

立法會
Legislative Council

LC Paper No. FC180/17-18

(These minutes have been
seen by the Administration)

Ref : FC/1/1(19)

Finance Committee of the Legislative Council

Minutes of the 40th meeting
held at Conference Room 1 of the Legislative Council Complex
on Friday, 12 May 2017, at 5:12 pm

Members present:

Hon CHAN Kin-por, BBS, JP (Chairman)
Hon Michael TIEN Puk-sun, BBS, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon LEUNG Yiu-chung
Hon Abraham SHEK Lai-him, GBS, JP
Hon Tommy CHEUNG Yu-yan, GBS, JP
Prof Hon Joseph LEE Kok-long, SBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon CHAN Hak-kan, BBS, JP
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon Claudia MO
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, JP
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
Hon LEUNG Che-cheung, BBS, MH, JP
Dr Hon KWOK Ka-ki

Hon KWOK Wai-keung
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon IP Kin-yuen
Dr Hon Elizabeth QUAT, JP
Hon Martin LIAO Cheung-kong, SBS, JP
Dr Hon CHIANG Lai-wan, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon Andrew WAN Siu-kin
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon HO Kai-ming
Hon LAM Cheuk-ting
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai
Hon SHIU Ka-chun
Dr Hon Pierre CHAN
Hon CHAN Chun-ying
Hon HUI Chi-fung
Hon LUK Chung-hung
Hon LAU Kwok-fan, MH
Hon KWONG Chun-yu
Hon Nathan LAW Kwun-chung
Dr Hon YIU Chung-yim

Members absent:

Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon CHAN Han-pan, JP
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
Hon Dennis KWOK Wing-hang
Dr Hon Helena WONG Pik-wan
Hon POON Siu-ping, BBS, MH
Hon Alvin YEUNG
Hon Wilson OR Chong-shing, MH
Hon YUNG Hoi-yan

Hon Tanya CHAN
Hon CHEUNG Kwok-kwan, JP
Hon Kenneth LAU Ip-keung, MH, JP
Dr Hon CHENG Chung-tai
Hon Jeremy TAM Man-ho
Dr Hon LAU Siu-lai

[According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.]

Public officers attending:

Ms Elizabeth TSE Man-ye, JP	Permanent Secretary for Financial Services and the Treasury (Treasury)
Ms Carol YUEN, JP	Deputy Secretary for Financial Services and the Treasury (Treasury) 1
Mr Alfred ZHI Jian-hong	Principal Executive Officer (General), Financial Services and the Treasury Bureau (The Treasury Branch)
Mr John LEE Ka-chiu, PDSM, PMSM, JP	Under Secretary for Security
Mr Andrew TSANG Yue-tung	Principal Assistant Secretary for Security
Mr Stanley CHUNG Siu-yeung	Assistant Commissioner of Police (Crime)
Mr Anthony TSANG Ching-fo	Senior Superintendent (Cyber Security and Technology Crime Bureau), Hong Kong Police Force
Dr Frank LAW Yuet-wing	Superintendent (Cyber Security and Technology Crime Bureau), Hong Kong Police Force

Clerk in attendance:

Ms Anita SIT	Assistant Secretary General 1
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Staff in attendance:

Mr Derek LO	Chief Council Secretary (1)5
Ms Ada LAU	Senior Council Secretary(1)7
Mr Raymond SZETO	Council Secretary (1)5
Mr Frankie WOO	Senior Legislative Assistant (1)3
Ms Michelle NIEN	Legislative Assistant (1)5

Action

Item No. 2 — FCR(2017-18)3

**RECOMMENDATION OF THE ESTABLISHMENT
SUBCOMMITTEE MADE ON 21 FEBRUARY 2017**

EC(2016-17)23

HEAD 122 —HONG KONG POLICE FORCE

Subhead 000 —Operational expenses

The Finance Committee ("FC") continued with the discussion on item FCR(2017-18)3.

Members' concerns about the discharge of duties by the Police

2. When speaking on the item, members generally agreed that there was a need to combat technology and cyber crimes, given their increasing threats. Mr Charles Peter MOK, Mr HUI Chi-fung and Mr KWONG Chun-yu were concerned about the Police using the pretext of combating cyber crimes to tighten surveillance on the expression of views or even fulfil the political mission of suppressing the freedom of speech. Mr HUI Chi-fung was dissatisfied that the Police had failed to provide the Legislative Council ("LegCo") with statistics concerning cases where telecommunications or Internet service providers had refused to disclose to the Police information on their clients. Mr SHIU Ka-chun enquired about the Police's handling of hacking activities conducted by Mainland intelligence agencies in Hong Kong. He pointed out that such questions were raised by members to highlight the need for the Administration to strike a balance between stepping up actions against cyber crimes and protecting human rights.

3. Dr KWOK Ka-ki was worried that the proposed post was created by the Administration as a means to further tighten surveillance over Internet activities. He asked whether any mechanism was in place to enhance the operational transparency of the Cyber Security and Technology Crime Bureau ("CSTCB"), so as to allay public concerns. Mr Charles Peter MOK also called on the Administration to increase the operational transparency of CSTCB.

4. Under Secretary for Security ("USS") said that:

- (a) the portfolio of the proposed post would include launching publicity and education initiatives to enhance the public's awareness of preventing cyber crimes and their understanding of CSTCB's work; and
- (b) when discharging its duties, the Police would only focus on alleged commission of criminal offences, and no regard would be given to the political stance of the parties involved; and, in respect of all cases, prosecution would only be initiated when there was sufficient evidence.

Members' concerns about the relevant legislation

Section 161 of the Crimes Ordinance

5. Ms Claudia MO, Mr CHAN Chi-chuen, Mr KWONG Chun-yu, Mr Charles Peter MOK, Mr HUI Chi-fung, Mr LEUNG Kwok-hung and Mr James TO expressed concerns about whether section 161 of the Crimes Ordinance (Cap. 200), i.e. Access to computer with criminal or dishonest intent, would be subject to abuse by the Police and become a tool to suppress political movements. Mr LEUNG stressed that the Administration must amend the provision. Ms MO asked for an update on the theft incident involving the loss of personal data of electors.

6. Mr CHAN Chi-chuen requested the Administration to provide the latest statistics regarding the offence of "access to computer with criminal or dishonest intent" under section 161 of the Crimes Ordinance (including figures of arrests, prosecutions and convictions), as well as a breakdown of such cases by their nature. Mr CHAN requested that the Administration should have a more detailed breakdown of cases under section 161. Echoing the request, Mr Charles Peter MOK requested the Administration to have prior discussion with LegCo Members in this regard before

preparing such statistics together with the Judiciary, so that the statistics could eventually be classified in a way that could address members' general concerns. Mr MOK enquired whether the Administration had set any implementation timetable in this regard.

[*Post-meeting note:* The supplementary information provided by the Administration was circulated to members vide LC Paper No. FC143/16-17(01) on 19 May 2017 and 2 June 2017 respectively.]

Interception of Communications and Surveillance Ordinance

7. Mr Nathan LAW expressed concern that as communications via instant message applications were not covered by the Interception of Communications and Surveillance Ordinance (Cap. 589) ("ICSO"), people's rights to freedom and privacy of communication were not protected. Mr CHU Hoi-dick held that people's rights to freedom and privacy of communication could only be adequately protected if ICSO was amended. In this connection, Mr LAW enquired if hacking software had been used by the Hong Kong Police Force ("HKPF") to intercept such communications, and whether HKPF had any internal guidelines in this regard. He considered that the Administration's stance had all along been evasive when confronted with such questions.

8. Mr HUI Chi-fung was of the view that the loopholes in the relevant legislation had facilitated the abuse of power by the Police to carry out political missions. He asked whether, in case the Police checked the WhatsApp messages in his mobile phone, such act of the Police was subject to regulation under ICSO.

9. Dr Fernando CHEUNG remarked that members' concerns were not unfounded. He pointed out that in the annual reports published by the Commissioner on Interception of Communications and Surveillance ("the Commissioner"), there were invariably non-compliant cases involving interception of communications and surveillance operations conducted by various law enforcement agencies ("LEAs") including HKPF.

10. In response to members' questions about section 161 of the Crimes Ordinance and ICSO, USS advised that:

- (a) police officers must act in a lawful manner when discharging their duties. The taking of law enforcement actions depended on the commission or otherwise of any criminal offences, and no regard would be given to the political stance of the parties involved;
- (b) among the cases where enforcement actions had been taken by HKPF under section 161 of the Crimes Ordinance, cases involving speech on the Internet only accounted for a minority;
- (c) the Law Reform Commission of Hong Kong had commenced the preparatory work for a review of computer crime-related legislation;
- (d) the Administration would collaborate with the Judiciary to examine the possibility of storing the required crime data in the Integrated Law and Order Statistical Information System, in particular the data breakdown relating to "access to computer with dishonest intent". LegCo Members were welcomed to raise requests in this regard to the Administration for consideration;
- (e) covert surveillance operations carried out by designated LEAs were strictly regulated by ICSO and cases of non-compliance and irregularities would be reported in the Commissioner's annual reports. Every year, the Secretary for Security headed the relevant officials to attend meetings of relevant LegCo Panels to explain to members the Government's response to the relevant reports. All these were effective measures designed to ensure the compliance of government departments with requirements under ICSO. He stated that in case LEAs breached statutory requirements under ICSO, the Commissioner would definitely handle such cases correspondingly;

- (f) Members' stance on the efficacy of the existing computer crime-related legislation should not be linked to the discussion about the creation of the proposed post to step up efforts in combating technology crimes and improving cyber security; and
- (g) he could not disclose details of cases under investigation by the Police.

Need for the proposed post

11. Dr Elizabeth QUAT and Mr MA Fung-kwok spoke in support of the creation of the proposed post. Dr QUAT opined that members opposing the item should not deny the need for the proposed post on the basis of subjective inference. Mr MA remarked that the questions that were raised by many members had already been discussed by the Establishment Subcommittee ("ESC"). The Chairman reminded members that they should avoid repeating issues already discussed by ESC in their speeches.

12. Dr Fernando CHEUNG, Mr LEUNG Yiu-chung and Mr SHIU Ka-chun queried the need of creating the proposed post in the form of adding a permanent post. They opined that given HKPF's huge establishment as measured by the police-to-population ratio, and its ever-increasing funding provision in the midst of a decline in the overall crime rate, the Administration should first consider internal redeployment of staff to take up the work of the proposed post.

13. USS said that:

- (a) the relatively low crime rate in Hong Kong as compared with other international metropolitan cities could only be sustained if adequate police manpower was provided and appropriate policing strategies were deployed;
- (b) having reviewed the staffing position of all 46 Chief Superintendent of Police posts in HKPF, the Administration considered it not feasible to absorb the work of the proposed post through internal redeployment; and
- (c) it was necessary to create the proposed post, given the increasing threat of cyber security incidents currently faced by Hong Kong.

Motion for the adjournment of further proceedings of FC

14. At 6:47 pm, Mr Nathan LAW moved without notice under paragraph 39 of the Finance Committee Procedure that further proceedings of FC be then adjourned. The Chairman proposed the question and directed that each member might speak once on the motion for not more than three minutes.

15. Mr Nathan LAW spoke on his motion. He considered that the Administration had failed to protect people's rights to freedom and privacy of communication by introducing legislative amendments in a timely manner. Dr KWOK Ka-ki, Ms Claudia MO, Mr LEUNG Kwok-hung, Mr CHAN Chi-chuen, Mr LEUNG Yiu-chung and Dr Fernando CHEUNG spoke in support of the motion that further proceedings of FC be then adjourned. In gist, these members expressed grave concerns about power abuse by the Police and the loopholes in the relevant legislation. Dr Elizabeth QUAT spoke against the motion.

16. The meeting ended at 7:11 pm.

Legislative Council Secretariat
9 March 2018