

立法會
Legislative Council

LC Paper No. CB(2)2520/07-08(01)

Ref : CB2/BC/13/06

Bills Committee on Independent Police Complaints Council Bill

**Background brief prepared by Legislative Council Secretariat
for the meeting on 7 July 2008**

**Financial and transitional arrangements for
the Legislative Council Secretariat and the Office of The Ombudsman**

Purpose

This paper summarises the financial and transitional arrangements for the Legislative Council (LegCo) Secretariat and the Office of The Ombudsman.

Background

2. The Independent Police Complaints Council (IPCC) is currently supported by a full-time Secretariat, headed by a Secretary, with 22 general grades staff and a Senior Government Counsel seconded from the Department of Justice serving as legal adviser to IPCC. In addition, two contract staff are employed to undertake information technology-related duties, and public relations and publicity matters for IPCC respectively.

3. In its submission dated 16 May 2008, the existing IPCC has proposed, among others, additional manpower/financial resources be provided to the statutory IPCC as follows -

- (a) six additional posts for the IPCC Secretariat;
- (b) upgrading the IPCC Secretary post from the existing rank of Administrative Officer Staff Grade C (Directorate Pay Scale Point 2 with a monthly salary of \$115,450 to \$122,600) to the equivalent of Directorate Pay Scale Point 3 (monthly salary of \$134,250 to \$142,250);
- (c) in addition to IPCC's existing provision under Head 121 of \$16,526,000, an one-off provision of \$3,700,000 and an increase in

recurrent provision of \$14,400,000 to cover staff costs arising from the six additional posts and upgrading of the IPCC Secretary post; and

- (d) provision to cover any rental increase for office accommodation and other unforeseen expenses.

4. At the meeting on 23 June 2008, the Administration informed the Bills Committee that it was examining the proposals in paragraph 3(a) to (c) and would allocate additional resources where justified. As regards paragraph 3(d), the Administration would consider providing additional resources should there be a sharp increase in rental and unforeseen expenses which were beyond the statutory IPCC's ability to absorb. The Administration envisaged that IPCC would be provided with no less than the current level of financial resources on becoming a statutory body. Any requests for additional resources would be subject to the established resource bidding procedures in the normal manner. Bids for additional financial resources from all bureaux/departments and government-funded bodies, including those from the statutory IPCC in future, would be considered at a high-level forum, with the personal participation of both the Chief Secretary for Administration and the Financial Secretary.

5. Members requested the LegCo Secretariat to provide for members' reference information on the transitional and financial arrangements for the establishment of the LegCo Secretariat.

Financial and transitional arrangements for the establishment of the Legislative Council Secretariat

6. In his 1992-1993 Policy Address, the Governor advised, among others, that there would be complete separation of non-government membership of the Executive Council and LegCo, and that LegCo must have clear and separate management of its own affairs. The Administration would work actively with LegCo Members in developing financial and managerial autonomy in organising LegCo's own administration and support facilities.

7. Following the Governor's Policy Address, the Office of Members of the Executive and Legislative Councils (OMELCO) set up a Working Group on Matters Arising from the Winding Up of OMELCO to make recommendations on follow-up actions on matters arising from the decision to wind up OMELCO. LegCo also established a Deputy President's Working Group to draw up proposals on -

- (a) the proposed structure and financial arrangements for the new LegCo Secretariat;

- (b) the proposed remuneration package for staff of the new LegCo Secretariat;
- (c) the implementation timetable for the reorganisation of the LegCo Secretariat; and
- (d) staffing arrangements for the new LegCo Secretariat.

8. The Deputy President's Working Group was subsequently referred to as the President's Working Group and enlarged with the addition of members from OMELCO's Working Group. The President's Working Group concluded its deliberations on 2 April 1993. It proposed, among others, that the new LegCo Secretariat should be financed through a one-line vote arrangement under a new Head of Expenditure and that the Government secondees and civil servants working in the OMELCO Secretariat and Office of the Clerk to LegCo be replaced by staff directly engaged by The LegCo Commission.

9. According to the LegCo Brief on the LegCo Commission Bill, a provision of \$193.5 million was included in the 1994-1995 draft Estimates for the salaries and expenses of The LegCo Commission. The provision included \$10.8 million for 31 new posts and upgrading of four posts, representing a 12% increase in manpower. During the resumption of Second Reading debate on the Bill, the Chief Secretary said that the provision of \$193.5 million represented a substantial growth over the approved provision of \$50.1 million in 1993-1994. Any further funding requests in the future resource allocation exercise would be fully and properly considered. However, there were always competing demands for public funds and the Administration had to allocate priorities carefully. Any requests for resources from The LegCo Commission inevitably, and rightly, had to be assessed against requests from other government departments.

10. The LegCo Brief on the LegCo Commission Bill and the relevant extract from the official record of proceedings on the resumption of Second Reading debate on the Bill at the Council sitting on 30 March 1994 are in **Appendix I** and **Appendix II** respectively.

Financial and transitional arrangements for the Office of The Ombudsman

11. Members may also wish to note the arrangement for the Office of The Ombudsman, which was delinked from the Administration in 2001. Before delinking, 74 of its 90 permanent posts were filled by general grade officers seconded from the civil service.

12. According to the Administration's paper on the delinking of the Office of The Ombudsman from the Administration for the meeting of the Panel on

Administration of Justice and Legal Services on 26 April 2001, the Office of The Ombudsman would gradually replace the civil servants serving on secondment by contract staff. It was anticipated that the 74 serving civil servants would be released by phases over the following 24 months. A number of posts were created with the delinking exercise, including one Accountant, four Complaints Assistants, seven temporary Senior Complaints Officers and five temporary Case Officers. The Office of The Ombudsman would operate on a subvention basis after delinking, and The Ombudsman would continue to be designated as the Controlling Officer for the estimates of expenditure. Whilst the Office of The Ombudsman enjoyed greater flexibility in resource management resulting from the lump-sum funding arrangement, it would be subject to the necessary accounting and auditing requirements in line with other publicly funded organisations. Apart from the one-off cost of setting up a temporary commissioning team, establishing accounting and human resources systems, conducting executive search and placing advertisements for employing contract staff in 2001-2002, the delinking exercise was cost-neutral. Future requests for additional resources by the Office would be dealt with through the annual Resource Allocation Exercise, as with other publicly funded organisations.

13. According to the LegCo Brief on The Ombudsman (Amendment) Bill 2001, "the delinking exercise will not affect the existing financial commitment (i.e. resources on recurrent expenditure) of the Government to fund the operation of the Office of The Ombudsman. However, there are one-off commissioning expenses, in a total amount of \$2.6 million, required by the Office of The Ombudsman to set up its commissioning team and accounting and human resources systems, conduct executive research and place advertisements for employing contract staff in 2001-2002."

14. The Administration's paper for the Panel on Administration of Justice and Legal Services and the LegCo Brief on The Ombudsman (Amendment) Bill 2001 are available on the LegCo website (<http://www.legco.gov.hk>).

File Ref. : CSO/ADM CR 1/1/511/92(93) Pt.2

LEGISLATIVE COUNCIL BRIEF

LEGISLATIVE COUNCIL COMMISSION BILL

At the meeting of the Executive Council (ExCo) on 1 March 1994, the Council advised and the Governor ordered that the Legislative Council Commission Bill should be introduced into the Legislative Council (LegCo).

BACKGROUND AND ARGUMENT

2. On 25 May 1993, ExCo advised and the Governor ordered that a Legislative Council Commission be established by statute to be responsible for the financial and administrative matters relating to the provision of support services to LegCo. The Legislative Council Commission would be independent from the Administration and would provide support services to Legislative Councillors through its executive arm, the Legislative Council Secretariat. ExCo also advised that the Commission and the Secretariat should be in place by 1 April 1994.

3. The reorganisation exercise has made good progress. The Legislative Council Commission and the Secretariat can be formally established by 1 April 1994, subject to the passage of the Legislative Council Commission Bill.

THE BILL

4. The Bill seeks to establish the independent Legislative Council Commission by statute and empower it to act in all financial and administrative matters affecting the provision of support services for LegCo.

5. **Clause 4** specifies the composition of the Legislative Council Commission.

6. **Clauses 9 and 10** specify the functions and powers of the Commission respectively.

7. **Clause 16(1)** specifies that the Secretary General shall be deemed to be a public officer and be designated as a Controlling Officer under the Public Finance Ordinance (Chapter 2).

8. To address the provisional Commission's concern that there may be an inconsistency arising from the Secretary General being accountable to the Commission and his role as a Controlling Officer (who will have to obey regulations and instructions given by the Financial Secretary under the Public Finance Ordinance), **Clause 16(2)** provides that before any regulations are made and directions are given to the Secretary General under the Public Finance Ordinance, the Financial Secretary shall first consult the Commission.

9. **Clause 17(1)** expressly specifies the Commission's managerial and financial autonomy. This has been included at the provisional Commission's request.

10. The opportunity is also taken to amend in the Schedule of the Bill the references in various Ordinances to the Clerk to the Legislative Council and the re-titled Clerk to the Executive Council, so that the different roles and functions performed by these two officials can be clearly specified.

LEGISLATIVE TIMETABLE

11. The legislative timetable will be -

Publication in the Gazette 4 March 1994

First Reading and 9 March 1994
commencement of the Second
Reading debate

Resumption of Second To be notified
Reading debate, committee
stage and Third Reading

BILL OF RIGHTS IMPLICATION

12. The proposed legislation has no implications in relation to the Bill of Rights Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

13. There are no financial and staffing implications arising directly from the proposed Bill.

14. Provision of \$193.5 million has been included in the 1994-95 draft Estimates for the salaries and expenses of the Commission. This includes \$10.8 million for 31 new posts and four upgradings, representing a 12% increase in the combined establishment of the present Office of Members of the Legislative Council and the present Office of the Clerk to the Legislative Council.

PUBLIC CONSULTATION

15. The provisional Legislative Council Commission is involved in the drafting process and has agreed with the draft Bill. As the Bill only affects the provision of support services to LegCo Members, public consultation is considered not necessary.

PUBLICITY

16. A press release will be issued on 2 March 1994.

Administration Wing
Chief Secretary's Office
2 March 1994

**Extract from the official record of proceedings on
the resumption of Second Reading debate on the Legislative
Council Commission Bill at the Council sitting on 30 March 1994**

3062

HONG KONG LEGISLATIVE COUNCIL — 30 March 1994

THE LEGISLATIVE COUNCIL COMMISSION BILL

Resumption of debate on Second Reading which was moved on 9 March 1994

Question on Second Reading proposed.

MRS ELSIE TU: Mr President, when the Legislative Council Commission Bill was introduced into this Council on 9 March 1994, it concluded one and a half years of concerted effort on the part of the Administration, the working group under your chairmanship, Mr President, and last but not the least staff of the Council Secretariat, to put in place a legal framework to enable this Council to direct the operation of its support services with managerial and financial autonomy.

Following the passage of the Bill, this Council will be given powers and responsibilities to employ its own staff, determine the organization of its administration and support facilities, formulate and execute policies for their effective operation and expend funds in ways it sees fit to support these activities.

The establishment of a secretariat completely separate from the executive, to underpin an independent legislature is a milestone in the history of Hong Kong's constitutional development.

With these remarks, Mr President, I welcome and strongly support the Bill.

MISS EMILY LAU (in Cantonese): Mr President, I speak in support of the Legislative Council Commission Bill. Since the Right Honourable Christopher PATTEN, the Governor, announced in October 1992 the separation of the legislature from the executive, this Council has been engaging in discussion with the Government in the ensuing 17 months, and eventually the conclusion arrived at is laid before us today after much bargaining has taken place.

I believe both the Government and the public understand that it is of paramount importance to have a legislature independent of the Government. We, the Legislative Council, must recruit our own staff who will be loyal to the Council so as to manage affairs for the Council.

Mr President, I have had very active participation in the discussion process these 17 months. During this period, I have been worrying that the Government may seek to control us through the allocation of resources because the Government does not want to see the emergence of a strong and independent Legislative Council and its Secretariat. The Government would rather want the most capable personnel to work for it, and would not wish top-notch personnel to serve the Legislative Council. I hope that my way of thinking is wrong and, all the more, I cherish the hope that the Government will, in the future, act to show us its strong support for the Legislative Council.

Mr President, after introduction of a directly elected element into the Legislative Council in 1991, our workload has increased considerably, our meetings have been held more frequently and the volume of the papers to be examined has also grown. I believe both the Government and the public understand this point. And from this I hope each and every one of us can conclude that this Council has taken up a very active role in monitoring the operation of the Government after directly-elected Members joined this Council. At most times, we do it by way of a frontal or head-on approach which is a very positive approach, though. The Government must be made to understand that with the expansion of workload, this Council may require more resources. Since we must maintain our independence, we have to have loyal staff who will be dedicated workers of this Council. Mr President, I believe that, before the separation of the legislature from the executive, some of my colleagues, including I myself, did not really trust our staff. Some of us even saw them as the tools of the Government and the senior Members. Nevertheless, times have changed. I hope that we Members will have complete trust in the loyal staff of the Legislative Council. Therefore, I agree with the Honourable Mrs Elsie TU's comments and I quote "to underpin an independent legislature is a milestone in the history of Hong Kong's constitutional development."

Mr President, this Council may have to go through a lot of trials and hardships in the coming three years, some of us may be kicked out from this Council. But I cherish the hope that, come what may, we will throughout be served by this Council's excellent staff. I hope they can work for this Council with steadfast devotion and peace of mind. I believe that if we can work hand in hand with an excellent and quality team, this will be of vital importance to the long-term development of Hong Kong. Although we Members are faced with an uncertain future, I hope that our staff will dedicate themselves to working for the Legislative Council with ease of mind and that we can together weather through the trying times of the transition.

With these remarks, I support the Bill.

DR YEUNG SUM (in Cantonese): Mr President, the establishment of the Legislative Council Commission on 1 April 1994 will be a major event after the separation of the executive from the legislature. It will also be a major step in the process of the Legislative Council's development towards independent operation. The independence of the Legislative Council is a necessary move in the context of the constitutional development of Hong Kong. It will have a positive and promotive effect on the development of democracy in Hong Kong to enable the Legislative Council to monitor the Government and to render the executive branch of government accountable to the Legislative Council.

However, the staffing and financial resources of the Legislative Council of Hong Kong are scant relative to the legislatures of other countries. The Administration must conduct a review on support matters such as support services to the Secretariat and the Bills Committees as soon as the establishment of the Commission is endorsed. Without such resources, the working capabilities of Councillors will be greatly restricted. Therefore, the United Democrats of Hong Kong fully support the establishment of this Commission and hope that the Government can learn from the experience of other countries in order to give full play to the independence of the Legislative Council and its ability to monitor the Government in the service of the public.

With these remarks, the United Democrats of Hong Kong fully support the motion.

CHIEF SECRETARY: Mr President, I would like to thank Members for their support of the Legislative Council Commission Bill. In response to the comments made by the Honourable Miss Emily LAU and Dr YEUNG Sum, I can assure this Council that it has never been our intention to restrain the activities of the Council by denying it adequate resources. But it is the Administration's responsibility to give proposals from the Council's secretariat that involve the expenditure of public funds the same rigorous examinations as we give to proposals from any government department or subvented agency. I am sure Honourable Members would not wish it any other way. I would like to

make it clear that the Administration has considered the funding requests from the Executive Committee of this Council carefully and sympathetically and is of the view that sufficient resources have been allocated to enable the Legislative Council Commission to be set up on a proper and financially sound footing. We have given and will continue to give this Council every support.

The proposed provision for the Legislative Council Commission in 1994-95 is \$193.5 million. Discounting the transfer of existing provision for Members' salaries and allowances, and for staff and expenses in respect of the Office of the Clerk to Legislative Council, and other factors such as known price increases, the proposed provision still represents a substantial growth in real terms over the approved provision of \$50.1 million in 1993-94. 31 new posts and four upgradings have been agreed for the Commission, representing a 12% increase in manpower. We consider that this should be sufficient to enable the new Legislative Council Secretariat to meet its anticipated workload.

I can assure Honourable Members that any further funding requests in future resource allocation exercise will be fully and properly considered. However, as Honourable Members are well aware, there are always competing demands for public funds and the Administration has to allocate priorities carefully. Any requests for resources from the commission inevitably, and rightly, have to be assessed against requests from other government departments, many of which will also have the support of Honourable Members.

Mr President, with these remarks, I commend the Bill to Members.

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).