FC meeting.

46. The Subcommittee was adjourned at 10:00 am.

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