

Legislative Council Panel on Housing

Permanent Retention of a Supernumerary Assistant Director of Housing Post in Housing Department

Purpose

This paper seeks Members' support for the permanent retention of a supernumerary post of Assistant Director of Housing (AD of H) (D2) in the Housing Department (HD) mainly to head the Independent Checking Unit (ICU), which exercises control, in accordance with the requirements of the Buildings Ordinance (BO) and the Lifts and Escalators (Safety) Ordinance (L&E(S)O), over Housing Authority (HA)'s buildings, Home Ownership Scheme (HOS) courts, Tenants Purchase Scheme (TPS) estates, and HA's divested retail and car-parking (RC) facilities.

Independent Checking Unit

2. Before 2000, building control in respect of HOS courts / TPS estates had been undertaken by a Building Control Unit (BCU) in HD under delegated authority from the Buildings Department (BD). In 2000, HD established an ICU to exercise regulatory control of HA's new buildings¹ in line with the requirements of the BO and L&E(S)O,² and the BCU was subsumed under the ICU since May 2003. The regulatory control work in relation to the BO involves, among others, checking building design and construction proposals, and undertaking subsequent site inspections and monitoring of works against approved plans as work progresses to various stages. The control generally applies to new building projects as well as

¹ Although HA's buildings are statutorily exempted from the BO and L&E(S)O, ICU exercises regulatory control over HA's buildings using the same technical standards and practices as those adopted by the Building Authority for control of private buildings.

² The Lift Ordinance Enforcement Unit under ICU is responsible for granting permission for the use and operation of new and existing lifts and escalators installed in HA's buildings. In essence, it performs more or less the same role of Electrical and Mechanical Services Department on lifts and escalators installed in private buildings.

projects for addition or alteration to existing buildings. Since November 2005, the ICU's control function has been extended to cover HA's divested RC facilities, and is being extended gradually to cover HA's existing buildings as well.

3. Under HA's Public Housing Construction Programme, HA will construct an average of 16 000 new public rental housing (PRH) flats each year over the next five years. HA's existing building stock comprises PRH flats (153 estates with about 600 000 flats), retail premises (over 200 000 m² in Internal Floor Area (IFA)), car-parking premises (about 27 000 car-parking spaces) and other non-domestic premises (about 770 000 m² in IFA). There are some 400 000 flats in 185 HOS courts and TPS estates. HA's divested RC facilities comprise retail premises of about 1 000 000 m² in IFA and some 100 000 car-parking spaces.

4. Reporting direct to the Director of Housing (D of H), a supernumerary post of AD of H (D2) (departmentally known as Assistant Director (Independent Checking Unit) (AD(ICU))) was first created on 15 January 2001 under delegated authority to enable the Department to work on the setting up of the ICU and drawing up its expansion plan. On 8 June 2001, the Finance Committee (FC) approved vide EC(2001-02)7 the creation of this supernumerary AD of H post for three years effective from 15 July 2001 to head the ICU. On 25 June 2004, FC approved vide EC(2004-05)9 an extension of this supernumerary AD of H post for another three years until 14 July 2007.

5. Since November 2005, we have redeployed on a temporary basis one Chief Architect post (D1) from the Development and Construction Division (DCD) of HD to ICU to help cope with the heavy workload arising from the extension of building control to existing PRH buildings³. In line with BD's practice, ICU has adopted a three-tier vetting system⁴ for examining construction proposals that involve structural alteration to existing buildings,

³ The temporary redeployment of posts was subsequently approved by the Finance Committee in July 2006 vide EC(2006-07)11.

⁴ In the past, HD adopted a two-tier system, i.e. a professional or senior professional would vet an application; the vetting result would then be reviewed by a senior professional or directorate officer. Under BD's three-tier system, an additional layer of review was needed at D1 level.

and in view of a growing number of such proposals submitted by The Link REIT in respect of the divested RC facilities, we have also deployed a Chief Structural Engineer post (D1) in DCD on a part-time basis to ICU to discharge this function.

Technical Audit Unit and Internal Audit Unit

6. In HD, there is a Technical Audit Unit (TAU) which is responsible for the review of operations and practices relating to capital and maintenance works; review of effectiveness of control on consultants' standard of service; cost effectiveness and suitability of materials and processes in capital and maintenance works. There is also an Internal Audit Unit (IAU) which is responsible for all other audits including system-based audit; operations, computer and system development audit; value-for-money audit; and outstation offices inspection. Before 2003, these two Units had each been headed by an officer at senior professional level (MPS 45 – 49 or equivalent), who reported direct to D of H. Since October 2003, AD(ICU) has been tasked to supervise TAU and IAU in order to enhance co-ordination and efficiency of various checking and audit functions within HD, as well as to relieve D of H partially of his supervisory duties.

Application of the Buildings Ordinance to HA's Buildings

7. The AD(ICU) post was created on a supernumerary basis pending completion of the Administration's detailed assessment of the legal, staff management and resource implications of lifting the current statutory exemption of HA's buildings from the BO. The Administration has now completed the assessment.

8. We agree in principle that the exemption for HA's buildings under the BO should be lifted, so that HA's buildings and private buildings will be subject to the same system of regulatory control under the Ordinance.

9. However, experience in the progressive adoption of the BO requirements in the regulatory control of HA's buildings reveals that applying the BO formally to HA's buildings would have significant implications for a

large number (over 2 100) of civil servants working in HD. In particular, these staff will assume enhanced responsibilities under the BO serving as Authorised Persons / Registered Structural Engineers / Registered Geotechnical Engineers / Technically Competent Persons in the design and/or supervision of HA's building projects. Furthermore, they will face potential criminal liability under the BO for contravening certain provisions of the BO.

10. Imposing criminal liability on public officers and the Government (i.e. HD)⁵ would be against the existing practice of most common law jurisdictions in the world today, which generally provides for immunity on the Government and public officers in respect of criminal liability. Government's legal policy is that no criminal liability should be imposed on public officers and the Government. Applying the BO to HA's buildings would result in the imposition of criminal liability on HD and civil servants working in HD, which is in conflict with this policy.

11. Furthermore, as the enhanced responsibilities of the civil servants concerned are not specified in their original conditions of employment, and in view of the serious repercussions of committing a criminal offence for civil servants (in respect of employment and pension), it will be necessary to consult them fully before implementing any change.

12. On the other hand, with the establishment of ICU in November 2000, there is now in place a stringent and effective system of regulatory control over HA's buildings. As its name suggests, ICU exercises independent control over the buildings under its jurisdiction. Using a system modeled closely on that provided under the BO for all stages of a project, the technical standards and practices adopted by ICU are identical to those adopted by BD for private buildings⁶. Indeed, after ICU's establishment in 2000, there has been no record of occurrence of substandard design or construction of HA's buildings.

⁵ If the BO is applicable to HA buildings, it is possible that HA as the building owner, may become criminally liable for contravening certain provisions of the BO. As HD is the executive arm of HA, it may be possible that if HA commits an offence under the BO, HD will also be held criminally accountable.

⁶ To ensure consistency in applying the BO, ICU consults BD regularly on interpretation and application of technical standards and practices, and benefits from the secondment of professional staff in relevant disciplines from BD. ICU is also required to submit bi-annual reports to BD on its regulatory control work.

13. Having regard to the effectiveness of ICU's independent control work, there is no immediate need for formally applying the BO to HA's buildings. Given the fundamental policy objection to the imposition of criminal liability on the Government and public officers, we do not propose to lift the exemption of HA's buildings under the BO. Instead, the current ICU's control arrangement should continue.

Permanent Retention of the supernumerary AD of H Post

14. Given the practical need to maintain the ICU operation for the long term, and the heavy existing and expanding (see paragraph 15 below) responsibilities of the AD(ICU) post, it is necessary to retain this post on a permanent basis.

15. Apart from its on-going building control activities, ICU is embarking on a number of initiatives, namely,

- (a) to take forward the implementation of the Fire Safety (Buildings) Ordinance (scheduled to take effect on 1 July 2007) in HA's buildings and other buildings under ICU's jurisdiction;
- (b) to continue a programme of Planned Survey for HOS courts / TPS estates; and
- (c) to continue to compile as-built records for HOS courts / TPS estates and HA's existing buildings, in line with BD's existing practice and format for private buildings, to facilitate building control.

We need an AD of H post to steer the implementation of the above initiatives and to oversee further development of the independent checking system. The post will continue to report to D of H. An updated job description of the post is at **Annex A**. A concise organisation chart of ICU, TAU and IAU showing the span of control of the AD(ICU) post is at **Annex B**.

Financial Implications

16. The notional annual salary cost of the AD of H post at mid-point is \$1,360,800, and its full annual average staff cost, including salaries and staff on-costs, is \$2,263,728. The full cost will be recovered from the HA under the usual arrangement for HD staff seconded to the HA.

Way forward

17. Subject to Members' comments, we plan to put the proposals to the Establishment Sub-committee of the FC in May 2007 for consideration.

Housing, Planning and Lands Bureau
February 2007

**Job Description
Assistant Director (Independent Checking Unit)**

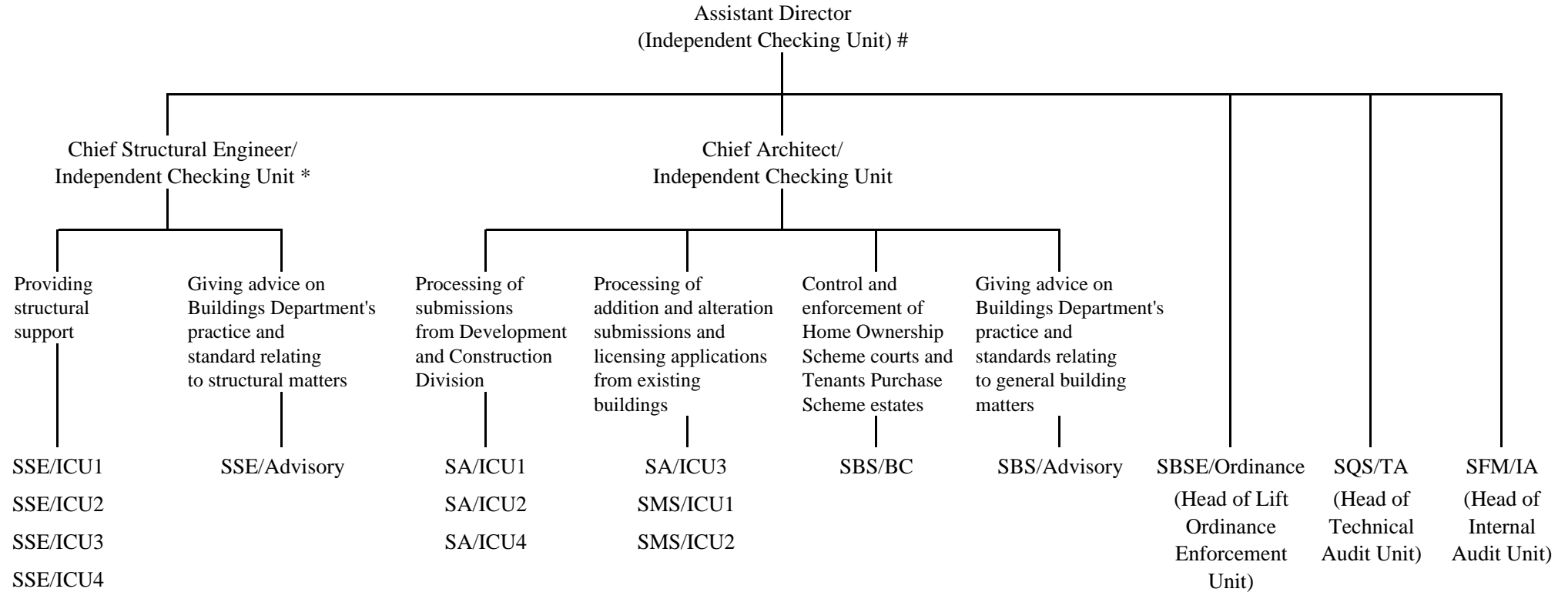
Rank : Assistant Director of Housing (D2)

Responsible to : Director of Housing

Major Duties and Responsibilities –

1. to head the Independent Checking Unit (ICU) to manage the checking of submissions from Divisions of the Housing Department (HD) to ensure compliance with statutory requirements under the Buildings Ordinance (BO) and the Lifts and Escalators (Safety) Ordinance (L&E(S)O);
2. to study, formulate and develop policies, in relation to regulatory compliance of Housing Authority (HA) projects, consistent with those required by the BO and L&E(S)O, and in consultation with the Buildings Department (BD) and Electrical and Mechanical Services Department;
3. to develop and maintain an appeal system in consultation with the BD in respect of disputes that may arise from the ICU decisions on regulatory matters on HA projects;
4. to review and develop independent checking practices for all submissions and approvals, applications for consent to the commencement of works, final inspections and the issue of occupation permit for building projects;
5. to review independent checking practices for all submissions, approvals, final inspections and the issue of operation permits for lifts and escalators;
6. to formulate the appropriate organisation structure, manpower requirements and practices of the ICU, seeking the BD's advice as necessary;
7. to liaise with Divisions of the HD, other departments, external non-Governmental bodies involved in the development process and consultants and contractors employed by the HA/HD, on regulatory compliance of the HA projects with the BO;
8. to oversee the building control work on Home Ownership Scheme courts, Tenants Purchase Scheme estates and divested properties carried out under delegated authority from the Director of Buildings; and
9. to manage the progress and reporting of the work of the internal audit units in HD and to assist the Audit Sub-Committee of the Strategic Planning Committee in considering the findings of their reports.

Existing Organisation Chart of Independent Checking Unit



Legends:

- # Supernumerary post of Assistant Director of Housing (D2) proposed for permanent retention
- * Post deployed to the Independent Checking Unit on a part-time basis
- BC Building Control
- IA Internal Audit
- ICU Independent Checking Unit
- TA Technical Audit

- SA Senior Architect (MPS 45 - 49)
- SBS Senior Building Surveyor (MPS 45 - 49)
- SBSE Senior Building Services Engineer (MPS 45 - 49)
- SMS Senior Maintenance Surveyor (MPS 45 - 49)
- SQS Senior Quantity Surveyor (MPS 45 - 49)
- SSE Senior Structural Engineer (MPS 45 - 49)
- SFM Contract Senior Finance Manager (HA contract post equivalent to MPS 45 - 49)