

**An Information Paper on
Issues Raised by Legislative Council Members**

- (a) **Possible duplication of resources between The Ombudsman's Office and other channels in redressing grievances, and in monitoring the work of the Government such as the investigations into the problems surrounding the opening of the new airport?**

(Raised by Dr Hon LEONG Che-hung and Hon YEUNG Yiu-chung)

The Ombudsman is an independent authority established under The Ombudsman Ordinance. It is an integral part of the system for controlling administration. While there are other statutory bodies that monitor the work of the executive branch of the Government, they do so with different objectives and perspectives. It is the specific function of the Ombudsman to determine whether an aggrieved individual has suffered unjustly from the defective working of the administrative machinery and, if so, to recommend an adequate remedy to be provided by the authority concerned.

2. The Ombudsman system does not seek to provide convenient political solutions to administrative disputes. It seeks to establish an independent office to protect citizens from maladministration by scrutinizing action taken by the government and designated public organizations. It also seeks to encourage public officials, in addition to complying with the requirements of the law, to maintain acceptable standards of good administration in their dealings with private persons. In addition to acting on complaints from aggrieved individuals, since June 1994 the Ombudsman has been empowered to initiate direct investigations into possible maladministration in the absence of complaints.

3. As regards the investigation into the commissioning and operation of the New Airport at Chek Lap Kok, the three investigations have different objectives, summarized as follows -

- (a) the **Woo Commission of Inquiry** sought, inter alia, to examine the decision to open the new airport on 6 July 1998 and identify problems encountered in the operation of the new airport and *to establish* their causes and where the *responsibility* for each of them lies;
- (b) **the inquiry by the Select Committee of the Legislative Council** sought to inquire into the choice of 6 July 1998 as the opening date, infrastructure and facilities, passenger and air cargo services, security ... *noise under flight paths, responsibilities and liabilities and overall economic loss in Hong Kong.*

- (c) **The Ombudsman's direct investigation** examines the preparation and commissioning work and its readiness for the opening of the new airport, *the framework and mechanism established by the Airport Authority to discharge its functions*, the causes of the major problems affecting the new airport, contingency plans and *remedial measures*.

4. The Ombudsman sees many important differences between the three investigations, particularly relating to ambit and consequences. However there is in practice a significant over-lap in subject matter. In so far as The Ombudsman's direct investigation is concerned, it focused on actions taken by organizations concerned in the commissioning of the new airport, with the objective of enhancing the quality of public administration rather than apportionment of blame or taking individual culprits to task. In this regard, all 20 recommendations made as a result of the Ombudsman's investigation were accepted by the Administration and Airport Authority and most had already been implemented.

(b) How does The Ombudsman monitor cases on which recommendations for improvement made by The Ombudsman have not been taken up by the Administration?

(Raised by Hon CHAN Yuen-han)

5. In specific cases where The Ombudsman has made recommendations after investigation, implementation is left to the head of the organization affected. The organization is requested to report progress of implementation at quarterly intervals and this is done in the great majority of cases. If this is not the case, the Office will approach the organization concerned to follow up the matter also on a quarterly basis until the recommendations have been satisfactorily implemented.

6. The Ombudsman Ordinance provides specifically for situations where the recommendations have not been taken up or adequately acted upon by the Administration. Section 16 provides that if The Ombudsman is of the opinion that her recommendations have not been adequately acted upon either within a specified time or within a reasonable time, she may submit to the Chief Executive the following: (1) the report and recommendations, together with such further observations as she thinks fit to make, and (2) a copy of any comments made by the head of the organization affected.

7. Where The Ombudsman is of the opinion that a serious irregularity or injustice has taken place, she may make a further report stating her opinion and reasons to the Chief Executive. The report shall be laid before the Legislative Council within one month or such longer period as the Chief Executive may determine.

8. As for general matters, around July every year, the Administration would table in the Legislative Council The Ombudsman's Annual Report on the exercise of her functions during the previous year. Shortly thereafter, the Administration would table a Government Minute in the Legislative Council to report on response to the recommendations made by The Ombudsman from the Administration and other public bodies under The Ombudsman's jurisdiction.

9. The Ombudsman is pleased to note that over 95% of the recommendations made in connection with complaints and all recommendations made in connection with direct investigations have either been implemented or accepted for implementation by the Administration. For the small percentage of recommendations which were not considered to be fully implemented, they mainly relate to matters which require standardization of formats, consultation, endorsement by specific boards and councils, approval for additional resources from appropriate authorities, legal advice and/or statutory amendments.

(c) **Investigation of the Transport Department**

(Raised by Hon Emily LAU Wai-hing)

10. In the 1998/99 reporting year, this Office received 63 complaints against the Transport Department. Of these, 21 were outside jurisdiction or discontinued/withdrawn. The remaining 42 complaints were mainly concluded by Alternative Dispute Resolution (ADR) means such as Rendering Assistance and Clarification or the Internal Complaint Handling (INCH) programme. Three complaints were investigated and concluded as partially substantiated.

11. In the first four months of the 1999/2000 reporting year, 20 complaints have been concluded. These include 7 which were outside jurisdiction or discontinued/withdrawn, and 13 which were concluded by ADR means. 12 complaints are currently being investigated.

Office of The Ombudsman

November 1999