

立法會

Legislative Council

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Finance Committee of the Legislative Council

Minutes of the 41st meeting
held at Conference Room 1 of the Legislative Council Complex
on Friday, 19 May 2017, at 4:33 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 Mrs Regina IP LAU Suk-yee, GBS, 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 CHAN Han-pan, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Dr Hon KWOK Ka-ki
Hon Christopher CHEUNG Wah-fung, SBS, JP

Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Dr Hon Elizabeth QUAT, JP
Hon Martin LIAO Cheung-kong, SBS, JP
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Hon HO Kai-ming
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai
Hon SHIU Ka-chun
Hon Wilson OR Chong-shing, MH
Hon YUNG Hoi-yan
Dr Hon Pierre CHAN
Hon CHAN Chun-ying
Hon Tanya CHAN
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung
Hon LUK Chung-hung
Hon LAU Kwok-fan, MH
Hon KWONG Chun-yu
Hon Jeremy TAM Man-ho
Hon Nathan LAW Kwun-chung
Dr Hon YIU Chung-yim
Dr Hon LAU Siu-lai

Members absent:

Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
Hon KWOK Wai-keung
Hon Dennis KWOK Wing-hang
Hon Alvin YEUNG
Hon Andrew WAN Siu-kin
Dr Hon Junius HO Kwan-yiu, JP

Hon LAM Cheuk-ting
Hon Kenneth LAU Ip-keung, MH, JP
Dr Hon CHENG Chung-tai

[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-yee, JP	Permanent Secretary for Financial Services and the Treasury (Treasury)
Ms Jenny CHOI	Acting 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 CHIU Man-hin	Acting Principal Assistant Secretary for Security (E)
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
Miss Yannes HO	Legislative Assistant (1) ⁶

The Chairman reminded members of the requirements under Rule 83A and Rule 84 of the Rules of Procedure ("RoP").

Item No. 1 — 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

2. The Chairman said that this item invited the Finance Committee ("FC") to approve the recommendation made by the Establishment Subcommittee at its meeting on 21 February 2017, i.e. the recommendation set out in item EC(2016-17)23 regarding the creation of one Chief Superintendent of Police ("CSP") post in the Hong Kong Police Force ("HKPF") with effect from the date of approval by FC to lead the Cyber Security and Technology Crime Bureau ("CSTCB").

Members' views on the Chairman's direction

3. Mr James TO, Mr CHAN Chi-chuen, Ms Claudia MO, Dr KWOK Ka-ki, Mr LEUNG Kwok-hung, Mr Nathan LAW, Ms Tanya CHAN, Dr Fernando CHEUNG, Mr Jeremy TAM, Dr LAU Siu-lai, Dr Helena WONG, Mr HUI Chi-fung, Mr WU Chi-wai and Mr CHU Hoi-dick gave views on the Chairman's written direction issued to members on 15 May 2017, and requested the Chairman to withdraw his decision. According to the Chairman's direction, members who wished to propose motions under paragraph 37A of the Finance Committee Procedure ("FCP") ("FCP 37A motions") on item FCR(2017-18)3 were required to submit their motions by noon on 17 May 2017. As FCP 37A stipulated that a member might "move a motion without notice", they were of the view that the Chairman had acted out of order and violated RoP by setting a deadline for the submission of such motions. They were generally dissatisfied that it was too early for the Chairman to set a deadline for the submission of proposed motions under FCP 37A, given that FC had only spent two hours on the deliberation of this item. They expressed the query that the Chairman was gradually tightening the control over the room for discussion allowed for members. Mr CHAN Chi-chuen requested that if the Chairman intended to set a deadline for the submission of proposed FCP 37A motions, he should give his direction during FC's deliberation of the relevant item.

4. Dr CHIANG Lai-wan suggested that the Chairman should explain to members the principles he had all along been adopting in chairing FC meetings. Mr Steven HO held that members should not refute the Chairman's decision on a point of order which was final.

5. The Chairman explained that he had forgotten to remind members of the deadline for submitting proposed FCP 37A motions nearer the end of the meeting on 12 May 2017. He said that, according to the wording of FCP 37A, it was true that members might propose a motion without notice. However, in recent years, it had become common for one member to propose a number of proposed motions at a time. He therefore needed sufficient time to peruse those proposed motions and make rulings. The Chairman added that as a total of four hours of FC meetings had been scheduled for the day, the meeting time should be sufficient to cover the discussion of this item and the handling of proposed FCP 37A motions. Lastly, the Chairman directed that the deadline for members to submit proposed FCP 37A motions be extended to noon on 23 May 2017 and members might submit a reasonable number of proposed motions at the meetings.

Functions of the proposed post

6. Mr LAU Kwok-fan, Mrs Regina IP and Mr Wilson OR spoke in support of this item. Mr LAU Kwok-fan said that as Hong Kong had lagged behind other places in combating technology crimes and safeguarding cyber security, coupled with the security threats triggered by the WannaCry incident lately, the creation of the proposed post could afford no delay. Mrs Regina IP said that the Administration had put in huge efforts to promote financial technology ("Fintech") in recent years and institutions such as the Hong Kong Monetary Authority ("HKMA") and The Hong Kong Federation of Insurers were introducing various initiatives, including cyber security platforms, to strengthen cyber security. She asked HKPF about its collaboration with those institutions in strengthening cyber security, and whether overseas training had been provided to train up talents.

7. The Under Secretary for Security ("US for S") said that HKPF had intended to seek the Legislative Council's approval for the creation of the proposed post as early as three years ago, but the proposal had not yet been approved so far. In his view, the situation of Hong Kong in handling technology crimes and cyber security incidents was precarious.

8. The Superintendent (Cyber Security and Technology Crime Bureau), HKPF responded that:

- (a) HKMA had recently launched for the banking system a Cybersecurity Fortification Initiative ("CFI") which served to raise the resilience of the banking system. Under CFI, HKPF had developed the Cyber Intelligence Sharing Platform, which allowed HKPF to establish a network with major facilities, so as to collect information on cyber attacks and disseminate such information to stakeholders through the platform;
- (b) HKPF had launched the Cyber Range, which was a facility that could mimic the Internet environment in an enclosed network, allowing the simulation of cyber attacks and technology crime scenes for research and training purposes; and
- (c) the Administration had been proactively sending officers to overseas institutions, including INTERPOL, for exchanges, networking and training. For example, a Chief Inspector of Police had been seconded to the INTERPOL Global Complex for Innovation in Singapore.

9. Regarding the Police handling of cyber security incidents, Mr LAU Kwok-fan enquired about the changes that would be entailed after the creation of the proposed post, in comparison with the present situation. Mr Wilson OR enquired about the division of work between CSTCB and the Commercial Crime Bureau ("CCB") in handling cyber crime after the proposed post was created. Mr OR said that the public were generally of the view that the Police should allocate more resources to the fight against cyber crime.

10. US for S explained that the Police, in determining whether it would be more appropriate for CSTCB or CCB to investigate into a case, would take into account the technology-related elements involved in the relevant case and the modus operandi of the illegal activity. The Assistant Commissioner of Police (Crime) ("ACP(C)") supplemented that CSTCB was carved out from CCB. As it was common that the purpose of committing cyber and technology crimes was cheating people of money, CSTCB had, after its establishment, continued to work closely with CCB to combat such crimes. Also, as both CSTCB and CCB were placed under the Crime Wing, this structure could facilitate the collaborative handling of such cases.

The necessity of creating the proposed post

11. Mr Michael TIEN, Ir Dr LO Wai-kwok, Mr WONG Ting-kwong and Mr LUK Chung-hung expressed their support for the creation of the proposed post. They agreed that it was important to combat technology crimes, safeguard cyber security, protect people's property and maintain Hong Kong's status as an international financial centre. Pointing out that the officer tasked to establish cooperative network with overseas law enforcement agencies ("LEAs") should be pitched at a considerably high rank, Mr TIEN suggested that the Administration might, in addition to internal promotion, consider appointing an external expert for the proposed post to dispel the political doubts raised by some members. Mr LUK understood that, out of security concerns, the Police were unwilling to disclose details of their deployment on combating cyber crime. In his view, the low crime rate enjoyed by Hong Kong was a result of sufficient police manpower.

12. Dr Elizabeth QUAT and Mr HO Kai-ming spoke in support of this item. Dr QUAT requested the Administration to elaborate on the consequences that would be entailed if the proposal was not approved by FC. She also asked whether the existing manpower at CSTCB was sufficient. Mr HO enquired how the creation of the proposed post could assist victims of technology and cyber crime in recovering cheated property more speedily and effectively.

13. US for S responded that HKPF had met the staffing requirements of CSTCB through internal deployment to perform the routine duties of CSTCB and carry out law enforcement actions. However, in order to combat technology crimes and handle cyber security incidents effectively, it was incumbent that CSTCB be headed by a far-sighted leader who was able to acquire suitable hardware, provide training for talents and establish liaison with overseas LEAs to strengthen cooperation, having regard to technological development and the situation of cyber crime. Without such a leader, the effectiveness of CSTCB's work would be undermined. He pointed out that the incident response capability of the Police to technology and cyber crime was the key to solving cases and gathering evidence. Therefore, the rank of the head of CSTCB must be high enough to exert influence in enhancing cooperation with LEAs outside Hong Kong and assisting in the investigation of cases.

14. Dr Fernando CHEUNG and Mr SHIU Ka-chun expressed reservations about the necessity of creating a CSP post. In view of the sizable establishment of the police force, they held that the Administration should resort to internal redeployment of resources instead of creating an additional permanent post. ACP(C) explained that under section 10 of the Police Force Ordinance (Cap. 232), the duties of the police force were plentiful. Other than general law and order duties, the police force had to take up many specialist duties, such as anti-terrorist operations, railway safety, border patrol duties and disposal of explosives. Therefore, it was necessary for the Hong Kong police to maintain its current establishment. He and US for S advised that the 46 existing CSPs in HKPF were each engaged in their respective portfolio and preoccupied with heavy workload. It was impossible for them to take charge of other bureaux in HKPF or cope with additional duties without adversely affecting the operational efficiency of their own bureaux. The specific duties of the 46 CSPs were listed in Enclosure 4 to item EC(2016-17)23.

15. Mr LEUNG Kwok-hung expressed dissatisfaction with the Police as it had failed to take the initiative to alert the public in the recent WannaCry incident. Mr CHAN Chi-chuen enquired about the actions taken by CSTCB before and after the WannaCry incident. US for S and ACP(C) advised that CSTCB had been carrying out extensive research to learn about the latest developments in the area of technology crimes and cyber security. It had also organized abundant publicity and educational activities for the public. ACP(C) supplemented that the Administration had sent representatives to attend seminars held in various places in the world so as to network with different stakeholders and enhance international cooperation. The Administration did not handle cyber security incidents in a reactive manner. Instead, it had been persistently working on crime prevention.

Members' concerns over the performance of duties by the Police

16. Mr Nathan LAW said that messages sent via instant messaging applications were not presently covered by the Interception of Communications and Surveillance Ordinance (Cap. 589) ("ICSO"). He held that currently the Police might access such messages through remote hacking by means of hacking software, seizure of mobile phones to view the messages or requesting telecommunications service providers to provide the Police with access to such messages. While freedom and privacy of communication were protected under Article 30 of the Basic Law ("BL"), timely amendments had not been made to ICSO to cover this kind of communications, giving rise to a situation where the above actions

"were not governed by any statutory provisions" and were therefore unconstitutional as such actions were in contradiction with the Basic Law. Mr LAW queried whether FC's approval for this funding proposal would be tantamount to supporting the Police to continue with the unconstitutional acts. He asked whether the future holder of the proposed post would be responsible for, among others, perfecting the relevant legislation, and whether he/she would be empowered to investigate into the unlawful surveillance activities carried out by the Mainland authorities in Hong Kong.

17. US for S replied that under BL 30, the freedom and privacy of communication of Hong Kong residents shall be protected by law, except that the relevant authorities might inspect communication in accordance with legal procedures to meet the needs of public security or of investigation into criminal offences, and ICSO stipulated the way in which LEAs might intercept communications and conduct covert surveillance. It therefore complied with the requirements under the Basic Law. The future holder of the proposed post would lead CSTCB to step up its efforts in combating technology crimes and safeguarding cyber security, but handling and perfecting the relevant legislation were not the routine duties of the proposed post.

18. Dr LAU Siu-lai queried the appropriateness for the Administration to conduct cyber patrol by means of hacking or through undercover hackers, or to request webmasters for information. Dr LAU asked whether the proposed post would be responsible for drawing up a code of practice for compliance by frontline staff in performing cyber patrol duties. She also asked whether the Police would be selective in taking law enforcement actions against unlawful acts and comments in the cyber world.

19. Mr SHIU Ka-chun said that the Security Bureau had previously stated that it would not disclose the code governing the Police in using hacking software for monitoring cyber crime, nor would it inform surveillance subjects of the relevant surveillance activities. He said that social workers providing outreach services online were concerned about the online surveillance of the Police as such activities might undermine the mutual trust between social workers and their clients and had adverse impact on their outreach services. He said that there had been occasions where police officers approached outreach social workers, and they were requested to provide the information that was obtained through online outreach services. Mr CHAN Chi-chuen was worried that members of the public might be subject to the surveillance of intelligence agents.

20. Dr Fernando CHEUNG expressed grave concerns about whether the Police would abuse its powers when handling technology crimes and cyber security incidents. He said that ICSO was limited in scope, not covering the use of hacking software by the Police in monitoring online communications. Regarding the information obtained by the Police through communication surveillance, Dr CHEUNG and Mr LEUNG Yiu-chung were worried about whether the Administration would provide such information to Mainland LEAs or exchange such information with them, for the purpose of suppressing free speech and social movement.

21. US for S responded that:

- (a) the Police, with no political mission, would not be selective in enforcing the law against illegal activities, nor would it condone power abuse;
- (b) all actions relating to the gathering of intelligence and evidence must comply with the requirements under the legislation of Hong Kong as such actions were specifically targeted at suspected illegal activities. For operations which were subject to regulation by ICSO, they must be carried out in accordance with the relevant legal procedures;
- (c) members of the public in need of the Police's assistance should take the initiative to approach and report their cases to the Police; and
- (d) if members considered that there were inadequacies in the Police's handling of cases, they might provide the Administration with details for follow-up.

22. ACP(C) said that any persons who suspected that their computer systems had been hacked should report their cases to the Police as soon as possible. Exchange of criminal intelligence would be conducted by HKPF under the guidelines issued by the INTERPOL. He and US for S reiterated that all actions of the Police were taken in accordance with the law.

23. Mr James TO held that members' concerns about possible abuse of powers by the Police were partly attributable to the Administration's failure to give a clear account of its policy on the transfer of intelligence to or exchange of intelligence with Mainland LEAs. Pointing out that the posts of the Secretary for Security ("S for S"), US for S and the Political Assistant to S for S were all taken up by former disciplinary services officers, he said that it was difficult to convince members of the public that the Security Bureau did attach importance to curbing power abuse by police officers.

24. Regarding his previous request for the Administration to provide statistics on requests made to telecommunications service providers by HKPF for information on the use of Internet by subjects being investigated by HKPF, Mr James TO pointed out that the Administration had refused to provide such statistics to him. Mr HUI Chi-fung said that, according to HKPF, it had not maintained records of the numbers of cases where internet service providers ("ISPs") had rejected the Police's requests for information, and the number of cases where the Police had to apply to the court for search warrants in order to obtain information from ISPs. Mr HUI asked the Administration why it did not keep such statistics. Mr HUI and Mr TO considered that the Administration's failure to provide a clear picture of such statistics to the public had only fuelled the public's worries.

25. US for S and ACP(C) replied that the Administration had previously provided members with the number of cases in which HKPF had made requests for information to ISPs. ACP(C) explained that the types and scope of client information that could be provided by ISPs to LEAs were bound by the regions in which the ISPs were located and governed by the internal policies adopted by the relevant ISPs, and it was possible that the ISPs concerned did not maintain the relevant information. Given that there were many possible reasons behind the inability of an ISP to provide the Police with the requested information, the Administration could not simply categorize such cases as rejected requests, and that was why the Administration could not provide members with the relevant statistics. ACP(C) pointed out that some ISPs would only provide the requested information upon the presentation of search warrants by the Police. Given that HKPF had to handle a large number of cases each day and compilation of statistics relating to applications for search warrants from the court was not operationally necessary, in view of the limited availability of resources, the Administration had not compiled the relevant statistics.

26. Given that members had repeatedly expressed worries over possible abuse of powers by the Police, US for S supplemented that:

- (a) the Commissioner on Interception of Communications and Surveillance published a report every year on his review of the interception of communications and surveillance operations performed by LEAs under ICSO, including whether there were cases where law enforcement officers had contravened the requirements under ICSO or the Code of Practice; and
- (b) apart from the Complaints Against Police Office ("CAPO"), public opinions, media watch and the Independent Police Complaints Council also played a role in monitoring the Police. In this regard, the number of complaints received by CAPO had shown a downward trend in recent years.

27. With regard to the deficiencies in ICSO, the concerns raised by Mr CHU Hoi-dick and Mr LEUNG Kwok-hung were similar to those of Mr Nathan LAW. Mr CHU queried whether the Police would disproportionately infringe the freedom and privacy of communication enjoyed by members of the public under BL 30 during Police investigations. Mr CHU requested the Administration to provide information on the number of applications for "intercepting acts" made by HKPF to authorizing officers under ICSO for the purpose of immediately intercepting communications sent via instant messaging applications, as well as the legal basis for refusing to provide such information.

28. US for S responded that as Mr CHU's questions touched on the powers and functions of the Commissioner on Interception of Communications and Surveillance, it should be up to the Commissioner to decide whether and how the relevant information would be provided.

[Post-meeting note: The supplementary information provided by the Administration was circulated to members vide LC Paper Nos. FC150/16-17(01) and FC159/16-17(01) on 26 May 2017 and 2 June 2017 respectively.]

29. At 5:38 pm, the Chairman said that he could not continue to chair today's meeting due to indisposition, and that the Deputy Chairman would take over the chair.

30. The meeting ended at 6:32 pm.

Legislative Council Secretariat
9 March 2018