

**立法會**  
**Legislative Council**

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(These minutes have been  
seen by the Administration)

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**Establishment Subcommittee of the Finance Committee**

**Minutes of the 2<sup>nd</sup> meeting**  
**held in Conference Room 1 of Legislative Council Complex**  
**on Wednesday, 14 November 2012, at 8:30 am**

**Members present:**

Hon WONG Ting-kwong, SBS, JP (Chairman)  
Hon Kenneth LEUNG (Deputy Chairman)  
Hon Emily LAU Wai-hing, JP  
Hon Starry LEE Wai-king, JP  
Hon WONG Kwok-kin, BBS  
Hon Mrs Regina IP LAU Suk-yee, GBS, JP  
Hon Steven HO Chun-yin  
Hon YIU Si-wing  
Dr Hon KWOK Ka-ki  
Hon KWOK Wai-keung  
Dr Hon Helena WONG Pik-wan  
Hon Martin LIAO Cheung-kwong, JP  
Hon POON Siu-ping, BBS, MH  
Hon TANG Ka-piu  
Hon CHUNG Kwok-pan

**Member absent:**

Hon IP Kin-yuen

**Public Officers attending:**

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|--------------------------------|---|
| Ms Esther LEUNG, JP            | Deputy Secretary for Financial Services and the Treasury (Treasury)1                  |
| Mr Eddie MAK Tak-wai, JP       | Deputy Secretary for the Civil Service (1)  |
| Mr Simon PEH Yun-lu, SBS, IDSM | Commissioner, Independent Commission Against Corruption                               |
| Mr Ryan WONG Sai-chiu, IDS     | Head of Operations, Independent Commission Against Corruption                         |
| Mr Ricky YAU Shu-chun          | Director of Investigation (Private Sector), Independent Commission Against Corruption |
| Mrs Jennie AU YEUNG            | Assistant Director (Administration), Independent Commission Against Corruption        |
| Mr Arthur HO, JP               | Director of Administration and Development, Department of Justice                     |
| Mr Kevin ZERVOS, SC, JP        | Director of Public Prosecutions, Department of Justice                                |

**Clerk in attendance:**

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| Ms Connie SZETO | Chief Council Secretary (1)4 |
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**Staff in attendance:**

|                 |                                   |
|-----------------|-----------------------------------|
| Mr Andy LAU     | Assistant Secretary General 1     |
| Mr Hugo CHIU    | Council Secretary (1)4            |
| Ms Alice CHEUNG | Senior Legislative Assistant (1)1 |
| Ms Clara LO     | Legislative Assistant (1)9        |

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The Chairman drew members' attention to the two information papers provided by the Administration before the meeting. ECI(2012-13)6 provided an update on the overall directorate establishment position and advance information on possible proposals for creation and deletion of directorate posts in the 2012-2013 legislative session. ECI(2012-13)7 set out the latest changes in the directorate establishment approved since 2002.

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**EC(2012-13)9            Proposed creation of a supernumerary post of Assistant Director, Commission Against Corruption (IPS 46) in the Operations Department of the Independent Commission Against Corruption for a period of 30 months from 12 December 2012 to 11 June 2015 to continue to pursue the investigations and preparation for related criminal proceedings**

2.            The Chairman advised that the Administration's proposal was to create a supernumerary post of Assistant Director, Commission Against Corruption (AD, CAC) in the Operations Department of the Independent Commission Against Corruption (ICAC) for a period of 30 months from 12 December 2012 to 11 June 2015 to continue pursuing the investigations and preparation for related criminal proceedings of the case ESCC 2530/2012 - HKSAR v HUI Rafael Junior and four others (the relevant corruption case) upon lapse of the existing supernumerary AD post (i.e. Assistant Director/Special Duty, AD/SD) which had been created for six months under delegated authority with effect from 12 June 2012.

3.            The Chairman advised that the Panel on Security had been consulted on the proposal at its meeting on 6 November 2012. Panel members in general supported the proposal. While Panel members recognized the need to provide adequate resources to support the work of ICAC in upholding Hong Kong's reputation in combating corruption, some members enquired the need to create the supernumerary post for a period of 30 months given that ICAC had already laid charges against the defendants in the relevant corruption case.

4.            Mr Kenneth LEUNG declared that two senior partners of the law firm which he was employed were the instructing solicitors of the defendants in the relevant corruption case, but he had no participation in the case.

5.            Ms Emily LAU said that the Democratic Party supported the staffing proposal. Dr KWOK Ka-ki conveyed the Civic Party's support for the proposal. Mrs Regina IP said that the New People's Party was supportive to the proposal. Mr LIAO Cheung-kwong and Mr POON Siu-ping also indicated support for the proposal.

Duration of the supernumerary post

6.            Noting that the Department of Justice (DoJ) would seek approval under the next agenda item for the creation of a supernumerary post of a Deputy Principal Government Counsel for five years for the relevant

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corruption case, Mr CHUNG Kwok-pan enquired why ICAC had requested a shorter duration of 30 months for the supernumerary post of AD, CAC given the likelihood of subsequent appeals in respect of the case. Dr KWOK Ka-ki shared similar concern. Head of Operations, ICAC (H/Ops) explained that the duration for the supernumerary post was determined having regard to the complex nature of the case and past experience in handling similar major cases. The major duties of AD, CAC were to undertake investigations for the case and assist DoJ in pre-trial preparation as well as during the prosecution in court. As ICAC was not responsible for dealing with the appeal proceedings, if any, the duration of 30 months would be reasonable as far as ICAC's areas of responsibility were concerned. He pointed out that ICAC was prepared to seek extension for the supernumerary post if the situation warranted. Conversely, the post would be deleted earlier as soon as it was no longer required.

Arrangements for the supernumerary post

7. Mr Kenneth LEUNG enquired whether there were precedents of creating a dedicated position at AD level for taking charge of investigation for a particular corruption case, whether a mechanism was in place for selecting candidate for filling the supernumerary post and whether the post would be filled by internal or external recruitment, as well as arrangement for the officer filling the AD, CAC post upon lapse of the 30-month period.

8. Commissioner, ICAC (C/ICAC) responded that in the "Case involving the Stock Exchange of Hong Kong Limited", ICAC had established a dedicated team headed by an assistant director rank officer created under supernumerary arrangement to handle the investigation. He advised that there was an established mechanism in ICAC to select suitable candidates for filling posts and the current incumbent of the AD/SD post was selected through the same mechanism. The officer concerned was promoted to AD rank in end of September 2012 and would continue to occupy the supernumerary post of AD, CAC, if created. Given the sensitivity and complexity of the relevant corruption case which required continuity, it would be inappropriate to deploy another officer to fill the post. C/ICAC advised that expiry of the supernumerary post would have no impact on the subject officer as he had already been promoted to AD rank.

9. Ms Emily LAU said that the general public considered it necessary to provide sufficient resources to ICAC for its handling of the relevant corruption case. Noting from Enclosure 3 to EC(2012-13)9 (i.e. the organization chart of the Operations Department of ICAC) that each of the four existing ADs in the Operations Department had to handle a number of cases, Ms LAU enquired whether it would be appropriate for the new AD,

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CAC to handle the case only and whether there were any precedents for such an arrangement.

10. H/Ops responded that manpower deployment for handling individual cases would be different depending on the nature and complexity of the cases. As explained in the paper, the high complexity and sensitivity of the relevant corruption case warranted the steering of the case by a full-time senior officer at AD level. He added that the recurrent work schedules had already fully occupied the existing four ADs on permanent establishment in the Operations Department of ICAC, and it would be operationally infeasible to deploy any of them to take up in addition to the duties of AD/SD.

Manpower issue of ICAC

11. Ms Emily LAU was concerned whether ICAC was encountering a succession problem and considered that the issue should further be discussed in the Panel on Security. Ms LAU also enquired whether ICAC had difficulty in selecting suitable candidates to fill its vacancies. C/ICAC said that while succession arrangement to fill the post of Head of Operations earlier was not entirely satisfactory, ICAC as a whole was not facing a succession problem. He stressed that ICAC had sufficient manpower with relevant expertise, professional knowledge and experience in discharging its work. The supernumerary post of AD, CAC would be filled by an officer recently promoted to AD rank and his previous post, being left vacant then, had been filled by another officer in acting capacity.

12. Mr POON Siu-ping and Dr KWOK Ka-ki were concerned about implications of the relevant corruption case on the manpower and resources of ICAC. C/ICAC responded that to cope with the heavy workload arising from the relevant corruption case, in addition to the supernumerary AD/SD post, a dedicated Special Duty Group comprising 15 officers had been established through redeployment of resources within the Operations Department to tackle the case. The work of these officers had been taken up by their peers in the interim. This arrangement had inevitably increased the workload of the staff concerned. C/ICAC added that ICAC was conducting an open recruitment exercise to cope with increasing workload and to fill existing and anticipated vacancies. It was envisaged that the new staff would report for duty in early 2013. H/Ops supplemented that there were nine Investigation Groups in the Operations Department of ICAC each consisting of around 40 to 50 staff members. An increase in workload would inevitably affect the work progress of cases. There was an established internal mechanism to monitor the handling of outstanding cases, under which ICAC management was required to report and explain to the Operations Review Committee on investigation cases which had taken over 12 months and for persons who had

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been kept on bail for over six months.

13. Dr KWOK Ka-ki enquired whether ICAC had plans to create other supernumerary AD posts to undertake investigations and preparation for related criminal proceedings for other significant corruption cases in future, such as the alleged case against Mr Donald Tsang Yam-kuen, the ex-Chief Executive. Referring to paragraph 18 of EC(2012-13)9, which indicated a faster rate of increase in posts at directorate level than non-directorate level, Dr KWOK was concerned that ICAC seemed to have accorded higher priority in strengthening manpower of the directorate level. He further enquired about the situations of staff wastage and staff morale in ICAC.

14. C/ICAC declined to comment on individual cases and stressed that ICAC would assess its manpower situation in dealing with complex and significant corruption cases and would seek approval for the creation of new posts if necessary. As regards increase in the number of directorate posts, H/Ops advised that ICAC had recently obtained approval of the Finance Committee (FC) to create three directorate posts at D1 level. He added that the current recruitment exercise would help relieve the manpower strain. ICAC would also devise staff retaining measures.

15. C/ICAC stressed that ICAC staff morale was being maintained at a high level and the staff wastage situation which was once aggravated by competition for talents in the private sector some years ago had improved significantly. As an example, he stated that the non-natural wastage for Assistant Commission Against Corruption Officer (an entry-level position) was 34 in 2008, and the figure was expected to reduce to 17 in 2012.

Work of the Operations Department of ICAC

16. In response to enquiries raised by Dr KWOK Ka-ki and Ms Emily LAU on the caseload of Investigation Branch 1 of the Operations Department, H/Ops advised that if corruption complaints relating to election were excluded, the caseload as at 1 October 2012 would be 6% lower than that in the same period in 2011. In respect of the election cases, the 413 election cases mentioned in paragraph 4 of the paper covered both the Legislative Council Election of 2012 and the District Council Election of 2011. He added that in respect of the District Council Election, there would usually be a time gap between the election date and the referral of complaints in connection with election expenses from the Registration and Electoral Office.

17. Ms Emily LAU re-iterated concern about whether ICAC had sufficient manpower to handle its caseload, and considered that ICAC should expedite investigation on election cases and provide written responses to the

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complainants.

18. C/ICAC re-iterated that ICAC was conducting an open recruitment exercise to fill existing and anticipated vacancies. As regards investigation of election cases, H/Ops advised that the task was taken up by a dedicated group (Group X) under Investigation Branch 1. The Group comprised staff with the relevant experience and expertise in handling election-related cases. Moreover, reviews were conducted on a regular basis to further enhance the efficiency and efficacy of investigative work, and ICAC would seek additional resources if necessary.

19. In response to Dr KWOK Ka-ki's enquiry on whether ICAC had sufficient resources for monitoring its compliance with the requirements of the Interception of Communications and Surveillance Ordinance (Cap. 589) (ICSO), H/Ops advised that ICSO had provided a proper legal basis for ICAC to conduct interception on surveillance operations. As requirements under ICSO were highly complicated, the need to comply with the requirements under ICSO had inevitably affected the work of ICAC. Nonetheless, in the past few years, ICAC had been stepping up its efforts in ensuring compliance with the relevant requirements of ICSO, including making improvement in ICAC's workflow and procedures.

20. The item was voted on. Members agreed that the Subcommittee should recommend the item to FC for approval.

**EC(2012-13)10      Proposed creation of a supernumerary post of Deputy Principal Government Counsel (DL2) in the Prosecutions Division of the Department of Justice from 18 December 2012 to 30 September 2017 to handle a substantial corruption case**

21. The Chairman advised that the Administration's proposal was to create a supernumerary post of Deputy Principal Government Counsel (DPGC) (DL2) in the Prosecutions Division of the DoJ for about five years from 18 December 2012 to 30 September 2017 to handle a substantial corruption case (i.e. ESCC 2530/2012 - HKSAR v HUI Rafael Junior and four others) (the relevant corruption case).

22. The Chairman advised that the Panel on Administration of Justice and Legal Services had been consulted on the proposal at its meeting on 30 October 2012. Panel members did not oppose the proposal. Some Panel members asked whether there was genuine need to create the post for five years for one criminal prosecution case and if there were precedents for

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similar arrangement. Some Panel members expressed concern about the arrangement for the officer filling the supernumerary DPGC post in case criminal proceedings of the relevant corruption case lasted for less than five years. Panel members also enquired about the need to pitch the supernumerary post at DL2 level given that the relevant post was currently filled by an officer at DL1 level on an acting basis.

23. Mr Kenneth LEUNG declared that two senior partners of the law firm which he was employed were the instructing solicitors of the defendants in the relevant corruption case, but he had no participation in the case.

24. Mr LIAO Cheung-kwong expressed support for the staffing proposal. Mrs Regina IP, Dr KWOK Ka-ki, and Ms Emily LAU conveyed the support of the New People's Party, the Civic Party and the Democratic Party for the proposal respectively.

The need for and appropriate rank of the supernumerary post

25. Mrs Regina IP enquired about details of the duties and responsibilities of the supernumerary post and whether the relevant officer would function like a supporting solicitor of a large law firm in assisting prosecution work for the case. Whilst expressing support to fill the post by internal deployment in DoJ, Mrs IP enquired about the arrangement for the officer filling the post upon expiry of the five-year period.

26. Director of Public Prosecutions, DoJ (DPP) responded that given the complexity and nature of the corruption case concerned, the officer would be involved in a whole array of duties including preparation for the trial, following up with the hearings, conducting related legal research, and dealing with the administrative matters such as acquisition of additional resources and manpower for the case etc. DPP said that the officer concerned would continue to be considered for promotion in future promotion exercises if any DL2 vacancies arose during the five-year period. If the officer was not promoted to DL2 rank upon expiry of the supernumerary post of DPGC, she would cease her acting appointment unless she was found suitable for acting in another DL2 post.

27. Mr LIAO Cheung-kwong considered it necessary to create the supernumerary DPGC post to undertake the highly complex task. He enquired whether the supernumerary post should be ranked at DL1 level instead of DL2 level given that DoJ was expected to engage a number of outside counsels to handle prosecution work for the relevant corruption case, and hence the post might in practice assume a supporting role only. Mr LIAO further noticed from the job description of the post (i.e. Enclosure 2



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to EC(2012-13)10) that some duties might overlap with those of outside counsel to be engaged. He enquired whether pitching the post at DL2 level was to ensure that the rank of the officer would be commensurate with the level of legal personnel whom the officer was expected to deal with in the case.

28. DPP explained that Government Counsel posts pitched at DL1 and DL2 levels had different responsibilities and were subject to different levels of standard expected of the posts. The rank of the post at DL2 level reflected the level of responsibilities and standard at which the officer was expected to perform for handling the relevant corruption case, which was extremely complex and would be vigorously contested. Director of Administration and Development, DoJ (DAD) supplemented that the rank of the supernumerary post was determined having regard to the nature, importance and complexity of the duties of the post. In a number of past cases, Government Counsel posts for steering highly complex criminal cases were also pitched at DL2 level. In respect of selection of suitable candidate for filling the post, DoJ had considered the expertise and experience of eligible officers in the Department having regard to the requirements of the post, in accordance with established mechanism.

29. Noting that the supernumerary post of DPGC would play an important role in supporting the prosecution work of the relevant corruption case, Dr KWOK Ka-ki expressed concern about the appropriateness to fill the post by an Assistant PGC on an acting basis, and asked whether DoJ had considered creating a more senior post to undertake the task which might enable a reduction in the number of outside counsel to be engaged for handling prosecution work, and hence the costs involved. He further enquired about the impact of the relevant corruption case on the existing manpower situation and work of DoJ.

30. DPP advised that the existing officer filling the post had worked in DoJ for over 16 years and had adequate expertise, experience, and knowledge in the relevant field in handling cases of white-collar crime and corruption, as well as the caliber required for the job. He had worked closely with the officer concerned on a number of major cases and was confident that she was able and capable. DPP re-iterated that it would be sufficient to pitch the supernumerary post at DL2 level for dealing with the work in question. He would also ensure that there would be sufficient manpower to handle other work of the office and there would not be any adverse effect on the overall work efficiency and effectiveness. He added that DoJ was conscious of the need to increase resources for its work and had continuously recruited new officers and engaged outside counsel as necessary to cope with the workload.

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Duration and recruitment of the supernumerary post

31. Mr Kenneth LEUNG enquired about the rationale in determining the five-year duration for the supernumerary post and whether the period had taken into consideration possible subsequent appeals for the relevant corruption case. Ms Emily LAU expressed similar concern. DPP explained that the duration for the post was decided having regard to both past experience and the nature of the case concerned, as well as possible subsequent appeals. DoJ could consider seeking extension of the duration where necessary.

32. On Mr LIAO Cheung-kwong's enquiry of whether the supernumerary post would be subject to open recruitment, DPP responded that taking into account the need to fill the post within a short period of time to commence work for the relevant corruption case, as well as the requisite requirement for the post holder to possess the relevant experience and expertise, including knowledge on the internal operation of DoJ which were unlikely to be possessed by outside counsel, it would not be viable for the post to be filled by a lawyer from outside. Open recruitments were generally conducted for entry-level positions. DAD supplemented that the supernumerary post was a civil service post, and in line with established policy, it would be filled by internal deployment unless no suitable candidate could be identified, and then open recruitment would be considered.

Estimated cost for prosecution work relating to the relevant corruption case

33. Mr Kenneth LEUNG referred to paragraph 8 of EC(2012-13)10 and enquired about DoJ's plan in briefing out the prosecution work of the relevant corruption case, including the number of counsel in the outside legal team and their composition. He also enquired about the criteria adopted by DoJ in selecting the outside counsel.

34. DPP responded that the legal teams to be employed by the defendants in the relevant corruption case and their composition would impact on DoJ's plan in this respect. It was noted that the five defendants of the case had employed five separate legal teams which were heavily represented by an extensive array of counsel and senior counsel from both local and overseas. The Government's outside legal team at the moment consisted of both local and overseas counsel, and the size of the team might expand having regard to the circumstances. In selecting outside counsel, DoJ would consider employing the best available ones with proven track record and suitable caliber in handling cases in the relevant field. For instance, apart from engaging a junior counsel with highly recognized skills in dealing with prosecution of corruption cases to assist in the case preparation, DoJ had just

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secured the admission of a reputable Queen's Counsel from the United Kingdom who was regarded as one of the best criminal lawyers in that jurisdiction and skilled in handling prosecution of cases of a similar nature, and who had conducted cases in Hong Kong and thus was familiar with the Hong Kong jurisdiction. DPP assured members that DoJ would engage an appropriate number of both local and overseas outside counsel to ensure that the case would be properly prepared and presented, and be conducted in a fair, effective and efficient manner, and that resources were put to the most cost-effective use.

35. In response to Ms Emily LAU's enquiry, DPP advised that the expenditure for engaging outside counsel was paid from DoJ's vote and FC's approval was normally not required. On the expenditure for the relevant case, DPP said that DoJ did not have the actual calculation and the situation was fluid, and the expenditure would depend on how the case would develop. He anticipated that the whole exercise would be costly amounting to millions of dollar, but that was unavoidable in order to ensure that the case was taken forward properly. So far as employment of overseas counsel was concerned, the fee charged by an overseas Queen's Counsel would range from \$40,000 to \$80,000 on a daily basis. Such fees were comparable to those of local Senior Counsel.

36. Ms Emily LAU and Dr KWOK Ka-ki considered that to enable members to have a comprehensive picture on the costs for handling prosecution for the relevant corruption case when considering the staffing proposal, the Administration should provide information on the estimated costs in this respect, including estimated briefing out costs for engaging outside counsel (both local and overseas) to handle the actual prosecution in court, before the proposal was submitted to FC. The Chairman requested the Administration to provide the information after the meeting.

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37. Deputy Secretary for Financial Services and the Treasury (Treasury) 1 (DS(Tsy)) clarified that the current proposal dealt with changes to the approved estimates of 2012-13 for creating the proposed post. The costs for taking forward the prosecution work for the relevant corruption case (like the engagement of outside counsel) would be met by resources of DoJ under the relevant expenditure heads and subheads in the approved Estimates of 2012-13. Resources required in subsequent years would be included in the estimates of the relevant years. She said that the Administration would provide the requested information after the meeting.

38. The item was voted on. Members agreed that the Subcommittee should recommend the item to FC for approval.

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39. The Chairman enquired whether it was necessary for the two proposals considered at this meeting to be voted on separately at the FC meeting to be held on 30 November 2012. Dr KWOK Ka-ki enquired about the usual practice in this regard. DS(Tsy) and Assistant Secretary General 1 explained the usual arrangements for discussion and voting for items endorsed by the Establishment Subcommittee (ESC) at the relevant FC meetings. In general, all items endorsed by ESC would be included in a composite paper for submission and approval by FC en-bloc. Members were entitled to speak on and request separate voting on any of the items included in the paper. Normally, public officers would not be invited to attend the relevant FC meetings unless a member considered it necessary for a specific item to be singled out for discussion and separate voting and that such request was raised one day before the FC meeting concerned. With this clarification, no members requested the above arrangement for the two items at the FC meeting to be held on 30 November 2012.

40. There being no other business, the meeting ended at 10:09 am.

Council Business Division 1  
Legislative Council Secretariat  
29 November 2012