

立法會
Legislative Council

LC Paper No. CB(2)371/09-10
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by the Administration)

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Panel on Security

**Minutes of special meeting
held on Tuesday, 20 October 2009, at 4:30 pm
in the Chamber of the Legislative Council Building**

- Members present** : Hon LAU Kong-wah, JP (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Hon Albert HO Chun-yan
Dr Hon Margaret NG
Hon CHEUNG Man-kwong
Hon WONG Yung-kan, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon CHIM Pui-chung
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan
Hon WONG Kwok-kin, BBS
Hon WONG Yuk-man
- Members attending** : Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon LI Fung-ying, BBS, JP
Hon WONG Kwok-hing, MH
- Members absent** : Dr Hon Philip WONG Yu-hong, GBS
Hon LAU Wong-fat, GBM, GBS, JP
Hon LEUNG Kwok-hung
Hon IP Kwok-him, GBS, JP
Hon Paul TSE Wai-chun

Public Officers : Item I
attending

Mr Ambrose LEE, GBS, IDSM, JP
Secretary for Security

Ms Carol YIP, JP
Deputy Secretary for Security 1

Ms Carol YUEN
Deputy Secretary for Security 2

Mr NGAI Wing-chit
Deputy Secretary for Security 3

Ms Sally WONG, JP
Commissioner for Narcotics

Mr Victor LO, PDSM
Political Assistant to Secretary for Security

Ms Maisie CHAN
Administrative Assistant to Secretary for Security

Item II

Mr Timothy TONG Hin-ming
Commissioner
Independent Commission Against Corruption

Mr Daniel LI Ming-chak, IDS
Head of Operations
Independent Commission Against Corruption

Ms Julie MU Fee-man
Director of Community Relations
Independent Commission Against Corruption

Mrs Jean AU YEUNG LUI Miu-kwan
Director of Corruption Prevention
Independent Commission Against Corruption

Clerk in : Mr Raymond LAM
attendance Chief Council Secretary (2) 1

Staff in attendance : Mrs Vivian KAM
Assistant Secretary General 2

Miss Josephine SO
Senior Council Secretary (2) 1

Ms Camy YOONG
Clerical Assistant (2) 1

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I. Briefing by the Secretary for Security on the Chief Executive's 2009-2010 Policy Address
(LC Paper No. CB(2)28/09-10(01))

Secretary for Security (S for S) briefed Members on the new and ongoing initiatives of the Security Bureau in the 2009-2010 Policy Agenda.

(Post-meeting note: The speaking note of S for S was issued to members vide LC Paper No. CB(2)94/09-10(01) on 21 October 2009.)

Replacement of emergency ambulances

2. Mr WONG Kwok-hing expressed concern about cases of breakdown of emergency ambulances in the summer of 2008 and 2009. He enquired about the adequacy of emergency ambulances in meeting demand. He also asked about the timetable for replacing aged emergency ambulances.

3. In response, S for S advised that the Administration had all along been replacing ambulances in accordance with need. Funding had been allocated for the Fire Services Department (FSD) to replace a total of 196 aged ambulances in batches. The first 100 new vehicles would be put into service before the end of 2009, and the remaining 96 would become available within 2010. After all 196 replacement ambulances had been put into service, some 80% of FSD's ambulance fleet would be replaced and the age of the fleet would be reduced from the current average age of around eight years to less than two years.

Conduct and integrity of police officers

4. Mr WONG Kwok-hing said that to his knowledge, there had been an increasing number of complaints against police officers in the first half of 2009, as compared with the same period in 2008. He sought information on measures adopted by the Police to enhance the conduct of police officers.

5. S for S replied that -

(a) the public had confidence in the operation of the Independent

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Police Complaints Council, and complaints from the public were regarded as a drive for improvement;

- (b) the Police placed great emphasis on the integrity of its members. Throughout the years, the Force had introduced a variety of initiatives and programmes to ensure a high level of integrity among its members. In 2009, a Force Committee on Integrity Management (the Committee) had been set up at the Force level. Chaired by the Deputy Commissioner of Police (Management), the Committee formulated and developed policies to effectively promote and sustain the Force's values throughout the Force. The Committee also monitored and evaluated the effectiveness of these policies. At the formation level, the Force had set up Formation Integrity Committees to handle local matters in relation to integrity management. The new Force Strategy for Integrity Management adopted a four-pronged approach to promote and manage police integrity; and
- (c) the Force would continue to adopt various approaches, namely, education and culture building, governance and control, enforcement and deterrence and rehabilitation and support, to ensure a high level of integrity among its members.

Enhanced measures to assist Hong Kong residents travelling abroad

6. Mr CHEUNG Man-kwong and Ms Audrey EU noted that the Outbound Travel Alert (OTA) System, which aimed at helping Hong Kong residents to better understand the risk or threat to personal safety in travelling overseas, had come into force in October 2009. Noting that the Administration would monitor the situation of 60 places/countries and use amber, red and black to differentiate among the levels of risk to personal safety from low to high, they asked why Taiwan, Macao and the Mainland were not covered by the OTA System. Mr CHEUNG said that insurance companies might accept or decline applications for insurance cover based on the colour alerts. He enquired about the considerations of the Administration in deciding the travel destinations to be put under the OTA System.

7. S for S responded that the Administration had consulted the travel industry and made reference to international practices before implementing the OTA System. At present, the OTA System covered 60 countries or territories which were more popular travel destinations for Hong Kong residents. Taiwan, Macao and the Mainland were not included in the system. When there were signs of threat in these places that might affect the personal safety of Hong Kong residents, the Security Bureau would assess and consider the need to issue travel advice/warnings taking into account factors such as the nature, level and duration of the threat, and provide assistance to Hong Kong residents

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on the scene if the situation so warranted.

Removal of persons refused entry into Hong Kong

8. Dr Margaret NG referred to the removal incident concerning Mr ZHOU Yong-jun who was repatriated to the Mainland after having been refused entry into Hong Kong. She expressed grave concern as to whether the Immigration Department (ImmD) had handled Mr ZHOU's entry application in accordance with the law and the immigration policy. She asked whether the Mainland public security officials had crossed the boundary to exercise jurisdiction in Hong Kong and queried the rationale for sending Mr ZHOU back to the Mainland. Dr Margaret NG noted from media reports that Mr ZHOU was found in possession of a forged travel document. She said that she could not understand the reasons why Mr ZHOU was not prosecuted in Hong Kong for possession of a forged travel document. She was particularly concerned about whether the case involved removal without an application for a removal order, which was unlawful.

9. In response, S for S made the following points -

- (a) while the Administration would not comment on individual cases, the case concerning Mr ZHOU Yong-jun did not entail any unlawful removal action;
- (b) ImmD had the responsibility to uphold effective immigration control, and it handled all entry applications in accordance with the law and the immigration policy, having due regard to individual circumstances;
- (c) visitors were required to fulfil immigration requirements before they were allowed to enter Hong Kong. In general, a visitor who failed to meet the entry requirements would be refused permission to land and be repatriated to his or her place of embarkation or origin;
- (d) persons who had been refused permission to land in Hong Kong might appeal against the decisions of the immigration officers or immigration assistants. A mechanism was already provided under the Immigration Ordinance (Cap. 115) (IO) for aggrieved persons to lodge objections; and
- (e) the stance of the Administration had always been clear that under no circumstances were Mainland public security personnel allowed to cross the boundary to take enforcement actions in Hong Kong.

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10. Mr Albert HO declared that he was the legal representative of Mr ZHOU in his petition against the Government of the Hong Kong Special Administrative Region (HKSAR). Sharing the concern of Dr Margaret NG, Mr HO considered that the way the Administration had handled the matter had posed a great challenge to the principle of "One Country, Two Systems". He requested the Administration to explain its policy and procedures in handling suspected use or possession of forged travel documents, including the existing practice on detention and prosecution, the reasons for refusing a visitor's entry into Hong Kong and the factors considered in repatriating the person concerned to his place of embarkation or origin.

11. The Deputy Chairman said that he had strong reasons to believe that Mr ZHOU Yong-jun would be subjected to political persecution if he was repatriated to the Mainland. Knowing that Mr ZHOU had right of abode in the United States and he travelled to Hong Kong from Macao on a Malaysian passport, the Deputy Chairman questioned the decision of the Government in sending Mr ZHOU back to the Mainland. He asked whether such repatriation arrangement had been accepted by Mr ZHOU.

12. In response, S for S reiterated that ImmD had the responsibility to uphold effective immigration control to safeguard Hong Kong's interests. In handling cases where use or possession of forged travel documents was suspected, investigating officers of ImmD would not act in haste. They would interview the suspects, search their luggage and examine the travel documents suspected to be forged to ascertain the identity of the visitors and their countries of origin, before recommending the course of action to be taken. It was noteworthy that IO provided a speedy mechanism for removing visitors who were refused entry on arrival at control points. The power of making summary dismissal was stipulated under section 18(1)(a) of IO. In case a person was to be removed, he would be informed of the decision, including the place/country to which he would be repatriated. The ImmD officer responsible for the investigation was required to record the details of the case, including whether objection was lodged under section 53 of IO against the Director of Immigration's decision to refuse entry.

13. Ms Emily LAU and Ms Audrey EU shared the views and concerns raised by members over the removal incident involving Mr ZHOU Yong-jun. They considered that the Administration should give a full account of the incident when the Panel discussed the issue of removal of persons refused entry into Hong Kong at its forthcoming meeting on 3 November 2009.

Establishment of a rendition arrangement with the Mainland

14. Dr Margaret NG said that although the HKSAR Government had started discussing the establishment of a rendition arrangement with the Mainland for more than 10 years, it seemed that not much had been achieved so far. She

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expressed concern about the slow progress of the Administration in establishing such an arrangement with the Mainland and requested the Administration to provide a progress report on its discussions with the Mainland regarding the establishment of a rendition arrangement.

15. S for S responded that owing to the differences in the legal and judicial systems between the two places and the complexities of the issues involved in the process, a rendition arrangement had not yet been established with the Mainland. Nevertheless, the Administration would continue its discussions with the Mainland authorities on the matter, with a view to reaching agreements at an early date.

Youth drug abuse problem and drug testing scheme

16. Ms Emily LAU and Mr WONG Yuk-man expressed concern about the Administration's anti-drug work, in particular how it tackled the youth drug abuse problem. Mr WONG expressed reservations about the implementation of drug testing in schools. In his view, the Administration should combat the problem of youth drug abuse at source, and more effort should be made in reducing the supply and availability of illicit drugs within the territory. Echoing Mr WONG's view, Ms LAU asked whether the Administration would step up law enforcement against drug trafficking and abuse activities.

17. In response, S for S said that alongside with enhanced enforcement actions taken by law enforcement agencies (LEAs), to tackle the youth drug abuse problem at root, there was a need to enhance the culture of care for young people in the community, strengthen complementary support among various sectors and stakeholders and promote participation in the anti-drug cause by all. While the primary purpose of the drug testing scheme was to prevent the spread of drugs in schools and to enable early intervention for treatment and rehabilitation, instead of facilitating prosecution, the Administration fully recognized the sensitive issues and wide implications involved in seeking to introduce drug testing, particularly from human rights and privacy perspectives.

Torture claim screening mechanism

18. Mr WONG Yung-kan expressed concern over the increasing number of non-ethnic Chinese illegal immigrants (IIs) coming to Hong Kong via the Mainland. He noted that many of these IIs took up unlawful employment in Hong Kong and lodged torture claims under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) after remaining in Hong Kong for a long time in order to prolong their stay. He considered that to combat the problem, LEAs in Hong Kong should enhance cooperation with the Mainland authorities to step up the interception of IIs. Mr WONG was also concerned about the increasing number of foreign domestic

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helpers (FDHs) making torture claims after the expiration of their employment contracts. He enquired about the measures taken by the Administration to address the issue.

19. In response, S for S made the following points -

- (a) under CAT, the Administration would not remove a torture claimant to another country if he would face torture on return to his country. However, this did not mean that the claimant was entitled to the right to work;
- (b) most of the people found illegally working were IIs or overstaying visitors. There was currently no offence against the taking of employment or establishing/joining in business by IIs and other ineligible persons. The Government used to prosecute IIs and overstayers found taking up employment in Hong Kong for the offences of "unlawful remaining" and "breach of conditions of stay" respectively under sections 38(1)(b) and 41 of IO;
- (c) in the judicial review case of *Iqbal Shahid, Waseem Abbas & Others v Secretary for Justice*, the Court of First Instance (CFI) held that recognizance granted to IIs pending decision for asylum or torture claims could in the context represent an authority from the Director of Immigration for them to remain in Hong Kong. Hence, IIs entered into a recognizance would have a defence against the charge of unlawful remaining;
- (d) after the CFI ruling, there was an upsurge in the number of arrests of non-ethnic Chinese IIs in recent months. The Administration saw an urgent need to amend IO to specify the offence in question. The Administration had introduced the Immigration (Amendment) Bill 2009 in June 2009. The Bill would provide for a criminal offence against the taking of employment by IIs and other ineligible persons. The new offence aimed to tackle the problems of illegal immigration and illegal employment;
- (e) the HKSAR Government had been reviewing the torture claim screening mechanism, with a view to achieving effective screening, ensuring procedural fairness and preventing abuses. The screening process was suspended since December 2008 following a CFI's ruling in another judicial review case. As at mid-October 2009, there were some 5 600 claims pending screening. To deal with the backlog of claims, there was a need to resume screening as soon as possible. Against this background, the Administration planned to enhance the existing screening

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mechanism by implementing a series of improvement measures in the fourth quarter of 2009. The Administration also planned to introduce legislation on the screening procedures. It would brief the Panel on Security on the legislative proposals by the end of 2009; and

- (f) there was a rising trend in the number of torture claims made by FDHs after the expiration of their employment contracts. The Administration would closely monitor the situation.

Regulatory control over cross-boundary emergency ambulances

20. Responding to Ms Audrey EU's enquiry about the regulatory control over cross-boundary ambulances which conveyed patients from the Mainland to seek medical service in Hong Kong, S for S advised that regulatory arrangements for cross-boundary vehicles, including that relating to emergency ambulances, were matters under the policy purview of the Transport and Housing Bureau, and the fee-charging policy of these cross-boundary ambulances fell outside the ambit of the HKSAR Government. Nevertheless, emergency ambulances from the Mainland conveying patients to Hong Kong were required to go through immigration and customs clearance at boundary control points.

II. Briefing by the Commissioner, Independent Commission Against Corruption on the Chief Executive's 2009-2010 Policy Address
(LC Paper No. CB(2)28/09-10(02))

21. Commissioner, Independent Commission Against Corruption (C/ICAC) briefed Members on the policy initiatives of the Independent Commission Against Corruption (ICAC) in the year ahead.

(Post-meeting note: The speaking note provided by ICAC was issued to members vide LC Paper No. CB(2)94/09-10(02) on 21 October 2009.)

Corruption complaints against government departments

22. Mr WONG Kwok-hing was concerned that the number of complaints received against government departments in the first nine months of 2009 stood at 778, representing a 5% over the same period in 2008. He asked for the reasons for such an increase.

23. C/ICAC replied that despite the rise in the number of reports against government departments, it did not necessarily mean that corruption had become more rampant as not all such reports justified further action or investigation. The increase was partly attributable to the worsening economic

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situation and a higher expectation of the public in the ethical standard of public officers. Many cases were in fact relating to personal conflicts, alleging abuse of power, inequities or poor management, which might not involve any element of corruption or bribery.

Corruption complaints relating to building management

24. Mr WONG Kwok-hing noted with concern that building management (BM) corruption cases accounted for 42% (672 cases) of the private sector reports. He asked whether most of the cases stemmed from owners' corporations (OCs) undertaking maintenance and repair works of their buildings, and enquired about the measures adopted by ICAC to address the problem.

25. In response, C/ICAC and Head of Operations/ICAC advised that -

- (a) ICAC received a total of 672 BM corruption reports in the first nine months of 2009. While most of these reports, i.e. 61%, were trivial or speculative normally targeting at the operation and management of OCs, the remaining 39% of the BM corruption reports relating to building renovation suggested signs of syndicated corruption in the areas of work. During the period, 24 persons in 14 cases were prosecuted for corruption-related offences; and
- (b) in view of the large number of corruption reports received against BM, a "Corruption Prevention and Education Working Group on Building Management" had been set up to develop strategies on corruption prevention and education, and to implement and evaluate the action plans. In collaboration with the Home Affairs Department, Hong Kong Housing Society, Hong Kong Association of Property Management Companies and Hong Kong Institute of Certified Public Accountants, ICAC would launch a territory-wide "Integrity and Quality Building and Financial Management Programme" in October 2009. The programme entailed a wide range of activities, including the promulgation of the Building Financial Management Toolkit, the production of a training video for OCs, and organizing workshops and exhibitions in 18 districts. A user-friendly toolkit on major administrative functions of OCs would be developed and promulgated for use by their management committees.

Anti-corruption work against cross-boundary corruption

26. Ms Cyd HO expressed deep concern about cross-boundary corruption, in view of the increasing contacts and exchanges between enterprises in Hong

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Kong and overseas jurisdictions. She asked about the details of ICAC's cooperation with the relevant authorities of neighbouring places, including the Mainland authorities, in corruption prevention and investigation work.

27. In response, C/ICAC and Head of Operations/ICAC made the following points -

- (a) regarding the cooperation on cross-boundary anti-corruption work, ICAC had, in collaboration with the Securities and Futures Commission, organized seminars for Mainland enterprises seeking to list in the Hong Kong Stock Exchange. ICAC had also conducted seminars for top management staff of Mainland enterprises in Beijing in 2006 and 2007. Although there was no bilateral agreement, corruption prevention was a common concern for the two places. Apart from exchanging experience on corruption prevention through mutual visits, ICAC also worked closely with the Guangdong Provincial People's Procuratorate (GDPP) in the aspects of corruption prevention and community education;
- (b) as regards cross-boundary investigation work on suspected corruption cases, Hong Kong and the Mainland were two separate jurisdictions without reciprocal enforcement on the extradition of suspects. However, under the Mutual Case Assistance Scheme established between ICAC and the Supreme People's Procuratorate and GDPP, the requesting party could seek assistance in the interviewing of witnesses and gathering of evidence in the other party's jurisdiction in respect of corruption investigations. This cooperation tie had proved to be effective and had led to arrests and prosecutions of offenders on corruption charges; and
- (c) noting the rapid growth of cross-boundary business in Hong Kong and Guangdong, ICAC had launched a "Business Ethics Conference for Small and Medium Enterprises" jointly with GDPP in April 2008. Riding on the momentum of this conference, ICAC continued with its efforts in promoting a corruption prevention guide for Small-Medium Enterprises (SMEs) in Hong Kong and on the Mainland to equip them with the necessary knowledge and skills in managing corruption risks in their cross-boundary operations, including the relevant anti-corruption laws in both jurisdictions and advice on ethical management practices.

28. The Deputy Chairman expressed deep concern about the corruption prevention and educational support for Hong Kong enterprises operating in the

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Mainland. He enquired about ICAC's major anti-corruption initiatives in this area.

29. C/ICAC responded that ICAC would continue to step up efforts to enhance corporate governance and promote ethical practices in the business sector. Noting the rapid growth of cross-boundary businesses, ICAC saw the need to develop a closer working partnership with its counterparts in Guangdong and Macao. A joint working group would be set up to strengthen corruption prevention and educational support for SMEs, particularly those operating in the Pearl River Delta. ICAC would also conduct a research study on corruption risks faced by these SMEs. The study result would enable ICAC to enhance its services to SMEs.

ICAC

30. The Deputy Chairman requested ICAC to provide in writing more detailed information on how it developed a closer working partnership with its counterparts in Guangdong and Macao, including the establishment of the joint working group and the research study on corruption risks faced by these SMEs.

31. Hon Cyd HO suggested that the issue of measures taken by ICAC against cross-boundary corruption be further discussed at a future meeting. Members agreed.

Election-related corruption reports

32. Referring to paragraph 3 of the paper provided by ICAC, Ms Emily LAU sought details about those 214 election-related reports received by ICAC in the first nine months of 2009, in particular the corruption reports which were related to the 2008 Legislative Council Election. Noting that not all of the cases were pursuable, she enquired about the practical difficulty, if any, in investigating into such cases.

33. C/ICAC and Head of Operations/ICAC responded that -

- (a) the number of election-related reports normally stood at a higher level after a major election. Among those 214 election-related reports received in the first nine months of 2009, 177 were related to the 2008 Legislative Council Election, 18 to the 2008 and 2009 District Council By-elections, 15 to the 2003 and 2007 District Council Elections, while three involved the 2003 and 2011 Village Representative Elections and one concerned the 2011 Rural Committee Elections. Of these reports, 204 were pursuable;
- (b) for reports alleging bribery, investigation were normally carried out except for anonymous complaints where there were insufficient details to pursue. After the investigation was completed, those cases with evidence for a suspected offence

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would be passed to the Department of Justice (DoJ) for a decision on whether prosecution should be instituted. Cases where the allegation was found to be unsubstantiated and those where DoJ advised that there was insufficient evidence for instituting prosecution would be submitted to the Operations Review Committee. A case would only be closed when the Operations Review Committee was satisfied with the action taken;

- (c) regarding those 177 reports concerning the 2008 Legislative Council Election, a majority of them were related to election expenses incurred by candidates; and
- (d) regarding issues arising from the last round of elections that were of concern and required attention, ICAC had submitted a report to the Operations Review Committee for consideration.

ICAC

34. Ms Emily LAU requested ICAC to provide more detailed information about those 177 corruption reports received in the first nine months of 2009 which were related to the 2008 Legislative Council Election, including the nature and the course of action taken by ICAC in respect of the cases.

35. Members agreed that the Panel should follow up the subject of handling of election-related corruption reports in future.

36. The meeting ended at 6:05 pm.

Council Business Division 2
Legislative Council Secretariat
30 November 2009