

**立法會**  
***Legislative Council***

LC Paper No. CB(2)912/03-04

(These minutes have been  
seen by the Administration)

Ref : CB2/PL/HA

**Panel on Home Affairs**

**Minutes of meeting  
held on Friday, 28 November 2003 at 8:30 am  
in the Chamber of the Legislative Council Building**

**Members present** : Hon IP Kwok-him, JP (Chairman)  
Hon Cyd HO Sau-lan

Hon Albert HO Chun-yan  
Hon NG Leung-sing, JP  
Hon James TO Kun-sun  
Hon Emily LAU Wai-hing, JP  
Hon CHOY So-yuk  
Hon Andrew CHENG Kar-foo  
Dr Hon TANG Siu-tong, JP  
Hon Henry WU King-cheong, BBS, JP  
Hon Tommy CHEUNG Yu-yan, JP  
Hon Albert CHAN Wai-yip

**Members absent** : Hon MA Fung-kwok, JP (Deputy Chairman)  
Hon Andrew WONG Wang-fat, JP

Hon WONG Yung-kan  
Hon LAU Wong-fat, GBS, JP  
Hon Timothy FOK Tsun-ting, SBS, JP  
Dr Hon LO Wing-lok, JP  
Hon WONG Sing-chi

**Public Officers:  
attending** Item IV

Mrs Pamela TAN  
Director of Home Affairs



Mr Isaac CHOW  
Deputy Director of Home Affairs (2)

Mr LEE Kam-chung  
Assistant Director of Home Affairs (3)

Mr David LEUNG  
Senior Administrative Officer (3)  
Home Affairs Department

Miss Dora NG  
Senior Executive Officer (3)1  
Home Affairs Department

Item V

Mr Isaac CHOW  
Deputy Director of Home Affairs (2)

Mrs Angelina CHEUNG  
Assistant Director of Home Affairs (4)

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

**Staff in attendance** : Mr Stephen LAM  
Assistant Legal Adviser 4 (agenda item V only)

Ms Joanne MAK  
Senior Assistant Secretary (2)2

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**I. Confirmation of minutes**  
[LC Paper No. CB(2)165/03-04]

The minutes of the meeting on 9 October 2003 were confirmed.

**II. Information paper(s) issued since the last meeting**

2. The Chairman invited members to note the following papers issued since the last meeting -



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- (a) letter of 10 October 2003 from the Administration on public fund-raising activities for non-charitable purposes [LC Paper No. CB(2)83/03-04(01)];
- (b) dates of hearings to be conducted by the relevant United Nations Treaty Monitoring Bodies to discuss (a) the Second Report of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China in the light of the International Covenant on Economic, Social and Cultural Rights and (b) the Report of the HKSAR under the Convention on the Rights of the Child provided by the Administration [LC Paper No. CB(2)155/03-04(01)];
- (c) supplementary information provided by the Administration on the new administrative structure for sports development [LC Paper No. CB(2)178/03-04(01)];
- (d) information paper on "Declaration of the Morrison Building as a Monument" provided by the Administration [LC Paper No. CB(2)351/03-04(01)]; and
- (e) information paper on "Visit of the delegation of China's first manned space mission to Hong Kong " provided by the Administration [LC Paper No. CB(2)468/03-04(01)].

3. Members did not raise any comment or question on the papers.

**III. Items for discussion at the next meeting**

[Appendices I and II to LC Paper No. CB(2)447/03-04]

4. The Chairman informed members that the Administration proposed to discuss the following items at the next regular meeting scheduled for 12 December 2003 at 10:45 am -

- (a) summary results of the 2001 Population Census; and
- (b) measures to address gambling-related problems.

5. Ms Emily LAU proposed to discuss the appointed membership of District Councils (DCs) and related issues at a Panel meeting as soon as possible. She said that the Secretary for Home Affairs (SHA), who was responsible for drawing up a proposed list of appointees, should brief members on the criteria for selecting persons for such appointments. She said that the Administration should also explain whether the Chief Executive (CE) had the



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discretionary power not to make any such appointments.

6. Mr James TO, Mr Albert CHAN and Ms Cyd HO agreed that the Panel should discuss the subject as soon as possible since SHA was already in the course of drawing up the proposed list of appointed members. They said that the community was concerned about the legal basis for the appointed membership of DCs and the minimum number of members that CE had to appoint to DCs as required by law. Mr James TO said that he also wished to seek the Administration's response to a media report that the Government had already drawn up a list of appointees and was lobbying support for certain persons on the list to be DC chairpersons/deputy chairpersons.

7. Ms Emily LAU suggested that given the urgency of the issue, the Panel should hold a special meeting as soon as possible or discuss it at the next regular meeting on 12 December. She said that, alternatively, the Panel could hold a joint meeting with the Panel on Constitutional Affairs (CA) to discuss the issue if that such a meeting could be arranged soon. She added that the Panel should invite all other Legislative Council (LegCo) Members to join the discussion of the subject.

8. Ms Cyd HO said that although it was SHA who was responsible for drawing up the proposed list of appointed members in DCs, the subject fell within the purview of the Constitutional Affairs Bureau. She considered it more appropriate for this Panel to hold a joint meeting with the CA Panel to discuss the issue.

9. Since the Panel had already scheduled a special meeting for 9 December, the Chairman suggested that the Panel should discuss the appointed membership of DCs at a joint meeting with the CA Panel on 12 December. He said that if members agreed, he would consult the Chairman of the CA Panel.

10. Ms Emily LAU suggested that the Panel should consider whether item (b) in paragraph 3 above should be deferred to a later meeting to allow sufficient time for discussion at the meeting on 12 December. However, Mr Albert CHAN considered that discussion of that item should not be deferred as many concern groups had been waiting for the Administration's progress report on the subject. He suggested that the meeting on 12 December could start 30 to 45 minutes earlier so that all the three items could be discussed. The Chairman said that he would further discuss with the Chairman of the CA Panel and inform members of the meeting arrangements as soon as possible.

*(Post-meeting note: a joint meeting of this Panel and the CA Panel was held on 8 December to discuss the appointed membership of DCs and related issues.)*



**IV. Remuneration package for District Council members of the Second Term District Councils (2004-07)**

[LC Paper No. CB(2)447/03-04(01)]

11. The Director of Home Affairs (D(HA)) said that the Independent Commission on Remuneration for Members of DCs of the HKSAR (the Commission) had completed a review of the remuneration package for DC members and had made its recommendations to the Government. D(HA) said that subject to the views of this Panel, the Administration would submit a proposal to the Finance Committee at its next meeting on 19 December 2003 to seek its endorsement for the new arrangements to take effect from 1 January 2004.

12. At the Chairman's invitation, Deputy Director of Home Affairs (2) (DD(HA)2) gave a Powerpoint presentation on the recommendations of the Commission as detailed in paragraph 6 of the Administration's paper.

13. The Chairman invited members, who had been elected as DC members in the coming term, to declare interests. Mr James TO, Mr Albert CHAN, Ms Cyd HO and Mr Andrew CHENG declared interests in that regard. Dr TANG Siu-tong and Mr Tommy CHEUNG declared that they were serving DC members.

14. Mr Albert CHAN welcomed the proposal of expanding the ambit of the Operating Expenses Allowance (OEA) to cover other necessary expenses. He said that this new arrangement was fair as it would be in line with the existing arrangement for LegCo Members. However, Mr CHAN considered that the one-off Information Technology and Other Support Grant (ITOSG) of \$10,000 was inadequate to meet expenses for installing the necessary office equipment, such as computers, when setting up a ward office. He said that the amount fell far short of the provision for the same for LegCo Members, who were each entitled to a one-off Information Technology and Communication Equipment Expenses Reimbursement of \$100,000. He said that DC members should not be required to pay for the costs of IT facilities in their ward offices out of their own money or out of their monthly honorarium.

15. Agreeing that the ITOSG of \$10,000 was not a very substantial amount, D(HA) said that it was proposed taking into consideration the financial constraint of the Government. She said that when the economy improved, consideration could be given to revising the amount. DD(HA)2 added that the Commission was of the view that if DC members found the ITOSG of \$10,000 inadequate, they could use their OEA to make up for the shortfall.

16. As regards the monthly honorarium for DC members and OEA, Mr Albert CHAN considered that they should be adjusted annually according to the movement of Consumer Price Index (A) (CPI(A)), be it an inflation year or



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a deflation year. He said that the current arrangement that DC members did not have to face any reduction in OEA in deflation years was inappropriate having regard to prevailing social discontent and the fact that the standard payment rates of the Comprehensive Social Security Assistance had also been cut by 11%. Therefore, he accepted the adjustment mechanism for OEA as proposed by the Commission.

17. Dr TANG Siu-tong asked whether the Commission had considered the provision of a setting up grant for DC members to meet expenses for establishing new ward offices. D(HA) responded that the Commission also recognised that more expenses would be incurred by some DC members when setting up a new ward office in the beginning of the new term. It had therefore annualised the provision of OEA to provide more flexibility to DC members. In this way, DC members could make claim for more money under OEA during particular month(s) within one year as required for establishing new ward offices. After the new offices had been established, less running cost would be incurred and the DC members concerned could then claim for less under OEA.

18. Ms Cyd HO said that in general, expenses relating to office accommodation accounted for a large part of the overall expenses for LegCo Members and she believed that this was also true for DC members. She said that since there were many vacant units or shops in public housing estates, the Home Affairs Department (HAD) should suggest to the Housing Authority (HA) or Hong Kong Housing Society (HKHS) that they should lease such premises at a lower rental level to DC members to facilitate their provision of service to tenants. D(HA) undertook to refer the suggestion to HA and HKHS for consideration as soon as possible.

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19. Mr James TO said that some DC members had to wait for one to two years before they were allocated units in public housing estates for setting up ward offices. He said that some DC members suspected that the Housing Managers actually did not want to see the establishment of these ward offices lest this would facilitate tenants' lodging complaints to the DC members' offices. D(HA) said that she would refer Mr TO's view to the Housing Department for follow-up.

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20. Mr James TO said that some non-governmental organisations (NGOs) had suggested that DC members should be required to surrender to the Government any office equipment/furniture items in their offices which were no longer needed so that they could be given to NGOs. D(HA) explained that as these items were bought with public money, they had to be returned to the secretariats of DCs if they were no longer required. Assistant Director of Home Affairs (3) added that capitalised items of equipment/furniture costing \$1,000 or more with a life span of over one year, but excluding software and fixtures, should be returned to the DC secretariats. He said that DC members



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could apply to buy these items at market value in accordance with the established procedures.

21. Dr TANG Siu-tong said that the proposed adjustment mechanism for OEA would create financial difficulties for DC members in meeting their contractual obligations with their employees as the duration of employment contracts was generally two years. He suggested that consideration should be given to alternative arrangements, such as revising the amount of OEA once every two years or only at the end of a DC term. The Chairman also pointed out that a significant proportion of OEA was used by DC members to cover staff salaries. He considered it necessary to have some certainty regarding the OEA level, so that DC members would not have to cut the salary levels of their staff. He said that the Administration should give thought to Dr TANG's suggestion.

22. Mr Andrew CHENG was concerned that any downward adjustment of OEA might render the OEA insufficient to meet the contractual obligations of a DC member under, for example, employment contracts with his staff and office rental contracts. He supported a suggestion made by Mr Tommy CHEUNG on a previous occasion that any downward adjustment of OEA should be deferred to a subsequent term and made according to the accumulative deflationary effect. He said that this mechanism would allow DC members to have some certainty in their OEA level. He added that on the other hand, upward adjustments should be made to OEA in an inflation year to cope with cost increases.

23. Mr NG Leung-sing said that he appreciated the justifications for the various suggestions made by members regarding the adjustment mechanism for OEA. However, he considered that the mechanism mentioned by Mr Andrew CHENG might give the public an impression that members only wanted to make an immediate upward adjustment to OEA when there was inflation but would defer any downward adjustment to a subsequent term. Mr NG was concerned whether this logic, if adopted, would have great implications on the budgetary policy of the Government.

24. Mr James TO asked whether there were any precedents in the Government or public-funded organisations that employment contracts had stipulated that salaries would be cut when there was deflation. D(HA) responded that the employment contract entered between a DC member and his assistant was a private contract and it was the Government's established policy not to interfere with such contracts as long as they met the basic requirements of the law. She explained that flexibility was allowed for the employers and employees to negotiate for the terms acceptable to both parties.

25. Mr Andrew CHENG said that having considered Mr NG Leung-sing's views, he was inclined to accept that any adjustment, be it upward or



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downward, of OEA should be deferred to the subsequent term and made according to the accumulative inflationary or deflationary effect, as the case might be. He agreed with Mr NG that it was not fair to have upward adjustments made immediately whereas downward adjustments would be dealt with at a later stage. He reiterated that it was necessary to have some certainty regarding the OEA level to facilitate the operations of DC members.

26. Mr Tommy CHEUNG said that the Liberal Party was of the view that any downward adjustment of OEA should be deferred to the subsequent term and made according to the accumulative deflationary effect. On the other hand, in an inflation year, upward adjustments should be made to OEA and the revised OEA should take effect in the subsequent year. Mr CHEUNG pointed out that the amount of OEA was already far less than that for LegCo Members and the largest part of OEA was used to cover staff salaries and office rental. He said that since employment contracts and office rental contracts carried fixed financial commitments during the contractual period, it would be difficult for a DC member to meet these contractual obligations if his OEA was cut in a deflation year. On the other hand, if a DC member resorted to cutting the salary of his staff, this might give rise to employer/employee disputes and would also adversely affect staff morale.

27. Mr Tommy CHEUNG further said that the Liberal Party considered that in an inflation year, upward adjustments should be made to OEA and should take effect in the subsequent year. He said that this would enable DC members' staff to have a salary increase to cope with increases in living costs.

28. Mr Henry WU said that the existing adjustment mechanism, which allowed any downward adjustment of OEA in a deflation year to be deferred to a subsequent inflation year, was unfair. He considered that any adjustment, be it upward or downward, of OEA should be deferred to the subsequent term and made according to the accumulative inflationary or deflationary effect, as the case might be.

29. The Chairman said that the crux of the problem was that DC members had to use a significant proportion of OEA to pay staff salaries. As a result, any downward adjustment to OEA could render it insufficient to meet the contractual obligations of DC members under employment contracts.

30. Summing up the views of members, the Chairman said that three different views had been expressed by members as follows-

- (a) OEA should be adjusted annually according to the movement of CPI(A), be it an inflation year or a deflation year;
- (b) the adjustment mechanism should only allow upward adjustment of OEA, if any, whereas any downward adjustment of OEA



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should be deferred to the subsequent term and made according to the accumulative deflationary effect;

- (c) adjustment, be it upward or downward, of OEA should be deferred to the subsequent term and made according to the accumulative inflationary or deflationary effect, as the case might be.

31. DD(HA)2 sought clarification as to whether the mechanism suggested by Mr Tommy CHEUNG meant that any downward adjustment of OEA should be deferred and that the adjustment should be effected when they were offset by upward adjustment in subsequent inflation years. He said that, to illustrate by way of example, if the deflation rate in 2004 was -2% but there was an inflation rate of 3% in 2005, the OEA for 2006 should be increased by only 1%. Mr Tommy CHEUNG indicated that DD(HA)2's understanding was correct.

32. D(HA) said that in order to allow the new remuneration package to take effect on 1 January 2004 for the second term of DCs, it was necessary to submit a proposal to FC on 19 December 2003 for endorsement. She hoped that members could come up with a mainstream view on which the Administration's proposal would be based.

33. Mr Albert CHAN and Ms Cyd HO supported making adjustment to OEA annually according to the movement of CPI(A), be it an inflation year or a deflation year. The Chairman said that based on what was said by Mr NG Leung-sing before he left the meeting, Mr NG also seemed to be supportive of this mechanism. The Chairman said that apart from the adjustment mechanism proposed by Mr Tommy CHEUNG, Mr Andrew CHENG, Mr James TO and Mr Henry WU seemed to be in favour of an alternative option which was that adjustment, be it upward or downward, of OEA should be deferred to the subsequent term and made according to the accumulative inflationary or deflationary effect, as the case might be.

**V. Proposed amendments to the Building Management Ordinance**  
[LC Paper No. CB(2)422/03-04 and CB(2)430/03-04(01)]

34. Members noted the report provided by the Subcommittee on the Review of the Building Management Ordinance (the Subcommittee).

35. DD(HA)2 briefed members on the support services provided by HAD to owners in building management, the background to the public consultation exercise on the proposed amendments to the Building Management Ordinance (BMO) (Cap.344), and the objectives of the proposed amendments. He said that the Administration planned to introduce the proposed amendments into LegCo in the 2004-05 legislative session.



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36. At the Chairman's invitation, Assistant Director of Home Affairs (4) (AD(HA)(4)) gave a Powerpoint presentation on the outcome of public consultation on the proposed amendments to the BMO as detailed in the Administration's paper.

37. Mr Albert CHAN, Chairman of the Subcommittee, thanked the Administration for its efforts made to improve the BMO and for accepting many, though not all, of the recommendations made by the Subcommittee. Mr CHAN said that at its last meeting with the Administration, the Subcommittee had listened to the Administration's explanation of its constraints and accepted its approach of dealing with the less controversial amendments first before addressing the more controversial issues.

38. Mr Albert CHAN further said that one of the greatest concerns of the Subcommittee was the stipulation in many deeds of mutual covenant (DMCs) of new private buildings that DMC managers could carry on providing their services for the buildings concerned after the expiry of the initial period of two years without being subject to any review mechanism. The appointment of the manager could be terminated only by a resolution of the owners of not less than 50% of the undivided shares. He said that the Subcommittee had reached an almost unanimous view that there was a need to change this mechanism since it would be difficult for owners' corporations (OCs) of large developments to obtain the support of owners holding not less than 50% of the undivided shares. Mr Albert HO agreed with Mr CHAN, adding that the threshold for passing the resolution could be lowered from 50% to 30%, if not the original proposal of a simple majority vote. Mr Albert CHAN suggested that the Subcommittee should continue discussions with the Administration to seek further improvements to BMO.

39. Ms Cyd HO thanked members of the Subcommittee for their efforts made to seek improvements to the BMO. She said that in the recent scrutiny of some bills such as the Buildings (Amendment) Bill 2003, Members noted that there were often disputes between individual owners and OCs involving litigation. She requested the Administration to explore whether matters relating to the litigation procedures could be dealt with by the BMO. AD(HA)(4) agreed to follow up.

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40. Ms Cyd HO said that representatives of District Offices should be more proactive in rendering support to OCs, particularly when a new OC was set up or when there was a change of term of an OC. She said that the representatives could play the role of a neutral third party, instead of just being an observer, at OC meetings and advise owners what legislative provisions owners had to comply with and what legal responsibilities they had to bear. She said that HAD could provide more accounting, IT and legal support to OCs. Miss CHOY So-yuk said that representatives of District Offices were often unable to solve the disputes between owners and OCs during OC meetings as they were



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reluctant to say who was right or wrong. Miss CHOY considered that more training should be provided to them to enhance their support service.

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41. DD(HA)2 agreed that representatives of District Offices should play a more proactive role and undertook to follow up the matter. AD(HA)(4) added that training for staff of District Offices had been strengthened to enhance their understanding of the provisions of the BMO and their skill in handling disputes. She said that HAD would continue to monitor the staff's performance and seek improvements.

42. Miss CHOY So-yuk said that there was a case that the major owner of a building was an owner of a shop on the ground floor. He opposed other owners' proposal of installing a CCTV inside the lift of the building because he felt that it was not of any use to him. The CCTV actually did not cost much money and was considered necessary by the residents, but it could not be installed due to the major owner's opposition. Miss CHOY said that this kind of disputes often arose between small owners and the major owner. She asked whether a certain limit could be set concerning the voting rights of one single owner despite the fact that he might hold a majority of shares, or whether some agreements could be drawn up specifying that the small owners could go ahead with the installation of the building facilities they needed provided that they paid for their maintenance cost.

43. AD(HA)(4) said that if the major owner was the developer holding a majority of shares relating to the common parts, the developer was equivalent to holding the shares on behalf of the small owners as a trustee. According to the DMC Guidelines, an owner who held these shares did not enjoy voting rights. However, if the major owner was not a developer but was the owner of many flats in the building concerned, he held most of the voting rights because voting rights were based on the number of shares. AD(HA)(4) further said that HAD had consulted the Department of Justice (DoJ), which had advised that DMCs were private contracts made between the developer, the manager and the first owner of the building. As the Government was not a party to the contract, it was not appropriate to introduce amendments to the DMCs through legislative means. That said, there were sections in the BMO which had overriding effect and had to be incorporated into all DMCs in an implied manner. Besides, the Administration had proposed further amendments to the BMO which would facilitate the formation and operation of OCs. These included the deletion of reference to DMC from section 3 of the BMO and allowing all OCs to appoint a Vice-Chairman to a management committee (MC).

44. Referring to the recent bankruptcy of a property management company, Mr Albert HO urged the Administration to strengthen its regulatory control of these companies. He asked the Administration to ensure that these companies complied with the legal requirement on separation of bank accounts to prevent



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their mixing of their clients' money with their own. He added that the BMO should be amended to provide for penalties for failure to comply with the requirement.

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45. AD(HA)(4) said the existing BMO already provided that the manager had to keep separate accounts for each building. Following the bankruptcy of the said property management company, the Administration had been considering spelling clearly in law that management companies, in working for OCs, had to hold the management fees received in trust. The Administration was in the course of consulting DoJ and relevant parties on this idea. She added that D(HA) had also issued a letter to all management companies, OCs and owners' associations to remind them of the relevant requirements in law.

46. Mr Albert HO welcomed the Administration's review of the requirements and arrangements for the appointment of proxy. Noting that HAD was drafting in consultation with DoJ a set of guidelines on the appointment of proxy for reference by OCs and owners, Mr HO suggested that the Administration should seek the Subcommittee's views on the guidelines and also on any other guidelines being drafted for OCs and owners. He further suggested that the Administration should provide standard forms commonly used at owners' meetings or meetings of MCs, such as proxy forms, agendas and motions etc., in a code of practice for reference by OCs and owners. AD(HA)(4) said that the Administration would take into consideration Mr HO's suggestion.

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47. Mr Andrew CHENG suggested that the Subcommittee should be activated again to continue discussions with the Administration on review of the BMO. He requested the Panel to take a decision on this. The Chairman said that as this matter was not on the agenda, it should be discussed at the next regular meeting on 12 December 2003.

48. In response to the Chairman, AD(HA)(4) explained the Administration's proposals relating to the procurement of supplies, goods and services by OC as detailed in paragraphs 34 to 36 of the paper. The Chairman pointed out that the Administration should take into account the practical difficulty in convening general meetings of OC and re-consider the proposal that any procurement of supplies, goods and services which exceeded the sum of 20% of the annual budget of an OC would have to be accepted or rejected by a resolution passed at a general meeting of the OC. He suggested that the Subcommittee, if it was to resume meetings with the Administration, should follow up on this point.

49. There being no other business, the meeting ended at 10:40 am.