

立法會
Legislative Council

LC Paper No. CP 403/04-05
(These minutes have been seen
by The Ombudsman)

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**Legislative Council Members' meeting
with Ms Alice TAI, JP, The Ombudsman,
held on Tuesday, 7 December 2004, at 11:00 am
in Conference Room A of the Legislative Council Building**

Members Present : Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon Albert HO Chun-yan
Hon Martin LEE Chu-ming, SC, JP
Dr Hon LUI Ming-wah, JP
Dr Hon YEUNG Sum
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon Tommy CHEUNG Yu-yan, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon LI Kwok-ying, MH
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Albert Jinghan CHENG

**Attendance by
Invitation** : Office of The Ombudsman

Ms Alice TAI, JP
The Ombudsman

Mr MOK Yun-chuen
Chief Executive Officer

Staff in Attendance : Mrs Vivian KAM
Principal Council Secretary (Complaints)

Miss Erica WONG
Senior Council Secretary (Complaints) 1

I. Chairman's opening remarks

The Chairman welcomed Ms Alice TAI, The Ombudsman, and Mr MOK Yun-chuen, Chief Executive Officer of The Ombudsman's Office, to the meeting. She said that the purpose of the meeting was for The Ombudsman to brief Members on the work of The Ombudsman's Office (the Office) and for both parties to exchange views on issues of mutual concern. The Chairman reminded Members that the meeting was not covered by the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and that individual cases would not be discussed.

II. Briefing by The Ombudsman on the work of The Ombudsman's Office

(LC Paper No. CP 168/04-05(03))

Briefing

2. The Ombudsman briefed Members on the work of the Office for the year 2003/2004 and for the first seven months of 2004/2005 as set out in LC Paper No. CP 168/03-04(03).

3. The Ombudsman advised that:

- (a) When the last civil servant returned to the civil service the following week, all staff in the Office would be appointed directly by The Ombudsman. In view of the many new recruits appointed over the past three years, the Office attached great importance to staff training, including language and skills training. Its experienced staff also helped enhance the new recruits' knowledge of the operation of the Office as well as The Ombudsman Ordinance (Cap. 397) ("the Ordinance"). Moreover, to avoid loss of experience, the Office had compiled operational guidelines on Government departments to assist staff in understanding the internal operation of these departments and strengthen Investigation Officers' knowledge and techniques in complaint handling.
- (b) As for finance, the Office was also affected by the reduction in funding in the same way as Government departments. To maximize its resources, the Office had streamlined the structure of its administrative and supporting staff and strengthened the establishment of Investigation Officers. It had also simplified work procedures and appointed temporary staff to deal with sudden increase in caseload. Moreover, the value of the office

accommodation acquired two years ago had been doubled as a result of the uprise of the property market in recent months.

Jurisdiction

4. In response to Mr Ronny TONG's enquiry on whether the Office would investigate the Hunghom Peninsula incident, The Ombudsman said that since 1994, The Ombudsman had been empowered to initiate direct investigation on the grounds of public interest notwithstanding the absence of complaints. The Hunghom Peninsula incident, however, involved matters such as commercial decisions, contractual matters and grant of land which, according to Item 8 in Schedule 2 to the Ordinance: "any decision concerning the imposition or variation of any condition of granting, extending or renewing any interest in Government land", were not subject to investigation. In fact, when the Office handled complaints pertaining to land matters, the Office and the departments concerned often had divergent views as to whether The Ombudsman had the authority to investigate. As The Ombudsman's power of investigation was subject to more restrictions, she considered that it would be more appropriate for the Audit Commission to investigate into the Hunghom Peninsula incident.

5. Mr Ronny TONG was also concerned that the application form for The Link Real Estate Investment Trust ("The Link REIT") had to be completed in English only, and not in Chinese. Mr TONG enquired whether the Office would investigate into this special requirement.

6. The Ombudsman replied that the Office was concerned that some Government departments published official documents or publicity leaflets monolingually (usually in Chinese), and had recommended that the needs of users of the other official language must also be taken into account. Even if the departments considered that the purpose was to meet the needs of the vast majority of their readers, they should also incorporate explanatory notes in English (or in Chinese) in the documents so that people who could only understand the other official language would know their contents and the means to obtain relevant information.

7. Mr Albert CHENG questioned whether, as far as The Link REIT was concerned, the Government was selling the assets at an exceedingly low price and the reason for the number of fund units for allocation to the general public to be set at such a low level that foreign consortia would reap the lion's share of the profits. Mr CHENG enquired whether The Ombudsman would initiate any investigation.

8. The Ombudsman explained that the Office was constantly watchful for social affairs. Nevertheless, in deciding whether it would conduct an investigation, the Office must make reference to Schedule 2 of the Ordinance in which actions not subject to investigation were specified. In general, actions taken in relation to contractual or commercial transactions were beyond the Office's purview of investigation.

9. In response to Mr Albert HO's view that the listing of The Link REIT was an act to implement Government policy rather than a commercial act, The Ombudsman said that it appeared more appropriate for LegCo to follow up The Link REIT incident with the Government at the policy level than for the Office to initiate an investigation.

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10. Mr Albert HO said that, in effect, when Members sought information on The Link REIT, the Government often declined their requests on grounds of commercial secret and maintained that Members were politicizing the matter. He, therefore, hoped that The Ombudsman would consider initiating an investigation in her independent capacity. The Ombudsman agreed to consider the views of Members.

11. Mr Albert HO said that the Invitation for Proposals (IFP) for the development of the West Kowloon Cultural District had set out established conditions, among them the construction of a canopy. Mr HO asked The Ombudsman whether the IFP could be regarded as a tender document, meaning that it would not fall within the scope of actions set out in Schedule 2 which were not subject to investigation. The Ombudsman replied that information in hand was not sufficient to prove that the IFP had deviated from the tender procedure and amounted to acts of maladministration.

12. Ms Emily LAU was concerned that the report of the Audit Commission stated that the developer of Discovery Bay had modified the layout plan and encroached on Government land for golf course purpose for years, resulting in a reduction of over 100 million dollars of Government revenue. She queried why the Office had failed to offer assistance to the complainant, Miss YUNG Wing-sheung, a member of the Islands District Council, on the matter. Mr Albert CHENG also said that it was noted that the Office had not been proactive in investigating the case.

13. The Ombudsman responded that, upon the receipt of complaints, the Office could only make investigation on those involving administrative acts. A complaint involving land grant was not subject to The Ombudsman's investigation as specified at Item 8 in Schedule 2 of the Ordinance. As such, the Office would only investigate into the department's administrative acts. As administrative acts would only constitute a part (or even a minor part) of a complaint, the conclusion of the Office would often fail to live up to the complainant's expectation of an effective solution to the problem in question. On the contrary, the Audit Commission was not subject to any constraints in investigating the grant of land. Regarding the administrative acts involved in the grant of land at Discovery Bay, the Audit Commission had also set out the Office's recommendation in its report and stated its own views on the matter.

14. Mr Albert CHENG asked The Ombudsman whether the Office would recommend to a complainant for contacting other departments for follow-up when it considered that a complaint was outside its purview. The Ombudsman

replied that when the staff of the Office decided that they did not have the authority to or would not investigate into certain complaints, and if there were other organizations considered more appropriate in handling the complaints, the Office would inform the complainant of its views. If the Office noticed that a complaint involved legal proceedings, its officers would even remind the complainant of the relevant time restrictions.

Review of The Ombudsman Ordinance

15. In view of the chaos which occurred during the third term Legislative Council (LegCo) election, Mr Ronny TONG enquired if the Office could investigate into the chaotic election given that the Constitutional Affairs Bureau (CAB) fell within The Ombudsman's scope of investigation. Moreover, Mr TONG suggested that The Ombudsman should consider including the Electoral Affairs Commission into her purview of investigation.

16. The Ombudsman responded that the former Ombudsman had once proposed the inclusion of the Electoral Affairs Commission into The Ombudsman's purview, but the Government had rejected the proposal. Hence, although The Ombudsman's purview of investigation covered CAB, it could not be extended to the Electoral Affairs Commission. Nonetheless, The Ombudsman revealed that she was conducting an internal review of the Ordinance on possible areas of improvement, including its execution and The Ombudsman's purview. She would also re-consider the inclusion of the Electoral Affairs Commission under her purview, and would make reference to the practices of Ombudsmen in other countries.

17. Mr Martin LEE enquired if The Ombudsman wanted LegCo's support when reviewing the Ordinance for eliminating the restrictions concerning "actions not subject to investigation" stipulated in Schedule 2. He also enquired, if the Government favoured large consortia in certain land grant exercises and this led to a drastic reduction in revenue, whether The Ombudsman could investigate into such scenarios.

18. The Ombudsman thanked Members for supporting the elimination of restrictions on the Office concerning "actions not subject to investigation". She would look into the rationale for the existing restrictions in Schedule 2 and see if some could be removed. She would also make reference to the purviews of Ombudsmen in other countries and assess the impact of an expanded purview on the Office. She emphasized that The Ombudsman could not investigate into the administrative acts involved in complaints regarding land grant exercises unless she was conferred with such power by amending Item 8 in Schedule 2 to the Ordinance.

19. Mr Jeffery LAM enquired about the similarities and differences between the Ombudsmen of Hong Kong and those of overseas countries in terms of duties and structures. The Ombudsman replied that the Ombudsman systems in Hong Kong and in other common law jurisdictions were very similar. However, in

some countries such as Sweden, their Ombudsmen could investigate into complaints relating to personnel matters or outsourced Government services. The Ombudsmen in some Asian regions even took on the additional work of anti-corruption. Being the Secretary General to both the International Ombudsman Institute and the Asian Ombudsman Association, she hoped that next year's meeting of the Asian Ombudsman Association would enrich her knowledge in the development of the purview of Ombudsmen in other countries such as those in the Asia-Pacific regions. When reviewing the Ordinance, she would also consider whether such developments were suitable in the Hong Kong context.

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20. Members requested The Ombudsman to provide, upon completion of the internal review of the Ordinance, the outcome of the review to Members for discussion and then submit the proposed amendments to the Government for consideration. The Ombudsman agreed to follow up, but pointed out that the outcome of the review would take time as the review was still at a preliminary stage. As Members were uncertain about which panel should follow up on the matter, the Chairman proposed that consideration could be given to setting up a sub-committee under the House Committee for follow-up in future.

Powers of investigation and related issues

21. Dr YEUNG Sum enquired about the means through which the Office could obtain relevant information to investigate whether maladministration existed in Government departments, given the restrictions imposed by the Personal Data (Privacy) Ordinance (Cap. 486). The Ombudsman responded that while the Office would seek the complainant's consent to disclose his complaint to the department concerned, the complainant also had to give consent to the Office for obtaining his personal information from the department. Under certain circumstances, however, the Office would not release the complainant's information to the department concerned for his protection. In fact, there was a secrecy code in the Ordinance. Section 15 of the Ordinance provided that staff of the Office should not disclose any information obtained in the exercise of the Office's powers, and offenders were criminally liable.

22. In response to Dr YEUNG Sum's enquiry about the difficulties encountered by the Office in carrying out its duties, The Ombudsman advised that certain organizations, such as the Equal Opportunities Commission and Office of the Privacy Commissioner for Personal Data, had their own secrecy codes. Conflicts might arise from certain statutory provisions when the Office sought information from these organizations. The Office aimed at finding a mutually acceptable solution as far as possible. If no consensus could be reached, it might have to resort to the Court, although this had not occurred so far.

23. Noting that the Office received a total of 4 661 complaints in 2003/2004, Ms Emily LAU asked The Ombudsman for the reason why 1.8% of the concluded complaints had taken more than six months to conclude.

24. The Ombudsman explained that the performance pledge was a work indicator. Some cases had taken longer for investigation because they were more complicated, and the Office would keep the complainants posted of progress. In response to Ms LAU's request for examples to illustrate that the Office could only conduct partial investigation in certain complaints, The Ombudsman explained that for secrecy reasons, the Office could not divulge information on individual cases. However, she remarked that cases relating to lands matters were examples which showed that the processing time of cases was often affected by protracted disputes between the Office and the Lands Department over the feasibility of investigation into those complaints.

25. Miss CHOY So-yuk was concerned that the gathering of prostitutes and hawkers at Victoria Park was causing inconvenience to visitors. Miss CHOY then enquired about the circumstances under which The Ombudsman could initiate direct investigation into certain matters.

26. The Ombudsman responded as follows:

- (a) Under the Ordinance, the Office could only accept a complaint lodged by an aggrieved party who had to provide prima facie evidence to show that he was afflicted by the administrative acts of the Government. If The Ombudsman decided not to take any follow-up action after studying the complaint, she had to inform the complainant of her decision and of the reasons according to the Ordinance.
- (b) On the other hand, The Ombudsman might decide whether to conduct a direct investigation on matters involving public interest. Each year, there were about eight to nine cases being considered as potential targets for direct investigation. Of these cases, about five or six cases were selected for action.

27. Mr Albert HO enquired how complaints against The Ombudsman would be handled. In reply, The Ombudsman advised that under the secrecy principle, she would not respond on individual complaints but had requested her staff to give details of the Office's stance, investigation results and justifications in the investigation report or in the reply letters to the complainant. The Ombudsman also suggested that if Members agreed with the Office's stance after perusing the investigation report or the Office's letters to the complainant, they should advise the complainant as such. If, on the contrary, Members' views were different from that of the Office, they might inform The Ombudsman who would then consider whether a review was necessary.

Promotion and resources

28. Mr Jeffery LAM asked The Ombudsman how the Office promoted its services to enhance public awareness of the Office's work. The Ombudsman

replied that the Office promoted its services every year to people from all walks of life, introduced its services through teaching materials in schools and arranged publicity on TV commercials.

29. Mr Jeffery LAM was concerned that some people might lodge the same complaint to different departments, resulting in a waste of resources. The Ombudsman responded that a measure was in place to avoid wasting resources. In case the Office received a complaint letter addressed also to various departments, it would suggest to the complainant to wait for the replies from the departments. If the complainant was still dissatisfied with those replies, he could then request the Office to consider following up his complaint. On Mr LAM's enquiry as to whether there was resource overlapping between the work of the Independent Commission Against Corruption (ICAC) and The Ombudsman's Office, The Ombudsman explained that The Ombudsman's Office was set up in 1989 while the ICAC had been established long before. As the work of The Ombudsman did not include anti-corruption, there was no overlapping of duties between the Office and the ICAC.

III. Discussion items raised by Members

Efficiency and services of The Ombudsman's Office

(LC Papers No. CP 168/04-05(04) to (06))

30. Dr YEUNG Sum was concerned about how the Office could recruit and retain staff of high calibre under the financial constraints to ensure that its work efficiency would not be affected. The Ombudsman responded as follows:

- (a) With a good measure of financial well-being, the Office was able to recruit and retain staff of the right calibre, and provide a stable career and development opportunities for serving officers which other subvented organizations might be unable to offer.
- (b) Since the delinking in 2001, the Office had been coping with sudden increases in workload through internal staff redeployment and the appointment of experienced temporary or part-time staff. These arrangements provided flexibility to cope with the peaks and troughs in the Office and worked well.

31. Dr YEUNG Sum asked The Ombudsman whether the reasons for the decline in complaints received over the phone from 508 in 2002 to 267 in 2004 had been analyzed. The Ombudsman replied that telephone complaint service was introduced in late March 2001 to facilitate members of the public in lodging their complaints. However, this service was only suitable for the following types of complaints:

- (a) The subject matters of the complaint were straightforward and could be explained in not more than 15 minutes (otherwise this

could jam the complaint hotline and attract complaint against the Office when other complainants could not get through within a reasonable time).

- (b) It involved not more than two organizations.
- (c) It needed not be supported by the provision of massive documentation or other forms of evidence.

Given the overall trend of increase in complaints, the Office considered that the drop in the number of telephone complaints might be due either to the complainants' preferred method of complaints for a particular period, or to the more complex nature of complaint cases, which did not render it suitable for such complaints to be lodged by this method.

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32. Dr YEUNG Sum suggested The Ombudsman to review the telephone complaint services so as to better serve the public. The Ombudsman responded that the Office's management had been constantly watchful for the frontline services and would review the telephone complaint service based on its experience. Nonetheless, the Office was also concerned that if the telephone complaints involved many departments which made it necessary for the staff concerned to seek clarifications with the complainants, the latter might find it disturbing.

IV. Any other business

33. The Chairman advised that the next meeting would be held in December 2005. The Secretariat would consult Members and The Ombudsman on the exact date of the meeting. The Chairman thanked The Ombudsman, the Chief Executive Officer of the Office as well as Members for attending the meeting, and declared the meeting closed.

34. The meeting ended at 12:50 pm.

- (Post-meeting note:*
- (a) With the concurrence of the Chairman, given that the LegCo Panel on Administration of Justice and Legal Services (AJLS Panel) had been following up on issues relating to amendments to the Ordinance and the operation of The Ombudsman's Office, the Secretariat wrote to The Ombudsman on 9 December 2004 asking her to provide, upon completion of the internal review of the Ordinance, the outcome of the review to the Panel for follow-up. Members also decided that it would not be necessary for the House Committee to set up a subcommittee for follow-up.
 - (b) Subsequently, the Secretariat received a letter dated

31 December 2004 from The Ombudsman. The Ombudsman stated that as the review of the Ordinance had just commenced and as amendment bills would normally be introduced by the Administration to LegCo for scrutiny under the existing procedure for legislative amendments, The Ombudsman proposed that if amendments to the Ordinance were warranted upon completion of the review, she would further discuss with LegCo and the Executive Authorities the formal procedure for introducing such amendments. In the meantime, Members were welcomed to express views to the Office on the Ordinance.

- (c) With the concurrence of the Chairman, The Ombudsman's letter had been forwarded to LegCo Members concerned and the Chairman of the AJLS Panel for noting.)

Legislative Council Secretariat
7 February 2005