立法會
Legislative Council

LC Paper No. CB(2)2676/02-03
(These minutes have been seen by the Administration)

Ref : CB2/PL/SE/1

Panel on Security

Minutes of meeting held on Thursday, 5 June 2003 at 2:30 pm in Conference Room A of the Legislative Council Building

Members present	:	Hon LAU Kong-wah (Chairman) Hon Albert HO Chun-yan Dr Hon LUI Ming-wah, JP Hon CHEUNG Man-kwong Hon Andrew WONG Wang-fat, JP Hon WONG Yung-kan Hon Howard YOUNG, JP Hon Ambrose LAU Hon-chuen, GBS, JP Hon Michael MAK Kwok-fung Hon IP Kwok-him, JP Hon Audrey EU Yuet-mee, SC, JP
Members absent	:	Hon James TO Kun-sun (Deputy Chairman) Hon Margaret NG Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP
Public Officers attending	:	Item IV Security Bureau Mrs Clarie LO Commissioner for Narcotics Mr Charles WONG Principal Assistant Secretary (Narcotics) Mr L W TING Assistant Secretary (Narcotics)

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Department of Justice

Mr Robert LEE
Senior Assistant Director of Public Prosecutions
Prosecution Policy Coordinator on Asset Recovery

Mr Wayne Walsh
Deputy Principal Government Counsel

Hong Kong Police Force

Mr LEUNG Lap-fun
Superintendent (Financial Investigation Group),
Narcotics Bureau

Customs & Excise Department

Mr Eric HO
Group Head (Financial Investigation)
Customs Drug Investigation Bureau

Hong Kong Monetary Authority

Ms Michelle QUEK
Head, Banking Policy Department

Item V

Security Bureau

Miss Eliza YAU
Principal Assistant Secretary (E)

Hong Kong Police Force

Dr S G CHANDLER
Assistant Commissioner of Police, Support

Mr LAU Sik-tim
Chief Superintendent of Police, Support

Ms LI King-sui
Senior Superintendent of Police, Auxiliary, Support

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Item VI

Security Bureau

Mr Michael WONG
Deputy Secretary

Mr Alan CHU
Principal Assistant Secretary

Ms Anne TENG
Assistant Secretary

Immigration Department

Mr K C CHOW, IDSM
Deputy Director (Administration & Operations)

Mr Raymond WONG, IMSM
Assistant Director (Information Systems)

Deputation by invitation : Item V

Hong Kong Auxiliary Police Association

Mr LIU On-bong
Chairman

Mr CHAN Tak-yee
Secretary

Mr CHAN Chi-keung
Committee Member

Clerk in attendance : Ms Doris CHAN
Chief Assistant Secretary (2) 4

Staff in attendance : Miss Mary SO
Senior Assistant Secretary (2) 8

I. Confirmation of minutes of previous meeting

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(LC Paper No. CB(2)2246/02-03)

The minutes of the meeting held on 6 May 2003 were confirmed.

II. Information papers issued since the last meeting

(LC Paper Nos. CB(2)1986/02-03(01) and CB(2)2153/02-03)

2. Members noted the above information papers entitled "Updated statistics in relation to the problem of indebtedness of Police officers covering the second half of 2002" and "Summary report of crime in Hong Kong in first quarter 2003" provided by the Administration, and did not raise any query.

III. Date of next meeting and items for discussion

(LC Paper Nos. CB(2)2247/02-03(01) and (02))

3. Members agreed to discuss the following items at the next regular meeting scheduled for 3 July 2003 -

(a) Operational arrangements in respect of loss of permanent resident status under paragraph 7 of Schedule 1 to the Immigration Ordinance; and

(b) Reciprocal notification mechanism between the Mainland Public Security authorities and the Hong Kong Police, and assistance that could be rendered to Hong Kong residents detained in the Mainland.

IV. Hong Kong's work on combating money laundering and terrorist financing

(LC Paper No. CB(2)2247/02-03(03))

4. At the invitation of the Chairman, Commissioner for Narcotics (C for N) took members' through the Administration's paper which gave an account of the current work carried out by Hong Kong, both domestically and internationally, in the areas of combating money laundering and terrorist financing, as well as the major tasks ahead. A paper entitled "Fighting money laundering and terrorist financing activities within the rule of law: a prosecutorial perspective" provided by the Department of Justice (LC Paper No. CB(2) 2366/02-03(01)) was also tabled at the meeting.

(*Post-meeting note :* LC Paper No. CB(2)2366/02-03(01) was subsequently issued vide LC Paper No. CB(2)2454/02-03 on 12 June 2003).

5. The Chairman asked the following questions -

(a) Reason(s) for introducing a system of civil forfeiture in Hong Kong; and

(b) Reason(s) why the number of investigations and prosecutions had been

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relatively stable from 1998 up to April 2003, despite the fact that there had been an upsurge in the number of suspicious transaction reports received by the Joint Financial Intelligence Unit (JFIU) during the same period, particularly from 2002 up to April 2003.

6. C for N pointed out that at present civil forfeiture provisions with limited scope had already been provided for under section 24D of the Drug Trafficking (Recovery of Proceeds) Ordinance (DTROP) (Cap. 405) and section 13 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575). The latter only dealt with terrorists' funds but not proceeds of other serious and organised crime. C for N said that one of the recommendations made by a team of International Monetary Fund (IMF) and World Bank experts who conducted an on-site assessment of Hong Kong's anti-money laundering/countering financing terrorism (AML/CFT) regime in January this year was that Hong Kong should consider introducing a system of civil forfeiture, in line with other developed economies such as the United States (US), the United Kingdom and Australia. The Financial Action Task Force on Money Laundering (FATF) in its draft revised set of Forty Recommendations also encouraged members to consider adopting measures that allowed proceeds from money laundering and other serious offences to be confiscated without requiring a criminal conviction. The new set of Forty Recommendations would be finalized and endorsed by the FATF at its forthcoming Plenary meeting to be held in Berlin from 18 to 20 June 2003. Having regard to the recommendations made by these two international organisations and developments in other developed economies, consideration would be given by the Administration to introducing a system of civil forfeiture in Hong Kong.

7. As to the Chairman's second question, C for N said that the increase in the number of suspicious transaction reports received from 2002 up to April 2003 could be attributed to increase in awareness by the financial services sectors following the September 11 events in the US. On the number of prosecutions versus that of the suspicious transaction reports received, Senior Assistant Director of Public Prosecutions (SADPP) said that one of the reasons for the wide discrepancy between these two sets of figures was that different mental elements were involved. The trigger for disclosure under both section 25A(1) of the Organized and Serious Crimes Ordinance (OSCO) (Cap. 455) and DTROP was "knows or suspects", which in practice was a lower threshold than the mental element of "having reasonable grounds to believe" which the prosecution had to prove when establishing money laundering offences. SADPP further said that between early 1998 and March 2003, over 630 money laundering or money laundering-related charges had been laid by the Prosecutions Division of the Department of Justice against 235 defendants in 96 court cases as a result of investigations conducted by the Police, the Customs and Excise Department (C&ED), and the Independent Commission Against Corruption.

8. Superintendent (Financial Investigation Group), Narcotics Bureau supplemented that another reason for the low number of prosecutions compared with the number of suspicious transactions reports received by JFIU was because not all of the latter could be followed up by the Police and C&ED because of the quality of the reports. He further said that prior to passing these reports on to the appropriate investigative unit,

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staff of JFIU would check with its databank to see whether the person being reported had prior record of being reported to be involved in money laundering or terrorist financing or had been suspected of involving in criminal offences.

9. Mr Michael MAK asked the following questions -

(a) Why Thailand was not on the list of non-cooperative countries and territories (NCCT); and

(b) What were the kinds of legitimate businesses generally used by criminals to launder their ill-gotten wealth.

10. Responding to Mr MAK's first question, C for N said that under the NCCTs exercise a list of 25 criteria would be used by the FATF in assessing a jurisdiction's AML/CFT regime. Normally, a jurisdiction would only be put on the list if it had serious deficiencies in its AML/CFT legal framework and/or had inadequacies in the enforcement of its AML/CFT regime. A list of deficiencies together with a set of recommendations for specific improvements would be made known to the country/economy that was being placed on the list. The FATF would also carry out regular reviews on progress made by the jurisdiction concerned regarding implementation of the recommendations. A jurisdiction would be removed from the list if it was assessed to have complied with the recommendations. Originally, there were a total of 23 jurisdictions on the list, but it had now been reduced to 10.

11. As to Mr MAK's second question, Superintendent (Financial Investigation Group), Narcotics Bureau said that using illicit funds to invest in legitimate businesses was certainly one way of laundering money. He, however, pointed out that there was no indication which legitimate businesses were commonly used for such purpose. According to the money laundering cases which had been gone to trial, the ploys commonly used by people to launder their illicit proceeds were to transfer their illicit funds through their own bank accounts and those of their relatives, as well as through shell companies. Such an approach of mixing illicit funds with legitimate funds had sometimes rendered it very difficult for the Police to bring charges for money laundering offences.

12. Noting that 13 convictions of money laundering offences had been made in 2002, Mr MAK further asked about the means used to transfer illicit funds.

13. Superintendent (Financial Investigation Group), Narcotics Bureau responded that to his knowledge, the defendants generally used their own bank or securities accounts to transfer illicit funds, or used their illicit funds to buy properties. SADPP confirmed that that was the position, and that these items of property were invariably restrained pending confiscation.

14. Mr Albert HO asked whether the introduction of a civil forfeiture system in Hong Kong was for the purpose of confiscating any assets which -

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(a) Otherwise could not be made at present if the person concerned was not convicted of money laundering;

(b) Belonging to a person who would otherwise be convicted of money laundering if not missing; and

(c) Belonging to a person who was convicted of money laundering in other jurisdictions but the aggrieved persons were in Hong Kong.

Mr HO further asked whether the civil forfeiture system, if introduced, would have any retrospective effect.

15. C for N responded that the recommendation made by the IMF/World Bank was being considered by the Administration. Reference would also be made to the best AML/CFT practices in other developed economies. If it was eventually decided that a system of civil forfeiture should be introduced into Hong Kong, issues that had been raised would be taken into account. She added that normally newly enacted legislation would not have any retrospective effect. However, if Members were of the view that such a provision should be built into the civil forfeiture system under consideration, the Administration would take that into account during the deliberation of the proposal.

16. Deputy Principal Government Counsel (DPGC) replied in the positive to the points raised by Mr HO in paragraph 14(a) to (c) above. In the case of prosecution in other jurisdiction where the money was in Hong Kong, DPGC said that an overseas jurisdiction could make a request to Hong Kong to enforce its confiscation order in Hong Kong pursuant to the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525). Money seized by Hong Kong was sometimes shared with the requesting jurisdiction. On the question as to whether the civil forfeiture system, if introduced, would have any retrospective effect, DPGC said that there was no answer at this stage, but pointed out that most laws had no retrospective effect.

17. Responding to Mr HO's further enquiry on the amount of assets which had been confiscated by the Administration under the present criminal-based system, C for N referred members to Annex D of the Administration's paper.

18. Mr CHEUNG Man-kwong noted from paragraph 15 of the Administration's paper that in sum, the IMF commended Hong Kong for having put in place an AML/CFT framework that was largely in accordance with the FATF recommendations. However, some weaknesses in Hong Kong's AML/CFT regime were noted including oversight of remittance agents and money changers; resources of the JFIU; customer identification in the case of shell companies; quality of suspicious transactions reports; and mental element necessary for establishing money laundering offence. Mr CHEUNG asked why this was the case, given the numerous efforts made by Hong Kong to strengthen its AML/CFT regime as highlighted in the Administration's paper.

19. Mr CHEUNG then sought the Administration's view on the following

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comments made by Mr David Carse of the Hong Kong Monetary Authority (HKMA) on the fight against money laundering and terrorist financing on 17 March 2003. Mr Carse was of the view there was room for improvement in banks to have in place more effective systems for customer due diligence (CDD). In particular, banks should adopt policies and procedures to identify higher risk customers. Examples of high risk customers were political exposed persons, i.e. individuals holding important public position or those related to them; other types of private banking customers; correspondent banks, particularly "shell banks" of those from NCCT; and corporate vehicles, including offshore companies and trusts. Banks should not establish a business relationship with these high risk customers until the CDD process was satisfactorily resolved. In addition, although it was fine for banks to rely on intermediaries to perform CDD procedures on their behalf, ultimate responsibility for knowing the customer remained with the bank. Moreover, the bank must satisfy itself that its intermediaries were fit and proper and used adequate CDD procedures; CDD procedures must be as rigorous as those of the bank, and the bank must be able to verify these procedures; preferably to rely on regulated intermediaries from FATF jurisdictions and all relevant customer identification data should be submitted to the bank for review.

20. C for N responded that although money changers and remittance agents were required since June 2000 to register their operations with the Police and to follow AML measures such as customer identification and transaction record keeping, IMF nevertheless considered that there should be fit and proper test for those people who operated such services, similar to that for banks. Moreover, heavier penalties should be meted out to those operators who failed to register with the Police. To address IMF's concern regarding resources of JFIU, the agency would be re-organised towards the end of the year, and more staff would be deployed to the agency. On shell banks, there was a specific recommendation in the FATF's new Forty Recommendations which dealt with this issue. Consequently, the issue would be addressed in the context of the implementation of the new set of recommendations. As to the quality of suspicious transactions reports, IMF considered that JFIU should conduct more detailed analysis on the reports received from financial institutions and provide appropriate feedback. Measures were, in fact, being taken by the JFIU to improve both the analysis of the reports and the provision of feedbacks. As regards the mental element necessary for establishing money laundering offence, IMF considered that the proof requirement was too high and should be lowered if the money laundering offence was to be effectively prosecuted. C for N pointed out that the Administration had previously sought to change the mental element for establishing money laundering offence to "having reasonable grounds to suspect" under the Drug Trafficking and Organised Crimes (Amendment) Bill 2000, but the proposal was rejected by the Bills Committee. The Administration might put forward the proposal for Legislative Council's consideration again at a later stage, in the light of developments in other jurisdictions in this area.

21. Head, Banking Policy Department, HKMA said that HKMA had already issued a supplement to the statutory Guideline on anti-money laundering in March 2003 to address the deficiencies highlighted by Mr David Carse mentioned in paragraph 19

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above. For instance, banks were advised not to establish a business relationship with "shell banks" and to identify the source of funds of high risk customers such as the political exposed persons. HKMA closely monitored the latest developments in anti-money laundering and terrorist financing practice in other jurisdictions to ensure that the statutory Guideline on anti-money laundering, which set out the standards expected of banks, was in line with international standards.

22. Mr CHEUNG Man-kwong further said that in the International Narcotics Control Strategy Report 2002 issued by US Department of State on 1 March 2003, China was referred to as a major drug transit country and a major producer of precursor chemicals for the production of drugs. Apart from this, China, Hong Kong and Macau were listed as a major region for money laundering. Mr CHEUNG sought the Administration's view on these remarks. In view of the numerous deficiencies in the Mainland's financial structure, Mr CHEUNG asked the Administration whether it had made any assessment on how this would impact on the anti-money laundering efforts in Hong Kong.

23. C for N clarified that the reason why Hong Kong was listed as a major region for money laundering by the US State Department was because Hong Kong, like other international financial centres, was not immune from the risk of being used by criminals to launder their illicit proceeds. To address this, Hong Kong had always been vigilant in safeguarding the stability and integrity of its financial sector against such risks. Proactive actions had also been taken against money laundering both domestically and internationally. C for N added that Hong Kong had been removed from the US list of major drug transit centres in 2000.

24. C for N further added that, as long as the anti-money laundering regime in Hong Kong was sound and effective, the close relationship between the financial sectors of Hong Kong and the Mainland should not necessarily imply greater risks of Mainland criminals laundering their illicit proceeds in Hong Kong. Also the Mainland had very stringent control on outflow of capital. Moreover, in recent years, the Mainland had taken important and significant steps to counter money laundering. Since 1997, the Mainland had made laundering proceeds from drug trafficking, smuggling and serious crimes an offence under its Criminal Code. Terrorist financing was also made a criminal offence in 2001. In early January this year, a series of regulations targeting at deterring money laundering activities were promulgated, which were subsequently implemented in March 2003.

25. Mr Albert HO sought clarification about legal professional privilege (LPP) under section 25A(1) of OSCO and DTROP, in the light of the comments made by the judge in *Robert Pang v Commissioner of Police and anr*, HCAL 133 of 2002 in paragraph 7 of LC Paper No. CB(2) 2366/02-03(01). As proscription of organisations was one of the proposals under the National Security (Legislative Provisions) Bill, Mr HO asked whether C for N had been requested to provide advice on forfeiture of assets of proscribed organisations. C for N replied in the negative to Mr HO's question.

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26. SADPP said that to his understanding, section 25A(1) of OSCO/DTROP would not undermine the common law principle of LPP. The conclusions of the Judge in the Robert Pang case were based upon an analysis of well established common law authorities. In the situation where a legal practitioner was obliged by section 25A(1) to disclose his/her knowledge or suspicion in respect of any property which represented any person's proceeds of an indictable offence, SADPP noted one of the differences between the Hong Kong Bar Association and the judge regarding the status of LPP. It was that the Bar considered that a court should not set aside LPP unless the counsel knew his/her client's proceeds came from an indictable offence, whereas the judge in the Robert Pang case considered that a court should not set aside LPP unless a prima facie case "resting on solid ground" was demonstrated.

V. Status of the Hong Kong Auxiliary Police Association in representing Auxiliary Police officers

(LC Paper Nos. CB(2)1975/02-03(01) and CB(2)2247/02-03(04))

Views of the deputation and Administration

27. At the invitation of the Chairman, Mr LIU On-bong, Chairman of the Hong Kong Auxiliary Police Association (HKAPA), presented the views of HKAPA as detailed in its submission (LC Paper No. CB(2)1975/02-03(01)).

28. Assistant Commissioner of Police (ACP) took members through the Administration's paper (LC Paper No. CB(2)2247/02-03(04) which set out its views on the status of HKAPA in representing auxiliary police officers.

29. The Chairman pointed out that the Legislative Council (LegCo) had dealt with the complaint lodged by the auxiliary police officers on the setting up of a staff association on three occasions in May 2000, 18 July 2002 and 25 July 2002.

Discussion

30. Mr Michael MAK asked Mr LUI On-bong why HKAPA was registered under the Societies Ordinance (Cap. 151) and not under the Trade Unions Ordinance (Cap. 332) as a trade union or staff association. Mr MAK pointed out that the fact that HKAPA had not registered as a trade union or staff association had resulted in the Police Force Management refusing to communicate with them on any matters relating to general policy, training, welfare and conditions of service of auxiliary police officers.

31. Mr LIU On-bong explained that auxiliary police officers originally wanted to form a trade union, but dropped the idea having regard to the fact that a regular police officer was prohibited to be a member of any trade union under section 8 of the Police Force Ordinance (Cap. 232). Moreover, they were told by the Police Force Management that if HKAPA was registered as a trade union under the Trade Unions Ordinance, HKAPA members would not be assigned duties and would only be given

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training. Mr LUI, however, pointed out that although HKAPA was registered under the Societies Ordinance, it was in essence a trade union.

32. Mr MAK further said that the phrase "the formation of a social group under the name "Hong Kong Auxiliary Police Association" is unfortunate" used by ACP in his memorandum (LM (104) in CP/SUP.B/CON 253/1 PT. 5) dated 12 March 2003 was inappropriate, as everyone had the right to choose the name he/she liked. Moreover, no patent had been taken out on the name "Hong Kong Auxiliary Police Association".

33. ACP explained that the use of the phrase mentioned by Mr MAK in paragraph 32 above was because members of HKAPA had insisted on naming their organisation "HKAPA" despite being repeatedly advised that this would mislead people inside and outside the Police to think that HKAPA was de facto a trade union representing elected members of the serving auxiliary police officers. This was not the case, as there already existed the Internal Review and Management Committee (IRMC), which was a properly elected body of serving auxiliary police officers to carry out this function. Moreover, HKAPA permitted non-serving auxiliary officers to examine, discuss and put forward issues concerning serving officers. This, in the Force management's view, had lessened HKAPA's credibility as a proper staff association, where members' interests might be diversified but represented views from serving members only. Notwithstanding the aforesaid, there was no question of the Force management suppressing the HKAPA as mentioned by HKAPA in its submission to the Panel. The Force management was happy to maintain a dialogue with HKAPA on matters concerning the promotion of healthy life style of serving auxiliary members.

34. Mr Andrew WONG protested that the meeting had become a tripartite meeting, which was inappropriate. In response, the Chairman said that it was inevitable, given that there were three parties present, namely, representatives from the Administration, representatives from HKAPA and members. Mr WONG disagreed, and said that he would take the matter up with the House Committee at its meeting on 6 June 2003.

35. Mr MAK further asked why police officers were prohibited from forming trade union to represent their interests. Principal Assistant Secretary for Security (PAS for S) explained that to do so would mean allowing police officers to stage a strike which would be detrimental to public order, as the Police Force was the last resort which Hong Kong could rely on to maintain public order. PAS for S further said that such an arrangement was not unique to Hong Kong. PAS for S, however, pointed out that any staff association composed only of police officers might be recognised by the Commissioner of Police, who might seek the advice of any such association on any matter relating to the welfare and conditions of service of all or any police officers.

36. Mr Andrew WONG said that he did not support the setting up of IRMC. In his view, a better approach was to include the Hong Kong Auxiliary Police in the Police Force Ordinance so that the relevant provisions on the formation of trade union and staff association would also apply to auxiliary officers, thereby avoiding dispute which was now happening.

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37. Mr CHEUNG Man-kwong said that although IRMC was the only consultative body within the Auxiliary Police recognised by the Force management, this was no reason for the Force management to ignore the existence of HKAPA and suppress their activities, say, by not allowing them to put up their promotional posters inside the Police premises. This had resulted in HKAPA incessantly lodging their complaint with LegCo Members about them being suppressed by the Force management over the past few years. This was unacceptable, as the matter was an internal affair which should be dealt with by the Force management. In the light of this, Mr CHEUNG urged the Force management to expeditiously start a dialogue with HKAPA to reconcile their differences and try to understand the latter's needs. Mr IP Kwok-him and Ms Audrey EU concurred. Mr IP further urged the Force management to allow HKAPA to use the Police premises to promote and organise their activities as far as practicable.

38. Responding to Ms Audrey EU's suggestion to change the offices of the Chairman and Deputy Chairman of IRMC from appointed to elected members, ACP agreed to look into the suggestion. ACP further said that there was no question of the Force management suppressing HKAPA, although it was a fact that the Force management had not included it in any management decision-making for the reasons already given in the Administration's paper and reiterated at the meeting. ACP pointed out that the Force management had not actively discriminated against HKAPA, nor had it actively stopped their membership. For instance, the inauguration of HKAPA was held at the Police Club and advertised in the Police newspaper. It was unfortunate that a police officer removed one poster of HKAPA from a bulletin board, but this was an isolated incident.

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39. Mr LIU On-bong disagreed that the Force management had not suppressed HKAPA. For instance, the Force management had refused to give HKAPA a room in the Auxiliary Police Headquarters as their office, despite the fact that there were idle spaces. Mr LIU hoped that the Force management would treat them fairly, as their aim was to serve the people of Hong Kong. It was never the intention of HKAPA to dictate their needs to the Commissioner of Police. Mr LIU further hoped that the Force management would issue an internal memorandum to clarify its position on its views made in its internal memorandum of 12 March 2003, so that no one within the Police and Auxiliary Police would be deterred from communicating with HKAPA.

40. In summing up, the Chairman requested ACP to expeditiously meet with HKAPA to reconcile their differences and report the progress made to the Panel next month. The Chairman also requested the Administration to allocate a room and a bulletin board in the Auxiliary Police Headquarters for use by HKAPA, issue an internal circular as suggested by Mr LIU in paragraph 39 above, and also report the progress made in these areas to the Panel next month.

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VI. Proposed retention of a supernumerary post of Chief Systems Manager in the Immigration Department

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(LC Paper No. CB(2)2247/02-03(05))

41. Deputy Secretary for Security said that a permanent directorate post (D1) to be identified shortly would be deleted to offset the proposed retention of a supernumerary post of Chief Systems Manager (CSM) in the Immigration Department. He further said that the post to be deleted would be made known in the Administration's proposal to the Establishment Subcommittee on 18 June 2003.

42. Members did not raise any query on the supernumerary CSM post.

43. There being no other business, the meeting ended at 4:50 pm.

Council Business Division 2
Legislative Council Secretariat
7 July 2003