

立法會
Legislative Council

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LC Paper No. CB(2) 1392/04-05
(These minutes have been seen
by the Administration)

Panel on Security

**Minutes of meeting held on Tuesday, 1 March 2005
at 2:30 pm in Conference Room A of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)
Dr Hon LUI Ming-wah, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon WONG Yung-kan, JP
Hon Howard YOUNG, SBS, JP
Hon LAU Kong-wah, JP
Hon CHOY So-yuk
Hon Audrey EU Yuet-mee, SC, JP
Hon LEUNG Kwok-hung
Hon CHIM Pui-chung
- Member attending** : Hon Ronny TONG Ka-wah, SC
- Members absent** : Hon Daniel LAM Wai-keung, BBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Dr Hon Philip WONG Yu-hong, GBS
Hon Andrew LEUNG Kwan-yuen, SBS, JP
- Public Officers attending** : Item IV

Miss CHEUNG Siu-hing
Deputy Secretary for Security 1

Mr Ian WINGFIELD
Law Officer (International Law)
Department of Justice

Item V

Mr Ambrose LEE
Secretary for Security

Miss CHEUNG Siu-hing
Deputy Secretary for Security 1

Mr Johann WONG
Administrative Assistant to Secretary for Security

Mr John READING
Deputy Director of Public Prosecutions
Department of Justice

Mr Peter WONG
Senior Assistant Solicitor General
Department of Justice

Mr Victor LO
Assistant Commissioner of Police (Crime)

Mr Simon SHEUNG
Acting Senior Superintendent of Police (Liaison Bureau)

Item VI

Mr Michael WONG
Deputy Secretary for Security 3

Mr Alan CHU
Principal Assistant Secretary for Security

Mr Raymond WONG, IMSM
Assistant Director (Information Systems)
Immigration Department

Mr Albert LAI
Chief Systems Manager (Technology Services)
Immigration Department

Clerk in attendance : Mrs Sharon TONG
Chief Council Secretary (2)1

Staff in attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Mr Watson CHAN
Head, Research and Library Services

Mr Thomas WONG
Research Officer 4

Mr Raymond LAM
Senior Council Secretary (2) 5

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)929/04-05)

The minutes of the meeting held on 24 January 2005 were confirmed.

II. Information papers issued since the last meeting
(LC Paper Nos. CB(2)821/04-05(01), CB(2)907/04-05(01),
CB(2)914/04-05(01) and CB(2)931/04-05(01))

2. Members noted that the following papers had been issued since the last meeting -

- (a) Information note provided by the Administration on the overall immigration clearance arrangements at boundary control points during the forthcoming Chinese New Year holidays;
- (b) Submissions from the Society for Community Organization relating to rehabilitated offenders and eligibility for obtaining Security Personnel Permits; and
- (c) Administration's response to issues raised in the submissions from the Society for Community Organization regarding rehabilitated offenders and Security Personnel Permits.

3. Members noted that the Administration had provided an information paper on the Computer Systems for the Immigration Department at the new control point for the Lok Ma Chau Terminus of the Sheung Shui to Lok Ma Chau Spur Line. Members did not suggest discussing the subject matter at a Panel meeting.

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III. Date of next meeting and items for discussion

(LC Paper Nos. CB(2)923/04-05(01) and (02))

4. Members agreed that the following items proposed by the Administration would be discussed at the next meeting to be held on 15 April 2005 at 10:45 am and the meeting time would be extended to end at 1:15 pm -

- (a) Appointment of civil celebrants of marriage : Proposal to amend the Marriage Ordinance (Cap.181);
- (b) Computer Assisted Palmprint and Fingerprint Identification System;
- (c) Versatile Maritime Policing Response System; and
- (d) Amendments to subsidiary legislation under the Dangerous Goods Ordinance (Cap. 295).

5. Regarding paragraph 2(b) above, Miss Margaret NG suggested that the issues raised in the submissions from the Society for Community Organization regarding employment service support for rehabilitated offenders and the criteria for the issue of Security Personnel Permits should be discussed by the Panel. Members agreed that the issues would be discussed at the meeting to be held in May 2005.

IV. Report on the research study on regulation of interception of communications in overseas jurisdictions

(LC Paper No. CB(2)923/04-05(03))

6. At the invitation of the Chairman, Head, Research and Library Services (H(RL)) presented, with the assistance of Powerpoint, the research report on regulation of interception of communications in overseas jurisdictions.

7. Miss Margaret NG asked about the background of the Interception of Communications Commissioner in the United Kingdom (UK). H(RL) responded that the person concerned was a retired judge of the High Court.

8. The Chairman asked about the progress and timetable of the Administration's review of the Interception of Communications Ordinance (ICO).

9. Deputy Secretary for Security 1 (DS for S1) responded that the Administration's review on interception of communications, including a study of overseas practices and latest developments, was ongoing. The Administration hoped to complete the review and report on the way forward within the current legislative session.

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10. Referring to paragraph 5.3.2 of the report, Mr LAU Kong-wah asked whether law enforcement agencies in UK had requested communications service providers (CSPs) to keep their customers' communications data for national security purpose.

11. Research Officer 4 (RO4) explained that under the Anti-terrorism, Crime and Security Act 2001 of UK, CSPs were permitted to retain communications data beyond the period required for their own business purposes, so that it could be accessed by law enforcement and security agencies on national security and crime prevention grounds. A code of practice relating to the retention of such communications data by CSPs would be issued by the Home Secretary.

12. Mr LAU Kong-wah asked whether the United States (US) had made significant changes to legislation relating to interception of communications.

13. RO4 responded that the PATRIOT Act of US had increased the powers of law enforcement agencies and had faced strong opposition from many human rights groups in US. The Chairman asked whether the PATRIOT Act contained a clause providing for a review after a certain period of time. RO4 replied in the affirmative.

14. Mr LAU Kong-wah asked how the law enforcement agencies in Hong Kong would respond to recent legislative amendments in other jurisdictions.

15. DS for S1 responded that the United Nations (Anti-Terrorism Measures) (Amendment) Ordinance empowered law enforcement agencies to exchange information with law enforcement agencies of other jurisdictions for the purpose of combating terrorism.

16. Referring to page 64 of the report, Mr LAU Kong-wah asked whether the Administration would consider providing the Legislative Council with information on interceptions conducted by law enforcement agencies.

17. DS for S1 responded that the issue would be examined in the Administration's comprehensive review on interception of communications.

18. Referring to Appendix II to the report, the Chairman pointed out that UK, India, Singapore and Hong Kong were the only places where interception warrants were not issued by courts. He considered that interception warrants should be issued by courts. As the Administration's review of ICO had taken a long period of time, he hoped that the review could be completed within the current legislative session.

V. Issues relating to allegation of Mainland public security officials taking enforcement actions in Hong Kong
(LC Paper Nos. CB(2)742/04-05(01) and CB(2)923/04-05(04) to (06))

19. At the invitation of the Chairman, Secretary for Security (S for S) briefed

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Members on the Administration's paper on allegations of Mainland public security officials committing offences and enforcing the law in Hong Kong.

20. Ms Audrey EU said that although the Administration had stated in its reply to her letter of 20 January 2005 that the purpose of the visit of the seven Mainland persons was sightseeing, it seemed to be not the case. She asked about the period of time when the seven persons were found in the place concerned and the acts of such persons. She also asked about the grounds on which the Police had arrested the seven persons. In view of public concern about the case, she considered that the Administration should disclose such information.

21. S for S responded that the seven persons were found in two private cars in the vicinity of a residential building in an evening. In response to Police enquiries, two of the seven men said that they were Mainland public security officials. A pair of handcuffs was found in one of the vehicles. After being interviewed, the seven persons were arrested for the suspected offences of loitering and possession of offensive weapon. The Guangdong Provincial Public Security Department (GDPSD) had, upon the Police's enquiry in the course of investigation, advised that the purpose of visit of the seven persons was sightseeing and shopping. Having completed the investigation, the Police consulted the Department of Justice (D of J) on the sufficiency of evidence to support criminal proceedings against the seven arrested persons.

22. Deputy Director of Public Prosecutions (DDPP) said that D of J had, after considering all relevant information, come to the conclusion that there was insufficient evidence to justify bringing prosecution against any of the seven persons. In considering whether there was sufficient evidence to institute prosecution in relation to the pair of handcuffs, D of J had considered section 17 of the Summary of Offences Ordinance (SOO) (Cap. 228) and section 33 of the Public Order Ordinance (POO) (Cap. 245). However, an offence under section 17 of SOO required an intent to use the handcuff for an unlawful purpose and there was insufficient evidence to establish that element of the offence. Handcuffs were not offensive weapons under section 33 of POO.

23. The Chairman questioned why the Administration had said that the purpose of visit of the seven persons was sightseeing and shopping. He asked whether the Police had interviewed the seven persons.

24. S for S responded that the purpose of visit of the seven persons was advised by GDPSD in response to the Police's enquiry. He stressed that the Police had interviewed the seven persons. However, legal advice indicated that it was inappropriate to disclose the statements taken from the suspects.

25. Ms Audrey EU asked about the meaning of the law enforcement actions referred to in paragraph 16 of the Administration's paper and whether it covered surveillance. She also asked whether surveillance was in contravention of any local

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legislation.

26. DDPP responded that the law enforcement actions referred to in paragraph 16 of the Administration's paper were the actions normally undertaken by a law enforcement officer who was entitled to do so in Hong Kong.

27. S for S said that examples of acts in contravention of local legislation included illegal arrest and illegal detention. He cautioned that if surveillance was to be made illegal, there might be serious impact on other persons, including paparazzi.

28. DDPP said that although surveillance would not amount to an offence, it might become an offence, if it was associated with trespassing, kidnapping or illegal detention. If there was sufficient evidence suggesting that the law enforcement officers of other jurisdictions had committed any such crime in Hong Kong, prosecution would be instituted. Although GDPD had stated that the purpose of visit of the seven persons was sightseeing and shopping, what the Police and D of J were concerned with was whether there was sufficient evidence to establish the commission of a criminal offence. After considering all relevant information, D of J had come to the conclusion that there was insufficient evidence to bring prosecution against any of the seven persons.

29. Mr Howard YOUNG said that to his knowledge, Mainland law enforcement officers were required to report any visits outside the Mainland. He asked whether the Administration had enquired with the Mainland authorities whether the two public security officials had reported their visits to Hong Kong before leaving the Mainland.

30. S for S responded that he was not aware of such a requirement.

31. The Chairman asked whether the Police had asked GDPD whether it believed in the purpose of visit claimed by the seven persons and whether any of the seven persons had been punished in the Mainland.

32. Assistant Commissioner of Police (Crime) (ACP(C)) responded that the Police had reflected the grave concerns of the Administration and the public about the incident to GDPD. The Police had requested GDPD to verify the identity of the seven persons as well as the purpose of their visit to Hong Kong. GDPD had confirmed that the purpose of their visit was sightseeing and shopping, and the two public security officials among the seven persons had not been assigned to perform any duties during their visit. GDPD had advised that one of the two public security officials had inadvertently brought out of Mainland a pair of handcuffs which was normally used by him whilst on duty. GDPD had assured that it would take appropriate steps to prevent the recurrence of similar incidents.

33. Mr Howard YOUNG asked whether the statistics provided in paragraph 17 of the Administration's paper covered both duty visits and personal visits of Mainland public security officials. S for S responded that the statistics covered duty visits

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only.

34. Mr Ronny TONG said that an offence under section 17 of SOO required the possession of a pair of handcuffs as well as an intent to use the same for an unlawful purpose. As the person concerned was obviously in possession of a pair of handcuffs, the remaining question was whether there was an intent to use the same for an unlawful purpose, which could be inferred from the circumstances. He added that D of J's power to determine whether to institute prosecution against a person was not absolute. The Administration should explain why prosecution was not instituted against the seven persons and how evidence for bringing prosecution against the persons concerned was insufficient.

35. DDPP responded that the facts of the case were already in the public domain. The possession of a pair of handcuffs with an intent to use them for an unlawful purpose had to be proved beyond reasonable doubt before the offence could be established. As there was no reasonable prospect of conviction in the case concerned, prosecution was not instituted.

36. Mr Ronny TONG said that even if the Mainland public security official concerned had inadvertently brought the pair of handcuffs to Hong Kong, it should normally have been left in the hotel at which he resided in Hong Kong. Even if the purpose of the seven persons' visit to Hong Kong was sightseeing and shopping, they could still commit offences in Hong Kong.

37. DDPP responded that there was insufficient evidence to prove that there was an intent to use the pair of handcuffs for an unlawful purpose, which was an element required for an offence under section 17 of SOO.

38. The Chairman said that there were newspaper reports that the public security officials had, when approached by the Police, said that they were performing duties. He considered that the Administration should disclose more information about the case.

39. S for S responded that it might not be fair to treat reports in newspapers as the facts. He pointed out that when Police officers arrived at the scene, none of the seven persons had said that they were Mainland public security officials performing duties. It was only upon enquiries by the Police that two of the men said that they were Mainland public security officials.

40. Miss Margaret NG said that many people were of the view that there was sufficient circumstantial evidence to prosecute the persons. The Administration's refusal to disclose information about the case would only cause people to suspect that the Administration had shielded the arrested persons from prosecution. She questioned whether there was a double standard on the part of the Administration in that other persons would be prosecuted under such a situation.

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41. S for S responded that there was no question of double standard or shielding the arrested persons from prosecution. The Police had acted in accordance with the established procedures in this and other cases. If there was to be another case of a similar nature, the Police would also act in accordance with the established procedures. DDPP added that whether prosecution would be instituted in a case would depend on whether there was sufficient circumstantial evidence in the case concerned.

42. Miss Margaret NG asked why the Administration did not disclose information about the statements taken from the arrested persons. She also asked whether D of J would disclose details of the reasons for not instituting prosecution in the case concerned to maintain public confidence.

43. S for S responded that disclosing statements which contained personal data of the suspects without their consent might contravene the requirements on protection of personal data under the Personal Data (Privacy) Ordinance (Cap. 486). It was also important to criminal investigations that persons providing information to the Police were frank and open. Such persons did not expect what they provided to the Police would be publicly released other than in a court. Disclosing the statements would undermine their confidence and willingness to assist in the Police's investigations. He reiterated that the Police had acted in accordance with the established procedures and, after having completed investigations, consulted D of J on the sufficiency of evidence to support criminal proceedings against the seven arrested persons.

44. DDPP said that after carefully considering all relevant information, D of J had come to the conclusion that there was insufficient evidence to justify bringing a prosecution against any of the seven persons. He stressed that D of J had always tried to be transparent in its prosecution policy. D of J had no fear or favour in exercising its duties.

45. Mr LAU Kong-wah asked whether the Police had received any report about suspicious vehicles and whether the person who reported the matter to the Police had expressed concern about his own safety or well-being.

46. ACP(C) responded that the Police conducted investigation after receiving complaints made in person and through telephone that there were suspicious vehicles in the vicinity of a residential building.

47. Mr LAU Kong-wah asked whether there were guidelines on the custody of handcuffs for Hong Kong Police officers and Mainland public security officials. He asked whether plain clothed Police officers who were on duty throughout the day were allowed to keep their handcuffs all the time.

48. ACP(C) responded that Hong Kong Police officers were required to keep their handcuffs in appropriate custody when the handcuffs were not to be used. They should not bring along any handcuffs when they left Hong Kong, unless they had to

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undertake designated duties in accordance with the agreed mechanism of police cooperation with the jurisdiction concerned. He added that Mainland public security officials were not allowed to bring handcuffs outside the Mainland. In this connection, GDPD had indicated that it would take appropriate steps to prevent the recurrence of similar incidents.

(Post-meeting note : The Police has subsequently advised that there are no written instructions in the Hong Kong Police governing the custody of personal issue handcuffs when the handcuffs are not to be used for duty purposes. The Police understands that the situation in the Mainland is similar.)

49. The Chairman asked whether the Police had searched the seven persons' residence in Hong Kong.

50. ACP(C) responded that the Police had carried out investigations of the belongings of the seven persons and their residence in Hong Kong. No other suspicious articles were found.

51. The Chairman asked whether the arrested persons other than the two public security officials had any law enforcement background.

52. ACP(C) responded that GDPD had confirmed in response to enquiries from the Police that the other five persons were employees of a car rental company in Shenzhen.

53. The Chairman said that the information provided so far by the Administration could not convince the public of its decision of not instituting prosecution against the seven arrested persons. He considered that the Administration should at least consider providing on a confidential basis the statements or summary of statements taken from the seven persons. Otherwise, people would tend to think that the Administration had shielded the arrested persons from prosecution.

54. S for S reiterated that there was no question of the Administration shielding the arrested persons. He stressed that the Police had followed all the necessary procedures and conducted a thorough investigation and referred all relevant information to D of J for independent advice on the sufficiency of evidence to support criminal proceedings against the seven persons. As D of J had given its independent advice, the advice should be respected. He added that public discussion of a decision of not instituting prosecution in a case might amount to the trial of the suspect outside court.

55. Mr LEUNG Kwok-hung considered that the Administration had been unfair in determining whether to institute prosecution in different cases. Although there had been insufficient evidence to bring prosecution against him in many cases, he had been prosecuted in the cases concerned. To facilitate Members' understanding of the

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investigation conducted by the Police, the Administration should disclose more information about the case to Members, unless it had doubts about the creditability of Members. He asked whether the Administration would provide Members with its correspondence with GDPSD in the case concerned. He considered that personal data could be blocked out, if necessary, in the correspondence provided to Members.

56. S for S responded that the Administration had always respected Members. However, the disclosure of correspondence with the law enforcement agencies of other jurisdictions without their consent might undermine the confidence of such law enforcement agencies in the provision of sensitive or useful information to the Administration. This might hinder future cooperation with such law enforcement agencies.

57. Mr LEUNG Kwok-hung requested the Administration to provide Members with copies of its letters to GDPSD in the case concerned. S for S undertook to provide a response after seeking legal advice.

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58. Dr LUI Ming-wah asked about the timing of the reports made in person and through telephone to the Police. He also asked whether the suspicious vehicles were reported to have been found at the scene for some days.

59. ACP(C) responded that the reports made in person and through telephone were received by the Police at about the same time. It was reported that suspicious vehicles were found at the scene more than once. However, there was no evidence that the seven subject persons were at the scene before the matter was reported to the Police.

60. Dr LUI Ming-wah asked whether the person who reported the matter to the Police had expressed concern about his own safety or wellbeing.

61. ACP(C) responded that the Administration was not in a position to disclose information about the person who made the reports. However, the Police had examined all relevant information, including information provided by the person who made the reports, before providing all relevant information to D of J for independent advice.

62. Ms Audrey EU asked whether the statistics referred to in paragraph 17 of the Administration's paper reflected the actual situation and covered state security officials.

63. S for S responded that the statistics referred to in paragraph 17 of the Administration's paper only covered public security officials and did not cover state security officials or officers of other law enforcement agencies such as Customs.

64. In response to Ms Audrey EU's question about the visits made by Hong Kong Police officers to the Mainland, S for S provided the following information –

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	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Number of visits made by Hong Kong Police officers	51	35	43	45
Number of Hong Kong Police officers involved	113	87	98	103

65. Ms Audrey EU asked whether there was any agreed mechanism on the taking of law enforcement actions by state security officials in Hong Kong.

66. S for S responded that the present mechanism was focused on police cooperation in criminal investigations. State security officials had not made any request for taking law enforcement actions in Hong Kong. He said that the Administration had considered whether the coverage of the agreed mechanism could be extended to include state security officials and had come to the conclusion that there was not a need to do so, as state security officials were not involved in criminal investigations. Cooperation, if any, should be made on the basis of mutual respect for the laws and jurisdiction of both sides. The Chairman requested the Administration to provide a written response.

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67. The Chairman invited Members' views on how the case concerned should be followed up. He was of the view that the information provided so far by the Administration could not convince the public of the decision of not prosecuting the seven arrested persons. This might give people the impression that the Administration had shielded the arrested persons from prosecution. He proposed that the Panel should exercise its powers under the Legislative Council (Powers and Privileges) Ordinance (P&PO) (Cap. 382) to order the Administration to provide the statements taken from the seven arrested persons. He considered that there would be dereliction of duty on the part of Members, if such an action was not taken.

68. Dr LUI Ming-wah considered that one should trust the Police and D of J, which had completed their work in the case.

69. Mr LAU Kong-wah considered that the allegations of shielding the arrested persons from prosecution and dereliction of duties on the part of Members were serious ones. As the disclosure of the statements taken from the arrested persons would set the precedent of disclosing statements taken in cases where prosecution was not instituted, he objected to the Chairman's suggestion.

70. Mr Howard YOUNG considered that it was unnecessary to exercise P&PO to order the Administration to provide the statements taken from the seven arrested persons. However, the Administration should convey once again Members' concerns to the relevant Mainland public security authorities.

71. Miss CHOY So-yuk said that there was no evidence suggesting that

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prosecution was not instituted against the arrested persons despite there was sufficient evidence in the case concerned. She considered that if the Administration was to disclose information about a case whenever Members had any suspicions, members of the public would doubt the confidentiality of information provided to the Police and hence their willingness to assist the Police would be undermined.

72. Miss Margaret NG said that although she shared the concerns of the Chairman, there was not such a need for the Panel to exercise its powers under P&PO to order the Administration to provide the statements taken from the seven persons. She disagreed that there was dereliction of duty on the part of Members, who had tried their best to seek information about the case. She considered that the major issue was the Police's reluctance to disclose information obtained in the investigations and S for S's reluctance to disclose the explanations given by the arrested persons. These had caused people to question the decision of not instituting prosecution against the persons concerned.

73. The Chairman put his proposal referred to in paragraph 67 above to vote. The outcome was that three members voted in favour of the proposal, while five members voted against it.

74. Mr LAU Kong-wah proposed that the Administration should write to the Mainland authorities conveying Members' concerns and seeking a reply on the punishment, if any, imposed on the public security official who brought a pair of handcuffs to Hong Kong.

75. The Chairman put Mr LAU Kong-wah's proposal to vote. The outcome was that eight members voted in favour of the proposal, while no member voted against it.

76. Mr LEUNG Kwok-hung proposed that the Panel should write to GDPD requesting it to provide its correspondences with the Administration.

77. Miss Margaret NG said that it was not appropriate to write to GDPD as proposed by Mr LEUNG Kwok-hung, and she would abstain from voting.

78. The Chairman put Mr LEUNG Kwok-hung's proposal to vote. The outcome was that one member voted in favour of the proposal, while five members voted against it.

79. Mr LEUNG Kwok-hung suggested that the Panel should write to GDPD seeking a reply on whether state security officials had taken law enforcement actions in Hong Kong and, if so, the basis on which they had done so.

80. The Chairman pointed out that matters concerning state security officials fell within a different subject matter, which might be discussed at another meeting. Mr WONG Yung-kan said that such an issue, if to be discussed, should also cover the operation of other countries' intelligence agents.

VI. Automated Immigration Clearance : Proposal to amend the Immigration Ordinance (Cap.115)
(LC Paper No. CB(2)894/04-05(01))

81. At the invitation of the Chairman, Deputy Secretary for Security 3 (DS for S3) briefed Members on the Administration's legislative proposal to provide for the verification of identity of certain persons by automated means and related matters. He informed Members that the Administration intended to introduce the relevant bill into the Legislative Council at its meeting on 27 April 2005.

82. Mr Howard Young said that Dr LUI Ming-wah, Mr LAU Kong-wah and he were supportive of the legislative proposal, which would facilitate the clearance of passengers at control points.

83. The Chairman said that as the legislative proposal would involve automated clearance of non-residents, e.g. visitors, there should be stringent control in the granting of permission to land to such persons who opted for self-service immigration clearance, so that the integrity of immigration control in Hong Kong would not be compromised.

84. The Chairman concluded that members supported the legislative proposal in principle.

85. There being no further business, the meeting ended at 5:05 pm.