

立法會
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Establishment Subcommittee of the Finance Committee

**Minutes of the 12th meeting
held in Conference Room 1 of Legislative Council Complex
on Tuesday, 25 April 2017, at 8:30 am**

Members present:

Hon Mrs Regina IP LAU Suk-yee, GBS, JP (Chairman)

Hon Alvin YEUNG (Deputy Chairman)

Hon James TO Kun-sun

Hon Abraham SHEK Lai-him, GBS, JP

Hon WONG Ting-kwong, SBS, JP

Hon WONG Kwok-kin, SBS, JP

Hon Paul TSE Wai-chun, JP

Hon LEUNG Kwok-hung

Hon Steven HO Chun-yin, BBS

Hon WU Chi-wai, MH

Hon YIU Si-wing, BBS

Hon MA Fung-kwok, SBS, JP

Hon Charles Peter MOK, JP

Hon CHAN Chi-chuen

Dr Hon KWOK Ka-ki

Hon KWOK Wai-keung

Dr Hon Fernando CHEUNG Chiu-hung

Hon IP Kin-yuen

Hon Martin LIAO Cheung-kong, SBS, JP

Hon POON Siu-ping, BBS, MH

Dr Hon CHIANG Lai-wan, JP

Hon CHUNG Kwok-pan

Hon CHU Hoi-dick

Hon Jimmy NG Wing-ka, JP

Hon HO Kai-ming

Hon LAM Cheuk-ting
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai
Hon Wilson OR Chong-shing, MH
Hon CHAN Chun-ying
Hon Tanya CHAN
Hon LAU Kwok-fan, MH
Hon Jeremy TAM Man-ho
Hon Nathan LAW Kwun-chung
Dr Hon YIU Chung-yim

Members absent:

Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Dr Hon Helena WONG Pik-wan
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon SHIU Ka-chun
Hon YUNG Hoi-yan
Hon LUK Chung-hung
Hon KWONG Chun-yu

Public Officers attending:

Ms Carol YUEN Siu-wai, 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 Eugene FUNG, JP	Deputy Secretary for Food and Health (Food) 2
Mr Kenneth CHAN	Principal Assistant Secretary for Food and Health (Food) 1
Ms Winnie LAU	Senior Principal Executive Officer, Food and Environmental Hygiene Department
Dr Christine WONG	Acting Assistant Director (Food Surveillance and Control), Food and Environmental Hygiene Department
Dr Philip HO, JP	Consultant (Community Medicine) (Risk Assessment and Communication), Food and Environmental Hygiene Department
Ms Jennifer CHAN	Deputy Director of Administration 2
Mrs Judy LI	Director of Protocol
Mr Andrew LAI, JP	Deputy Secretary for Financial Services and the Treasury (Treasury) 2

Ms Pecvin YONG

Principal Assistant Secretary for Financial Services and the Treasury (Treasury)(Revenue)

Mr TAM Tai-pang, JP

Deputy Commissioner of Inland Revenue (Operations)

Clerk in attendance:

Ms Connie SZETO

Chief Council Secretary (1)4

Staff in attendance:

Mr Keith WONG

Council Secretary (1)4

Ms Alice CHEUNG

Senior Legislative Assistant (1)1

Miss Yannes HO

Legislative Assistant (1)6

Ms Haley CHEUNG

Legislative Assistant (1)9

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The Chairman drew members' attention to the information paper ECI(2016-17)13, which set out the latest changes in the directorate establishment approved since 2002 and the changes to the directorate establishment in relation to the four items on the agenda. She pointed out that the Administration had informed the Clerk to the Subcommittee yesterday its decision to withdraw the paper EC(2016-17)26 from the agenda for today's meeting. The relevant explanatory letter from the Administration had been issued to members vide LC Paper No. ESC92/16-17 on 24 April 2017. She then reminded members that in accordance with Rule 83A of the Rules of Procedure ("RoP"), they should disclose the nature of any direct or indirect pecuniary interest relating to the funding proposal under discussion at the meeting before they spoke on the item. She also drew members' attention to RoP 84 on voting in case of direct pecuniary interest.

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EC(2016-17)25

Proposed creation of two supernumerary posts of one Senior Principal Executive Officer (D2) in the Food and Health Bureau (Food Branch) to strengthen the directorate support to carry out various new policy and legislative initiatives on food safety for two and a half years; and one Senior Principal Executive Officer (D2) in the Food and Environmental Hygiene Department to head a new Corporate and System Management Division for about seven years up to 31 March 2024 with immediate effect upon approval of the Finance Committee

2. The Chairman remarked that the staffing proposal was to create one Senior Principal Executive Officer ("SPEO") (D2) in the Food and Health Bureau (Food Branch) to strengthen the directorate support to carry out various new policy and legislative initiatives on food safety for two and a half years with immediate effect upon approval of the Finance Committee ("FC"); and one SPEO (D2) in the Food and Environmental Hygiene Department ("FEHD") to head a new Corporate and System Management Division for about seven years up to 31 March 2024. She pointed out that the Subcommittee had discussed this item at the meetings on 10 and 24 April. The discussion would continue today.

3. Dr Fernando CHEUNG pointed out that FEHD had twice refused to attend the meetings of the Panel on Welfare Services for discussing the subjects relating to street sleepers. Although he did not have strong views on this staffing proposal, he would not support the proposal due to the aforesaid reason.

Voting on the item

4. The Chairman put the item to vote. No member claimed a division. The Chairman considered that the majority of the members voting were in favour of the item and declared that the Subcommittee agreed to recommend the item to FC for approval. The Chairman consulted members on whether the item would require separate voting at the relevant FC meeting. No member made such a request.

[*Post-meeting note:* Mr CHAN Chi-chuen requested before the end of the meeting that the item be voted on separately at the relevant FC meeting.]

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EC(2016-17)27

Proposed re-grading of the Director of Protocol (D of P) (D2) permanent post in the Protocol Division of the Administration Wing of the Chief Secretary for Administration's Office from the one-rank departmental post to a Senior Principal Executive Officer (SPEO) (D2) permanent post to formalize the long term arrangement of filling the D of P post by an SPEO since 1998; and deletion of the one-rank D of P grade consequent to the re-grading proposal with immediate effect upon approval of the Finance Committee

5. The Chairman remarked that the staffing proposal was to re-grade the Director of Protocol ("D of P") permanent post in the Protocol Division ("PD") of the Administration Wing of the Chief Secretary for Administration's Office from the one-rank departmental post to a Senior Principal Executive Officer ("SPEO") permanent post to formalize the long term arrangement of filling the D of P post by an SPEO since 1998; and to delete the one-rank D of P grade consequent to the re-grading proposal with immediate effect upon approval of FC.

6. The Chairman remarked that the Administration had consulted the Panel on Public Service on the staffing proposal on 20 July 2015 and 25 January 2017. At the meeting on 25 January 2017, Panel members generally supported the proposed re-grading of the post. Members noted that the operation of PD over the years had shown that the Executive Officer ("EO") grade staff could carry out the duties and responsibilities of PD smoothly. In addition, the Government currently needed to re-create a supernumerary SPEO post annually to accommodate the SPEO deployed to fill the D of P post. In the long run, the Government considered it appropriate to make permanent the arrangement of deploying an SPEO to fill the D of P post. The proposal could allow the Government to select the most suitable candidate from a sizable pool of staff at EO grade to fill the post, and would also optimize manpower planning.

Justifications for a Senior Principal Executive Officer filling the Director of Protocol post

7. Dr Fernando CHEUNG enquired whether the D of P post was currently filled by an Administrative Officer ("AO"), and whether the Administration proposed that the post be filled by an SPEO instead of an AO. He also enquired whether D of P was a policy-making official who reported directly to the Administration Wing rather than handling administrative duties only.

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8. Deputy Director of Administration 2 ("DD of Adm 2") explained that D of P was currently an open departmental post at D2 level. In the past, the Government had to accommodate the SPEO deployed to fill the D of P post through the arrangement of re-creating a supernumerary SPEO post annually. The current proposal was to re-grade the supernumerary post to a permanent post (which remained at D2 level) to be offset by deleting the one-rank D of P grade, so as to formalize the long-term arrangement of filling the D of P post by an SPEO. D of P reported directly to the Deputy Director of Administration; its holder was required to have strong executive experience to administer the honours system while having good organization and strong management skills to plan and coordinate visits of overseas dignitaries as well as national leaders to Hong Kong. In addition, the holder also had to possess strong communication skills to deal with matters pertaining to the Consular Corps in Hong Kong and to liaise with the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the Hong Kong Special Administrative Region ("OCMFA"). Therefore, a senior member of the EO grade with extensive government exposure as well as broad training, and rich experience in management and liaison was considered suitable for meeting the job requirements of the D of P post.

9. Mr KWOK Wai-keung noted that prior to 1997, there had been an arrangement of filling the D of P post by retired officers from the British Forces. After 1997, the Government had been deploying an SPEO to fill the D of P post through the arrangement of re-creating the supernumerary SPEO post annually since then. Mr KWOK enquired why the Government had not put forward the proposal of re-grading the D of P post to a permanent SPEO post until now.

10. Mr James TO enquired why the Administration had not made any attempt to conduct an open recruitment exercise after 1997 to identify a suitable candidate for the D of P post. He opined that the Administration should first make an attempt to conduct an open recruitment exercise for the D of P post before considering other options.

11. DD of Adm 2 advised that upon the anticipated departure of the then D of P in 1997, efforts were made by the Government to identify a suitable local candidate to fill the post which would become vacant by 1 July 1997. In-service and open recruitment exercises were conducted in 1996 and 1997 but no suitable candidate could be identified. Since 1998, the Government had been regularly reviewing the arrangement of deploying an SPEO to fill the D of P post. Following the retirement of the last member of the Protocol Officer ("PO") grade in 2014, the Government

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conducted an in-depth review on the staffing establishment of PD again; and submitted this re-grading proposal to the Legislative Council ("LegCo") Panel on Public Service for discussion in 2015. Support had been obtained from the Panel, but the Establishment Subcommittee could not consider the proposal before the expiry of the last LegCo term. Therefore, the Government consulted the Panel on Public Service again on the proposal in January 2017, and members generally expressed support for the proposal.

12. Dr YIU Chung-yim noted that some of the duties of D of P involved political judgment. He enquired how D of P would remain politically neutral when carrying out relevant duties, and why the Government did not consider filling the post by a politically appointed official.

13. Mr Nathan LAW shared Dr YIU Chung-yim's view. He opined that D of P had to be diplomatically tactful and equipped with political acumen and had an in-depth understanding of international relations, hence it was appropriate for an AO to fill the post. He enquired about the justifications for the proposal of filling the post by an SPEO.

14. DD of Adm 2 advised that the duties of D of P involved a lot of administrative and coordination work, including liaison with diplomats in the Consular Corps in Hong Kong as well as seasoned diplomats and representatives of OCMFA, administration of the Honours and Awards System, organization of official commemorative ceremonial events, management of the Government VIP Lounge services at the Hong Kong International Airport, etc. The Government considered that a senior member of the EO grade with extensive government exposure, political acumen and sensitivity as well as broad training would meet the job requirements of the D of P post. As for the staffing establishment, PD currently comprised 17 staff, including two directorate staff (i.e. D of P and the Deputy Director of Protocol), eight other EOs at different ranks and seven supporting staff. DD of Adm 2 stressed that D of P, being a civil servant of the Government, would perform his/her duties according to the principle of political neutrality of civil servants. Besides, PD, which was under the Administration Wing, would liaise with OCMFA over issues relating to foreign affairs or refer the issues to OCMFA. Over the past years, the D of P post had along been filled by an SPEO, and it had been demonstrated that operationally the EO grade staff could carry out the duties of PD and perform relevant responsibilities smoothly. The Director of Administration as well as other government bureaux/departments which frequently liaised with PD were also satisfied with this arrangement.

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Duties and responsibilities of the Protocol Division

15. Mr LEUNG Kwok-hung enquired whether the duties of PD included handling foreign affairs relating to Hong Kong. He also enquired about the details of PD's liaison work with OCMFA and the Consular Corps in Hong Kong, including the number of times of communication and the languages used, as well as whether PD would provide its staff with relevant language training in tandem with the developments of the Belt-Road Initiative.

16. D of P explained that according to the requirements under the Basic Law, the Central People's Government shall be responsible for the foreign affairs relating to the Hong Kong Special Administrative Region ("HKSAR"). She advised that PD would normally communicate with OCMFA in the form of documents over matters relating to privileges and immunities. As for consular relations matters pertaining to the Consular Corps in Hong Kong, the work of PD included arranging welcoming activities and briefings for new Consuls-General, attending National Day receptions held by consulates on behalf of the HKSAR Government, and assisting them in meeting relevant government officials and obtaining reference information needed, etc. She supplemented that communication with the Consular Corps in Hong Kong was mainly conducted in English, and PD would also hire translation services where necessary.

17. Mr Nathan LAW and Mr CHU Hoi-dick expressed concern about how PD would handle the duties relating to consular privileges and immunities. They enquired how PD decided whether consuls and diplomats in Hong Kong could enjoy privileges and immunities that exempted them from investigation and prosecution when they were involved in criminal cases in Hong Kong. Mr CHU further enquired whether national leaders and officials visiting Hong Kong as well as their accompanying staff could enjoy criminal exemption alike.

18. D of P said that as consular privileges and immunities were foreign affairs, PD would notify OCMFA if consuls or diplomats in Hong Kong were involved in criminal cases. OCMFA would decide whether the criminal immunities under the Vienna Convention on Consular Relations were applicable to them. PD would take follow-up actions in the light of OCMFA's views. D of P supplemented that to her knowledge, Mainland officials did not enjoy consular immunities in Hong Kong.

19. Mr Jeremy TAM suggested that PD should provide information relating to protocol matters (such as information and titles of heads of states, etiquette at official banquets, how national flags were placed, etc.)

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on its website for public reference so as to deepen their understanding of PD's work. In response, D of P mentioned that the HKSAR Precedence List was available on PD's website for public reference. Should there be enquiries from other government departments or outside agencies, PD would also provide views on etiquette to the organizers according to the needs of individual activities.

20. In relation to the work of dealing with consular affairs, Mr CHAN Chi-chuen enquired whether PD would arrange diplomatic or official passports for the same-sex partners of consuls in Hong Kong.

21. D of P said that the work of PD did not involve processing passports and visas for diplomatic officers. The consular affairs under the charge of D of P included helping diplomats in the Consular Corps to arrange meetings with relevant officials, providing policy information for reference, etc.

Arranging visits to Hong Kong by overseas dignitaries and national leaders

22. Citing the Government's response to a question raised by a Member on the Estimates of Expenditure 2017-2018, Mr CHAN Chi-chuen mentioned that in 2016-2017, PD received a total of 169 visits to Hong Kong by national leaders and overseas senior officials (less than the 180 visits in 2015-2016), involving an expenditure of \$7.05 million, which was higher than that in 2015-2016 (i.e. \$850,000). He requested the Administration to provide information on the visits to Hong Kong by leaders and senior officials of various countries that PD was responsible for over the past three years, including the national dignitaries involved, sizes of the groups visiting Hong Kong, the arrangements made by PD for such visits and the expenditure involved. He also enquired how PD would assess whether the expenditure for each visit was appropriate, and whether there was a mechanism for vetting the estimates of expenditure and reviewing the visit arrangements.

23. Mr Jeremy TAM and Dr CHIANG Lai-wan were concerned whether a mechanism was in place at PD to determine the expenditure on Hong Kong visits by national leaders and senior officials of various countries according to the depth of diplomatic relations, ranks of officials, the countries' population, etc. Mr Jeremy TAM requested the Administration to clarify whether the expenditure on Hong Kong visits by national leaders and overseas senior officials would be paid by the Hong Kong Government or visiting countries. Dr CHIANG Lai-wan requested the Administration to provide a breakdown of the expenditure on visits to Hong Kong, and state the ranks of the visiting officials whom PD was

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responsible for receiving.

24. DD of Adm 2 and D of P advised that the expenditure on arranging guest visits to Hong Kong would vary with sizes of the visiting groups, the duration of visits, the security requirements of visiting groups, security assessment by the Police, etc. PD would negotiate with representatives of visiting groups and make proper arrangements in accordance with the required protocols and prudent financial principles. PD would also make a budget, record and review on the expenditure needed in accordance with internal guidelines and experience. D of P supplemented that in case of an official visit of the highest level, the expenditure would normally include that on welcoming and farewell ceremonies, hotel accommodation, travel and hotel catering allowances. Generally speaking, officials on official visits to Hong Kong were heads and deputy heads of state, heads and deputy heads of government or officials at senior ministerial level; officials on working visits to Hong Kong were at ministerial level or above.

25. Mr LEUNG Kwok-hung enquired whether PD was responsible for arranging the Hong Kong visit in 2016 by ZHANG Dejiang, Chairman of the Standing Committee of the National People's Congress ("NPCSC") (including the relevant guest list). He also enquired whether this visit was the main reason where the expenditure on receiving national leaders and overseas senior officials visiting Hong Kong in 2016-2017 was significantly higher than that in 2015-2016.

26. D of P said that as regards the Hong Kong visit by Chairman ZHANG Dejiang in 2016, PD was responsible for the reception aspect, including welcoming and farewell activities, hotel accommodation, hotel catering allowances and travel arrangements, etc. PD was not responsible for drawing up the guest list, and the total expenditure of the visit (except for that on security) amounted to \$5.78 million.

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27. In relation to the Hong Kong visits by national leaders, Mr CHAN Chi-chuen requested the Administration to provide supplementary information comparing the expenditure on PD's arrangements for the Hong Kong visit by NPCSC Chairman Zhang Dejiang with that for former President HU Jintao's visit, including the total amount of expenditure and its breakdown. Separately, Mr LEUNG Kwok-hung requested the Administration to provide the number of Hong Kong visits over the past 19 years by national leaders (including those from overseas places, such as former United States President Bill CLINTON and former British Prime Minister Tony BLAIR, as well as those from China) where PD was responsible for planning and coordination, the expenditure involved in each visit and details of reception.

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28. Mr Alvin YEUNG noted that PD had posted on its website details of the overseas dignitaries on official visits to Hong Kong since 2004. He suggested that PD also post on its website information on the Hong Kong visits by national leaders, and enquired why such information was unavailable on PD's website. Mr YEUNG also requested the Administration to advise on the differences between PD's arrangements for the official or working visits by national leaders and those by overseas dignitaries in terms of manpower and work involved.

29. D of P said that like the Hong Kong visits by overseas dignitaries, those made by national leaders could also be classified into official visits, working visits and private visits. D of P pointed out that while national leaders rarely made working visits to Hong Kong, there were over 100 working and private visits to Hong Kong by overseas dignitaries and senior officials each year. During the official visits by national leaders, PD would be responsible for arranging welcoming and farewell ceremonies, sending staff to escort the national leaders throughout the visits, as well as arranging hotel accommodation, hotel catering allowances and travel, etc.; in case of working visits, PD was mainly responsible for making courtesy arrangements upon entering and exiting Hong Kong, as well as liaison and coordination work. PD would consider Mr Alvin YEUNG's proposal of posting on its website information regarding the Hong Kong visits by national leaders.

30. Dr KWOK Ka-ki enquired whether PD would advise OCMFA on the Hong Kong visits by individual national leaders, such as whether the prevailing political atmosphere and environment of Hong Kong was suitable for their visits.

31. DD of Adm 2 and D of P advised that individual national leaders would make detailed consideration and arrangements before visiting Hong Kong. Upon notification, PD would coordinate with the parties concerned and make every effort to provide support as well as extend courtesies to them so as to ensure that their Hong Kong visits could be conducted smoothly.

32. Mr Nathan LAW and Dr Fernando CHEUNG expressed concern about the security arrangements (such as the setting up of core security zones, use of counter-terrorism security measures) and the arrangements for media reporting during the Hong Kong visits by national leaders. They enquired about the role of PD in planning the arrangements in this respect. Separately, Dr CHEUNG mentioned the closure of the civic square in front of the entrance of the Central Government Offices ("CGO"), and opined

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that the arrangement might cause inconvenience to the guests visiting CGO or even be regarded as impolite treatment.

33. Dr CHIANG Lai-wan expressed concern about the impolite treatment such as demonstrations and shouting loudly that national leaders and overseas dignitaries might receive during their visits to Hong Kong. Mr CHU Hoi-dick was of the view that as long as the visits could be safely conducted, the Administration should allow protestors to express their views to national leaders and overseas dignitaries as a manifestation of the spirit of freedom and democracy in Hong Kong.

34. D of P said that the Hong Kong Police Force ("HKPF") was responsible for the security matters during delegations' visits to Hong Kong, and PD would work in tandem with HKPF's professional judgment and arrangements. As for the closure of the East Wing Forecourt of CGO, DD of Adm 2 explained that the Administration Wing was responsible for the management of CGO's facilities (including the East Wing Forecourt), which fell outside the purview of PD. As for media reporting during the Hong Kong visits by national leaders, D of P advised that the Information Services Department was responsible for relevant arrangements.

35. Dr Fernando CHEUNG pointed out that Nepal's former Prime Minister Baburam Bhattarai as well as his wife and his personal secretary were only permitted to enter Hong Kong after being detained by the Immigration Department for around an hour when they travelled from Guangzhou via Lo Wu on 29 October 2016. It was learnt that Nepal's former Prime Minister requested the Ministry of Foreign Affairs of Nepal to follow up the incident. Dr CHEUNG enquired about the role of PD in the said visit. Dr CHEUNG further said that some Nepali organizations had pointed out that Nepali passport holders were detained from time to time upon entry into Hong Kong, and he was concerned about the situation.

36. D of P recalled that the person concerned did not hold diplomatic passport for entering Hong Kong, so relevant departmental staff could not identify his identity immediately. She explained that it was not necessary for PD to coordinate and arrange all the Hong Kong visits by overseas dignitaries and national leaders. Upon notification, PD would inform relevant departments in advance to make proper arrangements.

The use of the National and Regional flags and emblems

37. Dr YIU Chung-yim enquired how D of P would remain politically neutral when handling work relating to the use of the National and Regional flags and emblems.

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38. DD of Adm 2 and D of P advised that the National and Regional flags and emblems were required to be displayed in accordance with relevant stipulations under the National Flag and National Emblem Ordinance and the Regional Flag and Regional Emblem Ordinance. PD had drawn up internal rules and guidelines according to the stipulations under the Ordinances to ensure that the use of the National and Regional flags and emblems was in compliance with relevant statutory provisions and requirements, hence the work in this respect would not involve a lot of political judgment. DD of Adm 2 further explained that government departments and other organizations were required to file applications to the Administration Wing before the use of the National and Regional flags and emblems in the events they organized. The Deputy Director of Administration would vet the applications depending on whether the use of such flags and emblems complied with statutory requirements and was of non-commercial nature. Should irregularities be identified, PD would refer the cases to law enforcement agencies for follow-up.

Administration of the Honours and Awards System

39. Dr YIU Chung-yim and Dr CHIANG Lai-wan enquired about the duties and role of D of P in respect of the administration of the Honours and Awards System, in particular whether PD would advise the Selection Committee or the Chief Executive on the nominees and recipients. Dr YIU enquired whether nominators were required to declare their interests in relation to their proposed nominations. Dr KWOK Ka-ki enquired about the consultation process for the nomination list.

40. DD of Adm 2 and D of P advised that PD was mainly responsible for the administration of the Honours and Awards System, and played the role of a secretariat by providing executive and secretariat support to the Honours and Non-official Justices of the Peace Selection Committee chaired by the Chief Secretary for Administration and its two sub-committees. Every year, PD would issue a call circular to government bureaux and departments inviting nominations for honours and awards. Upon receipt of the nominations, PD would submit the nomination list for the Selection Committee's consideration. The Selection Committee would shortlist the nominations for recommendations to the Chief Executive for final approval. PD would then organize the Honours and Awards Presentation Ceremony. D of P supplemented that members of the Committee were required to declare their interests according to the established mechanism.

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Voting on the item

41. The Chairman put the item to vote. No member claimed a division. The Chairman declared that the Subcommittee agreed to recommend the item to FC for approval. Mr LEUNG Kwok-hung requested that the item be voted on separately at the relevant FC meeting.

(At 10:42 am, the Chairman ordered that the meeting be suspended for a break. The meeting was resumed at 10:51 am.)

EC(2016-17)28 **Proposed creation of one permanent post of Administrative Officer Staff Grade C (D2) in the Treasury Branch of the Financial Services and the Treasury Bureau to strengthen directorate support on policy and legislative matters on various initiatives regarding Hong Kong's cooperation with the international community on tax matters; and making permanent of one supernumerary post of Chief Assessor (D1) in the Inland Revenue Department to cope with the increased workload and various policy initiatives relating to stamp duty**

42. The Chairman remarked that the Administration proposed to create one permanent post of Administrative Officer Staff Grade C ("AOSGC") (D2) in the Treasury Branch of the Financial Services and the Treasury Bureau ("FSTB(TsyB)") to strengthen directorate support on policy and legislative matters on various initiatives regarding Hong Kong's cooperation with the international community on tax matters; and make permanent one supernumerary post of Chief Assessor (D1) in the Inland Revenue Department ("IRD") to cope with the increased workload and various policy initiatives relating to stamp duty.

43. The Chairman remarked that the Administration had consulted the LegCo Panel on Financial Affairs on the proposal on 3 January 2017. The Panel had no objection to the Administration submitting the proposal to this Subcommittee. Some members were concerned about the economic benefits to be brought to Hong Kong through the creation of one permanent AOSGC post in the Financial Services and the Treasury Bureau ("FSTB"). The Administration advised that the international landscape on tax cooperation had been evolving very rapidly in recent years. The Organisation for Economic Co-operation and Development ("OECD") had from time to time put forward new initiatives to enhance tax transparency

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and combat cross-border tax evasion. There was an imminent need for FSTB to increase its manpower to handle matters relating to international tax cooperation in Hong Kong so as to avoid being labelled as a non-cooperative jurisdiction, which would affect Hong Kong's reputation and position as an international financial centre.

Work relating to automatic exchange of financial account information in tax matters and Comprehensive Avoidance of Double Taxation Agreements

44. Dr KWOK Ka-ki enquired whether China was among the 100 jurisdictions committed to automatic exchange of financial account information in tax matters ("AEOI"). He also requested IRD to give an account of the measures to combat cross-border tax evasion by Mainland people/officials.

45. The Chairman and Mr LEUNG Kwok-hung requested the Administration to provide a list of the 11 jurisdictions which had signed competent authority agreements ("CAAs") with Hong Kong. Mr LEUNG also enquired about the reasons why Hong Kong had not signed bilateral CAAs with China.

46. Deputy Secretary for Financial Services and the Treasury (Treasury) 2 ("DS(Tsy)2") advised that OECD had released the common reporting standard for AEOI in 2014 with a view to enhancing tax transparency and combating cross-border tax evasion. So far, there were 100 jurisdictions (including China and Hong Kong) committed to this global initiative. The Government amended the Inland Revenue Ordinance (Cap. 112) ("IRO") in June 2016 to put in place a legal framework for implementing AEOI in Hong Kong and later signed bilateral CAAs with Japan and the United Kingdom, so that Hong Kong could commence the first automatic exchanges in 2018. Subsequently, the Government signed bilateral CAAs with nine jurisdictions, including Belgium, Canada, Guernsey, Italy, Korea, Mexico, the Netherlands, Portugal and South Africa. The Government was now proactively pursuing bilateral CAA negotiations with various jurisdictions, including China.

47. In response to Mr LEUNG Kwok-hung's enquiry, DS(Tsy)2 advised that Comprehensive Avoidance of Double Taxation Agreements ("CDTAs") were tax agreements which sought to minimize incidence of double taxation between the contracting parties, helping organizations or persons with cross-border activities understand and calculate their tax obligations more explicitly. Currently, Hong Kong had signed CDTAs with 37 jurisdictions. Under AEOI, relevant financial institutions ("FIs")

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were required to collect the financial account information of their clients who were overseas tax residents and furnish IRD with the information on an annual basis, such that IRD could exchange such information with jurisdictions of residence of relevant account holders. He advised that Hong Kong adopted a territorial-based tax regime whereby only income sourced from Hong Kong was subject to tax. A local resident's income derived from sources outside Hong Kong would not be taxed in Hong Kong and hence would not be subject to double taxation. A fundamental change to the existing taxation regime would be needed if Hong Kong were to adopt a global taxation system.

48. In response to Mr LEUNG Kwok-hung's enquiry about AEOI, Principal Assistant Secretary for Financial Services and the Treasury (Treasury)(Revenue) ("PAS(Tsy)(R)") explained that under AEOI, FIs were obliged to identify accounts held by tax residents of jurisdictions on the list of "reportable jurisdictions", collect information in relation to these accounts and furnish IRD with relevant information. IRD had to conduct AEOI on an annual basis with jurisdictions which had signed bilateral CAAs with Hong Kong. She clarified that AEOI did not cover the financial account information of non-overseas tax residents. Since Hong Kong adopted a territorial-based tax regime, profits from business operations outside Hong Kong would not be taxed in Hong Kong.

49. Noting that the Administration was committed to expanding Hong Kong's network of CDTAs with its trading partners, Mr Holden CHOW enquired about the Administration's specific plan to expedite the signing of CDTAs with other trading partners (such as Australia, Brazil). PAS(Tsy)(R) pointed out that among the 37 jurisdictions which had signed CDTAs with Hong Kong, 12 were Hong Kong's 20 major trading partners. CDTA negotiations with some 10 jurisdictions (including Finland, Germany, India, etc.) were also under way.

50. The Chairman expressed concern about the economic benefits to be brought to Hong Kong through the implementation of AEOI. She was aware that some members of the banking sector considered not opening accounts for persons of dual nationality so as to avoid increasing compliance costs. She requested the Administration to provide information comparing Hong Kong and Singapore in respect of compliance with relevant international standards on enhancing tax transparency and combating cross-border tax evasion.

51. DS(Tsy)2 advised that the international landscape on tax cooperation had been evolving very rapidly in recent years, and Hong Kong as an international financial centre and a responsible member of the

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international community needed to render support in this respect. Apart from formulating the common reporting standard on AEOI, OECD would, starting from mid-2017, conduct a peer review on member jurisdictions regarding the effectiveness of their legal frameworks for AEOI and their progress in implementing AEOI. It would be necessary for Hong Kong to pass the relevant review to avoid being labelled as a non-cooperative jurisdiction and reduce the possibility of having international sanctions imposed on Hong Kong. He pointed out that following the endorsement of legislation for implementing AEOI in 2016, Singapore had signed AEOI agreements with 22 jurisdictions. Since the AEOI Standard formulated by OECD was applicable to all jurisdictions, the due diligence to be exercised by FIs in Hong Kong or Singapore and the reported information they collected were the same, so the compliance costs should be similar. In response to the Chairman's suggestion of conducting a follow-up study on the impact of implementing AEOI on the financial industry, clients and Hong Kong's overall economy, DS(Tsy)2 said that the Government had been collecting views from stakeholders. Stakeholders understood the latest international developments and requirements of AEOI and generally agreed that Hong Kong needed to duly expedite the implementation of AEOI initiatives in the light of the latest international trend.

52. Mr CHAN Chi-chuen expressed concern about Hong Kong's progress of implementing international tax cooperation initiatives. He enquired about the reasons why the progress of implementing AEOI in Hong Kong was slower than that in Singapore.

53. DS(Tsy)2 pointed out that the main reason for the relatively slow progress of implementing AOEI in Hong Kong was that unlike other jurisdictions which required FIs to collect financial account information of all overseas tax residents, FIs in Hong Kong were mandated to take the targeted approach only, i.e. identify and collect information in relation to accounts held by tax residents of confirmed AEOI partners as included in the list of "reportable jurisdictions" set out in IRO. Besides, for the 100 jurisdictions committed to AEOI, 90 had joined the Convention on Mutual Administrative Assistance in Tax Matters ("Multilateral Convention") to conduct AEOI on a multilateral basis. Instead, Hong Kong signed bilateral CAAs with individual jurisdictions as a basis for conducting AEOI. To avoid being labelled as a non-cooperative jurisdiction or having international sanctions imposed as far as practicable, Hong Kong needed to expand its AEOI network expeditiously. Therefore, the Government had introduced the Inland Revenue (Amendment) (No. 3) Bill 2017 into LegCo to mandate all FIs to identify and collect information in relation to accounts held by tax residents of prospective AEOI partners (74

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jurisdictions in total), in addition to confirmed AEOI partners, of Hong Kong.

54. Dr Fernando CHEUNG noted that Hong Kong was listed as a tax haven by the "Tax Justice Network", and a non-cooperative jurisdiction by the European Commission in 2015. Besides, the Panama Papers also revealed that among the cities in the world, Hong Kong had the greatest number of intermediaries offering services for setting up offshore companies. Such intermediaries set up offshore companies in tax havens for quite a number of politicians, public officials and celebrities and they were possibly involved in illegal activities such as assets hiding, tax evasion, money laundering, etc. The Panama Papers also showed that holders of these offshore companies mostly came from China, followed by Hong Kong. Dr CHEUNG expressed concern about the engagement of Chinese capital in money laundering activities through Hong Kong all along, and enquired why the Government, which sought to enhance tax transparency and combat cross-border tax evasion through the implementation of AEOI on one hand, and chose not to join the Multilateral Convention and did not collect information on the accounts held elsewhere by Hong Kong tax residents on the other. He also enquired how the proposed post of Principal Assistant Secretary for Financial Services and the Treasury (Treasury) (Revenue) 2 ("PAS(Tsy)(R)2") could further take forward the work in relation to combating tax evasion and money laundering if Hong Kong did not join the Multilateral Convention ultimately. He urged the Administration to join the Multilateral Convention as soon as possible so as to enhance tax information transparency.

55. Mr CHU Hoi-dick enquired about the manpower and resources involved in the signing of bilateral CAAs, including the time required for the negotiation of a bilateral CAA, and whether joining the Multilateral Convention could reduce FSTB's work in this respect. As for the issue of politicians, public officials and celebrities managing their local businesses through setting up offshore companies for the purposes of assets hiding and tax evasion, Mr CHU enquired whether joining the Multilateral Convention would help the Government obtain information on the offshore companies set up by Hong Kong people in tax havens (such as the British Virgin Islands and the Cayman Islands) so as to plug the loophole in this respect.

56. DS(Tsy)2 stressed that Hong Kong was not a tax haven. Since Hong Kong was an international financial centre, there would naturally be more institutions offering financial intermediary services. He pointed out that to avoid imposing undue compliance burden on FIs, the Government originally decided to conduct AEOI on a bilateral basis in order to take

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forward this new initiative in an orderly and gradual manner. Nevertheless, in the light of OECD's and the European Union ("EU")'s aspiration to widen the AEOI network internationally, the Government would proactively consider extending the application of the Multilateral Convention to Hong Kong for the implementation of AEOI. He clarified that after the implementation of AEOI, Hong Kong would also exchange with other jurisdictions information on the accounts held elsewhere by Hong Kong tax residents. However, as Hong Kong had been practising a simple, territorial-based tax regime, combating tax evasion cases through AEOI would be of limited effectiveness. He supplemented that in 2015, OECD had endorsed the package of measures covering 15 action plans to tackle base erosion and profit shifting ("BEPS") of enterprises. The package would help improve the coherence of international tax rules, realign taxation with economic substance and value creation, and promote a transparent tax environment.

57. PAS(Tsy)(R) reiterated that the Government had put in place a legal framework for implementing AEOI in mid-2016, and it had signed bilateral CAAs with 11 jurisdictions since then. However, in view of the mounting aspirations of the international community for jurisdictions to conduct AEOI on a multilateral basis, the Government would keep a close watch on the latest developments, and map out its strategy and response accordingly. She pointed out that while IRD was responsible for supporting the front-line negotiations of bilateral CAAs, FSTB(TsyB) was responsible for dealing with policy issues which might come up arising from the evolving international standards or unique circumstances for individual cases. FSTB(TsyB) would also take forward the relevant legislative proposals in seeking LegCo's ratification of the agreements signed. With the proliferation and rapid evolution of new standards and new initiatives on tax cooperation, the international community had been placing greater emphasis on the compliance by jurisdictions. There was an imminent need for FSTB to create the permanent PAS(Tsy)(R)2 post dedicated to handling Hong Kong's cooperation with the international community on tax matters, so as to avoid being included in the lists of non-cooperative tax jurisdictions by OECD and EU as far as practicable.

Justifications for creating the permanent post of Principal Assistant Secretary for Financial Services and the Treasury (Treasury) (Revenue)2

58. Mr James TO opined that the implementation of AEOI might not bring about substantial workload to FSTB and IRD, and that the Administration should first try to cope with the additional duties through internal resource allocation or the creation of supernumerary posts.

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59. Mr CHAN Chi-chuen noted that the proposed PAS(Tsy)(R)2 post was responsible for handling various policy and legislative matters regarding international tax cooperation. He enquired about the estimated time for completion and legislative timetables for the legislative matters concerning tax agreements, tax information exchanges, the BEPS package and other work relating to the amendment to IRO. He was concerned that the workload of the proposed post might reduce significantly upon completion of the aforesaid legislative work.

60. In response, PAS(Tsy)(R) mentioned that in relation to AEOI, the Government amended IRO in June 2016 to put in place a legal framework for implementing AEOI in Hong Kong. The Government then submitted two legislative proposals to include two and 72 jurisdictions in the list of "reportable jurisdictions" respectively. If the Government pursued extending the application of the Multilateral Convention to Hong Kong in the future, IRO would then have to be amended again for the implementation of relevant arrangements. Besides, in June 2016, Hong Kong committed to OECD on the BEPS package and its consistent implementation. The Government was drafting the relevant legislation and planned to introduce the amendment bill into LegCo in the second half of 2017. While the minimum standards currently set by OECD only covered four action plans of the BEPS package (including transfer pricing rules, spontaneous exchange of information on tax rulings, the country-by-country reporting requirement, the cross-border dispute resolution mechanism and the Multilateral Instrument), it was envisaged that jurisdictions would be required to implement the remaining BEPS action plans progressively in the years to come. The Government considered it appropriate to create one permanent AOSGC post in FSTB having regard to the on-going nature of the additional duties involved.

61. In response to Dr YIU Chung-yim's enquiry about the major duties of the proposed PAS(Tsy)(R)2 post, PAS(Tsy)(R) advised that the major duties of the post included handling the policy and legislative matters regarding the implementation of AEOI, measures to tackle BEPS, and the expansion of Hong Kong's CDTA network with its trading partners. She explained that unlike AEOI and BEPS measures, CDTAs were tax agreements which sought to minimize incidence of double taxation between the contracting parties and provide a mechanism for exchange of information between tax authorities. After signing various international tax cooperation agreements, the Government was required to take forward the relevant legislative proposals in seeking LegCo's ratification of the agreements before their implementation. FSTB would consult stakeholders on the various international tax cooperation initiatives in drawing up relevant legislative proposals. She reiterated that if Hong

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Kong could not respond to the international community's call for tax cooperation, it would possibly be listed as a non-cooperative jurisdiction by OECD and EU, and hence would be subject to international sanctions that would make it a less attractive place for investment and business.

Justifications for creating the permanent post of Chief Assessor (Stamp Office)

62. Dr YIU Chung-yim noted that the proposed post of Chief Assessor (Stamp Office) ("CA(SO)") was mainly responsible for heading the Stamp Office ("SO") and overseeing its daily operation. He pointed out that despite the persistent increase in the number of stamp duty cases on property transactions, there was a downward trend when compared with the peak level (more than 100 000 cases each year). Even though the cases handled by SO had become increasingly complicated owing to the demand-side management measures introduced by the Government to help cool down the residential property market; given that the Stamp Duty (Amendment) Bill 2017 which introduced a new flat rate for the ad valorem stamp duty chargeable on residential property transactions was still under scrutiny, and the additional workload brought by the demand-side management measures might be short-term in nature, Dr YIU queried the justifications for converting the supernumerary CA post (which lapsed on 31 March 2017) into a permanent post. He considered that it might be more appropriate to retain the existing supernumerary post or create an additional supernumerary post to cope with the workload brought by the implementation of demand-side management measures.

63. Mr CHAN Chi-chuen also expressed concern about converting the supernumerary CA post into a permanent post. He enquired about the share of handling stamp duty matters on property transactions in SO's overall workload, as well as the types of appeal cases handled by SO. He pointed out that the demand-side management measures might be short-term in nature, and queried the need to create the permanent CA post.

64. In response, DS(Tsy)2 and Deputy Commissioner of Inland Revenue (Operations) ("DC(O)/IRD") mentioned that volume aside, the stamp duty cases dealt with by SO had become increasingly complicated, especially those relating to demand-side management measures (including the acquisition of more than one residential property under one single instrument). Besides, in addition to handling stamp duty cases, the proposed CA(SO) post was also required to deal with an escalating number of appeal cases and to be heavily engaged in providing technical support to other policy bureaux in implementing new policy initiatives, including levy collection on behalf of the Property Management Services Authority,

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implementation of the Shanghai-Hong Kong Stock Connect, Shenzhen-Hong Kong Stock Connect and mutual recognition of funds between the Mainland and Hong Kong, etc. After taking into careful consideration the continued growth of SO's work in terms of scope, volume and complexity, the Government saw a strong need for creating the CA(SO) post on a permanent basis. As regards Mr CHAN Chi-chuen's further enquiry, DC(O)/IRD responded that as at the end of March 2017, among the appeal cases where hearings had not yet concluded, around 20% were related to demand-side management measures. He supplemented that SO was under Unit 3 of IRD. Unit 3 had a current establishment of more than 600 staff, but there was only one CA who had to supervise and administer the Unit's operation. Therefore, there was a need to create the proposed permanent CA post to maintain the effective directorate leadership at Unit 3.

The Stamp Office's procedures for handling complaints and informer cases

65. Mr Jeremy TAM enquired about SO's procedures for handling complaints and informer cases, including whether complainants or informers would be informed of relevant investigation outcomes. He advised that he had lodged a complaint to IRD in respect of a suspected stamp duty evasion case. When he later enquired IRD about the investigation outcomes, IRD refused to disclose any information. Mr TAM and Mr James TO commented that IRD should inform complainants or informers whether it had conducted investigation into the cases and the investigation outcomes (including whether a complaint was substantiated, whether enforcement actions were needed, etc.).

66. DC(O)/IRD advised that upon receipt of a complaint or informer case, IRD would acknowledge receipt with the complainant or informer and would take appropriate follow-up actions. As for the information that could be disclosed to a complainant or informer, it would depend on the circumstances of individual cases, such as whether third-party information or privacy of individuals would be disclosed. Generally, IRD would not disclose investigation contents and outcomes to complainants or informers. If the reports were about matters on IRO, IRD was required to safeguard the confidentiality of all relevant information under the confidentiality provisions of IRO. In relation to the case mentioned by Mr Jeremy TAM, DC(O)/IRD advised that he would further communicate and follow up with Mr TAM after the meeting.

67. In response to Mr LEUNG Kwok-hung's enquiry, DC(O)/IRD explained that as stipulated in section 4 of IRO, every person who carried out the provisions of IRO should preserve and aid in preserving secrecy

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with regard to all matters relating to the affairs of any person that might come to his knowledge in the performance of his duties, and should not communicate any such matter to any person.

Work on combating tax evasion

68. Dr KWOK Ka-ki pointed out that the Chief Executive's receipt of a remuneration from the Australian firm UGL Limited might involve tax evasion issues. Dr KWOK queried why IRD had not investigated the incident and given an account to the public all along.

69. DS(Tsy)2 and DC(O)/IRD reiterated that according to the confidentiality clauses in IRO, IRD should not disclose to other parties information of any cases, including the investigation actions taken and outcomes. They stressed that IRD would deal with each complaint case in accordance with the requirements under IRO in a professional and impartial manner.

(At 11:32 am, DS(Tsy)2 left the conference room.)

70. The Chairman said that the Subcommittee would continue to discuss this item at the meeting on 26 April 2017.

71. There being no other business, the meeting ended at 12:45 pm.

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Legislative Council Secretariat
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