

立法會
Legislative Council

LC Paper No. CB(2)707/07-08
(These minutes have been seen
by the Administration)

Ref : CB2/PL/SE/1

Panel on Security

Minutes of meeting
held on Tuesday, 6 November 2007, at 2:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon LAU Kong-wah, JP (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, SBS, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Daniel LAM Wai-keung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung
Hon CHIM Pui-chung
- Member absent** : Hon Howard YOUNG, SBS, JP
- Public Officers attending** : Item IV
Mr Ambrose LEE, IDSM, JP
Secretary for Security

Ms Grace LUI
Deputy Secretary for Security

Ms CHAN Kit-ling, Maisie
Administrative Assistant to Secretary for Security

Miss Catherine YIP
Assistant Secretary for Security

Mr Charles CHOW
Project Director (Acting)
Architectural Services Department

Item V

Mr Ambrose LEE, IDSM, JP
Secretary for Security

Ms CHANG King-yiu, JP
Permanent Secretary for Security

Mrs Jessie TING, JP
Deputy Secretary for Security

Ms CHAN Kit-ling, Maisie
Administrative Assistant to Secretary for Security

Mrs Apollonia LIU
Principal Assistant Secretary for Security

Mr Ian WINGFIELD
Solicitor General

Mr Godfrey KAN
Senior Government Counsel

Clerk in attendance : Mrs Sharon TONG
Chief Council Secretary (2)1

Staff in attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Mr Raymond LAM
Senior Council Secretary (2) 5

Miss Helen DIN
Legislative Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)156/07-08)

The minutes of the meeting held on 11 October 2007 were confirmed.

II. Information paper issued since the last meeting
(LC Paper No. CB(2)224/07-08(01))

2. Members noted that a paper provided by the Administration on the alleged taking of alcoholic drinks by firemen on duty and the findings of its investigations into the case had been issued since the last meeting.

III. Date of next meeting and items for discussion
(LC Paper No. CB(2)181/07-08(01) and (02))

3. The Chairman reminded members that the following had been agreed at the special meeting on 30 October 2007 -

- (a) the item "Police's practices regarding handling of searches of detainees" would be further discussed at the meeting in December 2007 and interested organisations would be invited to the meeting to give their views on the item; and
- (b) the item "Review Report on the Use of Handguns in the Hong Kong Police Force" be deferred to the meeting in December 2007.

4. Members agreed that the two items referred to in paragraph 3 above would be discussed at the next meeting to be held on 4 December 2007 at 2:30 pm.

5. Members agreed that the item "Legislative proposal to implement the obligations on extradition under the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia" originally scheduled for discussion at the regular meeting in December 2007 would be deferred to the regular meeting in January 2008.

6. Since a special meeting of the Finance Committee would be held on 1 April 2008, members agreed that the regular meeting in April 2008 would be scheduled for 8 April 2008 at 10:45 am. Since 1 July 2008 was a public

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holiday, members also agreed that the regular meeting in July 2008 would be held on 8 July 2008 at 10:45 am.

(Post-meeting note : With the concurrence of the Chairman, the meeting on 8 April 2008 has been rescheduled to 10 April 2008 at 2:30 pm to avoid a clash with a meeting of the Panel on Financial Affairs.)

IV. Updates on Shenzhen Bay Port Control Point and Land Development Cost of Hong Kong Port Area
(LC Paper No. CB(2)249/07-08(01))

7. Members noted that the phrase "9,000 元" in paragraph 14 of the Chinese version of the Administration's paper should read "90,000 元".

8. Secretary for Security (S for S) briefed members on the utilisation of the Shenzhen Bay Port (SBP), matters relating to the cooperation between the Hong Kong Special Administrative Region Government (HKSARG) and the Shenzhen Municipal People's Government (SZG) and the funding for land development of the Hong Kong Clearance Area of SBP.

9. The Deputy Chairman asked whether the Administration had consulted experts in Mainland laws and Mainland projects when examining the items referred to in paragraph 16 of the Administration's paper.

10. Deputy Secretary for Security (DS for S) responded that the Department of Justice had consulted legal experts in Mainland laws before advising on the items relating to land requisition in paragraph 16 of the Administration's paper. She said that the relevant regulations and fees in the Mainland on which the items were based had been set out in Annex C to the Administration's paper. A copy of the relevant documents had been deposited with the Legislative Council Secretariat for perusal by interested members.

11. The Deputy Chairman asked whether the land use restrictions on the returned land and auctioned land referred to in paragraph 16(g) of the Administration's paper had been taken into consideration when calculating the land premium foregone for the returned land. He expressed concern that the land price of the reclaimed land, which might be subject to more development restrictions, might not be comparable to that of the auctioned land in the Nanshan area.

12. DS for S responded that the land premium forgone for the returned land was calculated based on the average of actual auctioned prices of three pieces of auctioned residential lands in the Nanshan area in 2001 and 2002. Land use restrictions and land valuation arising from other circumstantial factors were not adopted.

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13. Referring to paragraph 16(d) of the Administration's paper, Mr WONG Yung-kan said that although compensation had been made for the removal of oyster beds in Shenzhen waters, some of these oyster beds had been moved to the Hong Kong waters outside Lau Fau Shan. He expressed concern that compensation might have to be paid again for these oyster beds when there was a need for clearance of the oyster beds in Lau Fau Shan in the future.

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14. DS for S responded that the Administration could not verify whether any oyster beds previously located in Shenzhen waters had been moved to Hong Kong waters. She would obtain information on whether there were plans for development of the waters outside Lau Fau Shan from the relevant Department.

15. Ms Emily LAU asked whether the compensation for removed oyster beds referred to in paragraph 16(d) of the Administration's paper was supported by payment records. DS for S replied that there was receipt showing that the Shenzhen side had made the payment for the water clearance fee, the HKSAR's share of which was about RMB¥7 million. Ms LAU said that the Administration should maintain such payment records to prevent duplication of compensation for oyster beds in the future.

16. Ms Emily LAU asked whether the Administration had verified whether the woodland in the area referred to in paragraph 16(f) of the Administration's paper had been restored. DS for S responded that although the Administration had not verified whether the woodland had been restored, it had verified that the forest restoration fee was calculated in accordance with the relevant Mainland regulations.

17. Referring to paragraphs 14 and 16(g) of the Administration's paper, Ms Emily LAU asked why HKSARG had to pay RMB¥ 5.11 million for the use of waters as well as RMB¥ 487.52 million for land premium foregone for the returned land.

18. DS for S responded that units using a particular area of waters in Guangdong Province for development purposes for three months or more were required to pay a fee for use of waters. Regarding paragraph 16(g) of the Administration's paper, she explained that SZG had reserved for the requisitioned unit an area of returned land equivalent to 10% of the area of the requisitioned land. As the requisitioned unit was only required to pay 10% of the prevailing market land price for the returned land, the remaining 90% was regarded as the land cost loss for the returned land. She informed members that although the area of returned land had subsequently been revised to a level of 10% to 15% of the area of the requisitioned land, the Shenzhen side had agreed to adopt 10% as the basis for calculating the area of the returned land. She added that compensation was required for the requisition of land in the area where rocks and sand were taken for reclamation works. A forest

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restoration fee was payable for the restoration of woodland in the area where rocks and sand had been taken for reclamation.

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19. At the request of Hon Emily LAU, DS for S undertook to provide detailed information on the computation of costs for items referred to in paragraphs 14 and 16(a) to (g) of the Administration's paper as well as the Mainland regulations on which such costs were based. The Deputy Chairman requested the Administration to provide information on the sizes of land referred to in paragraph 16 of the Administration's paper. He also requested the Administration to explain in detail the costs related to the items referred to in paragraph 16(c) and (g) of the Administration's paper.

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20. The Deputy Chairman said that although the auctioned land price referred to in paragraph 16(g) of the Administration's paper dated back to 2001 and 2002, the "Notice by the Guangdong Provincial Land and Resources Department Regarding Matters Relating to Launching Reform of Land Requisition System" referred to in item 6 of Annex C to the Administration's paper appeared to be issued in 2005. He requested the Administration to explain in writing whether the Notice had any retroactive effect.

21. Dr LUI Ming-wah said that the Administration should provide information on the area of pre-existing land and area of reclaimed land occupied by the Hong Kong Port Area (HKPA), so that members could have a better idea of the land cost per square metre.

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22. DS for S responded that the total area of the reclaimed land was about 1.57 million square metres and Hong Kong shared 32.04% of the reclaimed land. This, together with the ratio of 36.92% for the fees shared by the Hong Kong side for filling works, gave an overall share of about 33% for the cost to be borne by the Hong Kong side. The Chairman requested the Administration to provide information on the total reclamation cost and the reclamation cost borne by the Hong Kong side.

23. Dr LUI Ming-wah asked why HKSARG had chosen to lease but not purchase the land occupied by HKPA.

24. DS for S responded that according to the "Official Reply of the State Council Concerning the Area of the Hong Kong Port Area at the Shenzhen Bay Port over which the Hong Kong Special Administrative Region is Authorized to Exercise Jurisdiction and the Land Use Period" issued on 30 December 2006, the land use right of HKPA should be acquired by HKSAR by way of a lease. She added that HKSARG and SZG had agreed in principle that HKSARG would pay an annual rental and be responsible for the land development costs for HKPA.

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25. Dr LUI Ming-wah asked whether the annual rental could be fixed at an agreed level for 30 or 40 years, given that the Hong Kong side had shared the land development cost. Mr WONG Yung-kan asked whether the Administration had assessed the possible increase in annual rental of HKPA.

26. DS for S responded that it had been agreed between the Hong Kong side and the Shenzhen side that the rental would be adjusted once every five years. It had also been agreed that the range of adjustment, which should not exceed $\pm 30\%$, would be the average change in percentage of the benchmark land premium published by Shenzhen City in the five years immediately before 1 May of the year when the adjustment was made.

27. Miss CHOY So-yuk asked whether the environmental standards adopted by the Hong Kong side or the Mainland side had been used in environment impact assessments (EIA) of the project. She asked whether both sides had discussed and agreed on the EIA standards to be adopted.

28. DS for S responded that the part of HKPA located within the boundary of Hong Kong had undergone EIA in accordance with the standards adopted in Hong Kong. The relevant assessment had been endorsed by the Advisory Council on the Environment and approved by the Director of Environmental Protection in November 2002. The part of the HKPA located within the boundary of Shenzhen had undergone EIA in accordance with the standards adopted in the Mainland. She added that the Co-operation Arrangement on Major Issues Relating to Shenzhen Bay Port signed by the Hong Kong side and Shenzhen side covered environmental aspects. A copy of the document had been deposited with the Legislative Council Secretariat for perusal by interested members.

29. Miss CHOY So-yuk said that the same EIA standards should be adopted for similar projects straddling the territories of Hong Kong and the Mainland in the future.

30. Mr LEUNG Kwok-hung said that the Administration should provide members with copies of the papers provided by the Shenzhen side on land development cost. He considered that representatives from SZG should attend the meeting to answer questions raised by members.

31. S for S said that HKPA was developed by the Shenzhen side in compliance with Mainland regulations. He considered it inappropriate to scrutinise the Mainland regulations or invite representatives from SZG to the meeting. He said that the Administration had held a series of meetings with the Mainland side before reaching an agreement on the land development cost to be borne by the Hong Kong side. Assessments conducted by the Administration indicated that the cost was reasonable. The payment and compensation records had been audited by the Shenzhen Municipal Audit

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Commission and examined by HKSARG. DS for S added that although the discussions between the Hong Kong side and the Shenzhen side on the cost could not be disclosed, a copy of the agreements entered into by the two sides had been deposited with the Legislative Council Secretariat for perusal by interested members.

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32. The Chairman requested the Administration to provide its response to the issues raised and information sought by members when submitting the funding request to the Public Works Subcommittee.

V. Results of study of matters raised in the Annual Report 2006 to the Chief Executive by the Commissioner on Interception of Communications and Surveillance
(LC Paper No. CB(2)181/07-08(03))

33. S for S briefed members on the results of the Administration's study of issues raised in the 2006 Annual Report (the Report) of the Commissioner on Interception of Communications and Surveillance (the Commissioner).

34. The Deputy Chairman said that as persons whose communication was intercepted were unaware of the operations being conducted, law enforcement agencies (LEAs) should act strictly in accordance with the law when conducting such operations. Referring to paragraph 10.19 of the Report, he said that the discontinuance of interception of a wrong telephone line should not be reported as discontinuance of interception on the ground that there was no further value to continue with the interception. He considered that law enforcement officers should be strictly required to provide comprehensive and accurate information to panel judges.

35. S for S responded that while the intentional hiding of information from, or provision of incorrect information to, panel judges would be totally unacceptable, he had discussed the case in question with the senior management of the LEA concerned and considered that there was no such ill intention. This notwithstanding, the Administration had revised the Code of Practice to require LEAs to give the full reasons to panel judges when reporting on discontinuance of operations. Measures had also been introduced to expedite the detection of a wrong interception.

36. Referring to paragraph 10.16 of the Report, the Deputy Chairman asked about the security measures which were identified to have room for improvement.

37. S for S responded that while he did not have access to all the information accessible to the Commissioner under the Interception of Communications and Surveillance Ordinance (Cap 589) (ICSO), he believed

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that the Commissioner had disclosed as much information as could be disclosed.

38. Referring to Chapter 13 of the Report, Mr Albert HO expressed grave concern that LEAs and panel judges had different interpretations on a number of provisions in ICSO. He queried why LEAs disagreed with the views of panel judges regarding the powers of a panel judge to partially revoke the authorisations that had been granted, to impose additional conditions when confirming an emergency authorisation and to revoke a device retrieval warrant. He asked whether the additional conditions imposed by a panel judge when confirming an emergency authorisation were disregarded by LEAs.

39. Solicitor General (SG) responded that so far there had not been any application for the issue of an emergency authorisation. He said that ICSO did not provide for panel judges to impose conditions when confirming an emergency authorisation. However, a panel judge could refuse to confirm the emergency authorisation and order that the emergency authorisation was to have effect subject to the variations specified by him or order that the authorisation be revoked.

40. S for S stressed that the Administration fully respected the views of the Commissioner and panel judges. He said that differences in the interpretation of provisions in legislation were not uncommon. On the provisions in question, the Administration had consulted the Department of Justice, which had endorsed the Administration's interpretations. He added that the Administration had revised the Code of Practice to address the issues raised in the Report as far as possible.

41. Ms Margaret NG shared the views of Mr Albert HO. Referring to paragraph 6.19 of the Report, she expressed concern that law enforcement officers might consider panel judges' attitude an unnecessary hindrance to their investigation work. She asked how the Administration would tackle the differences in interpretation between panel judges and law enforcement officers and whether a review on ICSO would be conducted. She said that a sunset provision should have been included in ICSO.

42. S for S responded that LEAs were aware of the role of panel judges and had been doing their best to comply with the requirements of panel judges. He said that although no amendment had been made to ICSO, the Code of Practice had been revised where appropriate having regard to the views of panel judges. He stressed that the Administration welcomed the views of panel judges. It would conduct a comprehensive review on ICSO in 2009.

43. Ms Margaret NG queried why a review on ICSO would not be conducted until 2009. S for S responded that the issues raised by panel judges did not have any substantial impact on the operation of the existing regime.

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44. Ms Audrey EU said that the Administration should not disregard the views of panel judges and LEAs should not act against the law.

45. SG responded that the Code of Practice, which was issued under ICSO, had been revised in the light of various suggestions and recommendations set out in the Report. The Code of Practice was binding on LEAs.

46. S for S said that the Commissioner had stated in the Report that the overall compliance by LEAs with the requirements of the ICSO was satisfactory and the Commissioner had not detected any intentional or deliberate contravention of the requirements of ICSO by any LEA or its officers. S for S added that although the Administration took the view that a panel judge was not empowered by ICSO to impose conditions when confirming an emergency authorisation, the Code of Practice had been revised to include a requirement for an authorising officer, when issuing an emergency authorisation, to impose condition as would have been imposed by panel judges when issuing judge's authorisations.

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47. Ms Audrey EU queried whether all the issues raised by panel judges had already been dealt with in the revisions to the Code of Practice. She requested the Administration to provide a paper setting out the Administration's response to all the issues raised in Chapter 13 of the Report.

48. Mr LEUNG Kwok-hung expressed concern that the Administration could disregard the views of panel judges because the role of panel judges was an administrative rather than a judicial one. He considered that a sunset provision should have been included in ICSO.

49. S for S responded that the Administration respected the views of panel judges, who had been working hard to protect privacy while facilitating law enforcement for prevention and detection of crime as well as protecting public security.

50. Referring to paragraph 4 of the Administration's paper, Mr Daniel LAM asked about the actions taken by LEAs in cases where circumstances did not warrant the continuation of the operations in question.

51. S for S responded that as pointed out by the Commissioner in his report, where the LEA concerned came to the view that circumstances did not warrant the continuation of an operation, it would proactively discontinue the operation and inform the panel judge concerned as soon as practicable. This would help protect the privacy of the individual(s) concerned. As for cases involving wrong interception, the regime also provided for a notification and compensation mechanism in respect of individual(s) affected. In Case 4 of Chapter 10 of the Report, the Commissioner and the LEA concerned had tried

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their very best to identify the line that had been wrongly intercepted and its subscriber. As the subscriber and user of that line could not be ascertained, compensation could not be considered in the case concerned.

52. Ms Emily LAU expressed concern that ICSO would not be reviewed until 2009. She said that members of the public would be worried about the protection provided under ICSO, if the Administration and panel judges could not resolve their differences in the interpretation of some provisions in ICSO.

53. S for S responded that differences in the interpretation of some provisions in legislation were not unusual. He reiterated that the issues raised by panel judges did not have substantial impact on the operation of the regime or the protection of privacy. The Code of Practice had been revised having regard to the suggestions and recommendations put toward in the Report.

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54. Ms Margaret NG requested the Administration to provide the Commissioner's views on whether panel judges had the right to seek the court's judicial interpretation when there were differences in the interpretation of a provision in legislation between panel judges and LEAs.

55. Members agreed that the subject would be further discussed at a special meeting.

(Post-meeting note : The special meeting has subsequently been scheduled for 6 December 2007 from 11:00 am to 1:00 pm.)

56. The meeting ended at 4:30 pm.

Council Business Division 2
Legislative Council Secretariat
2 January 2008