

立法會

Legislative Council

LC Paper No. CB(2)2252 /09-10
(These minutes have been seen
by the Administration)

Ref : CB2/PL/SE

Panel on Security

Minutes of meeting
held on Tuesday, 6 July 2010, from 2:00 pm to 5:00 pm
in Conference Room A 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
 - Dr Hon Philip WONG Yu-hong, GBS
 - Hon WONG Yung-kan, SBS, JP
 - Hon Emily LAU Wai-hing, JP
 - Hon Audrey EU Yuet-mee, SC, JP
 - Hon Andrew LEUNG Kwan-yuen, GBS, JP
 - Hon CHIM Pui-chung
 - Hon Cyd HO Sau-lan
 - Hon CHAN Hak-kan
 - Hon WONG Kwok-kin, BBS
 - Hon IP Kwok-him, GBS, JP
 - Hon Paul TSE Wai-chun
 - Hon LEUNG Kwok-hung
 - Hon WONG Yuk-man
- Members attending** :
- Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
 - Hon LEE Cheuk-yan
 - Hon WONG Kwok-hing, MH
 - Hon WONG Ting-kwong, BBS, JP
 - Hon WONG Sing-chi
- Member absent** :
- Hon Timothy FOK Tsun-ting, GBS, JP

Public Officers : Item III
attending

Mr LAI Tung-kwok, SBS, IDSM, JP
Under Secretary for Security

Mrs Millie NG KIANG Mei-nei
Principal Assistant Secretary for Security

Miss Linda LEUNG Ka-ying
Assistant Secretary for Security

Mr Ian WINGFIELD
Solicitor General
Department of Justice

Mr Godfrey KAN
Senior Government Counsel, Legal Policy Division
Department of Justice

Item IV

Mr LAI Tung-kwok, SBS, IDSM, JP
Under Secretary for Security

Miss Shirley YUNG Pui-man
Deputy Secretary for Security

Miss Katharine CHOI
Principal Assistant Secretary for the Environment (Energy)

Mr LEUNG Wing-mo
Assistant Director of Hong Kong Observatory

Mr LAI Hon-chung
Chief Electrical & Mechanical Engineer
Electrical & Mechanical Services Department

Mr CHENG Kit-man
Senior Physicist in-charge
Department of Health

Mr Richard LANCASTER
Managing Director
CLP Power Hong Kong Limited

Miss Daisy CHAN Pui-chu
Public Affairs Director
CLP Power Hong Kong Limited

Mr S H CHAN
Managing Director
Hong Kong Nuclear Investment Co. Ltd.

Mr Richard FUNG
Technical Manager
Hong Kong Nuclear Investment Co. Ltd.

Professor LEE Chack-fan
Vice Chairman, Nuclear Safety Consultative Committee
of the Daya Bay Nuclear Power Station and the
Lingao Nuclear Power Station

Item V

Mr LAI Tung-kwok, SBS, IDSM, JP
Under Secretary for Security

Miss Shirley YUNG Pui-man
Deputy Secretary for Security

Mr CHAN Chor-kam, FSDSM
Deputy Director of Fire Services

Mr WONG Sai-chuen, FSMSM
Chief Fire Officer (Headquarters)
Fire Services Department

Mr YAU Wai-keung
Senior Divisional Officer (Planning Group)
Fire Services Department

**Attendance
by invitation**

: Item V

Hong Kong Fire Services Department Staffs General Association

Mr CHIU Sin-chung
Chairman

Mr WONG Kwok-ying
Deputy Chairman

Hong Kong Fire Services Officers Association

Mr MAN Siu-fung
Vice-Chairman

Mr SO Chi-wah
Secretary

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

Staff in attendance : Ms Connie FUNG
Senior Assistant Legal Adviser 1

Mr Bonny LOO
Assistant Legal Adviser 3

Miss Josephine SO
Senior Council Secretary (2) 1

Mr Ian CHOW
Council Secretary (2) 1

Ms Kiwi NG
Legislative Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)1946/09-10)

The minutes of the meeting held on 4 May 2010 were confirmed.

II. Information papers issued since the last meeting
(LC Paper Nos. CB(2)1776/09-10(01) and CB(2)1961/09-10(01))

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

- (a) Submission from Hong Kong Fire Services Department Ambulancemen's Union on emergency ambulance services; and
- (b) Administration's letter dated 29 June 2010 on the progress of the administrative screening mechanism for handling torture claims.

III. Review of the Interception of Communications and Surveillance Ordinance
(LC Paper Nos. CB(2)1948/09-10(01) and (02))

3. Under Secretary for Security ("US for S") briefed Members on the scope of the comprehensive review on the Interception of Communications and Surveillance Ordinance (Cap. 589) ("ICSO") being conducted by the Administration, details of which were set out in the Administration's paper.

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Protection of information subject to legal professional privilege and proactive monitoring of interception products and related records

4. Mr CHAN Hak-kan noted that the Commissioner on Interception of Communications and Surveillance ("the Commissioner") had proposed a system for the checking of interception products and related records by the Commissioner and his designated officers against cases of special interest or chosen at random, so as to ensure that the content of the REP-11 report submitted by a law enforcement agency ("LEA") truly represented the interception product as heard by the listener and to address the possibility that LEA did not fulfill its duty and did not make a report to the panel judge and the Commissioner on the possible involvement of information which might be subject to legal professional privilege ("LPP"). Expressing concern about the way how LEAs handled interception products involving information subject to LPP, Mr CHAN asked whether the existing oversight mechanism had constraints and limitations in preventing unauthorized interception.

5. In response, US for S made the following points -

- (a) it was possible that in the course of interception of communications and covert surveillance operations, an LEA might inadvertently obtain information subject to LPP. However, there were very few cases involving such information that had been reported to the Commissioner by LEAs since ICSO came into force in August 2006;
- (b) LPP protected client-lawyer communications from disclosure to a client's prejudice. While LEAs were duty-bound to preserve the confidentiality of information subject to LPP, the ICSO regime had put in place a stringent system with the strict purpose and intent to prevent the passing of any privileged materials to the investigators of LEAs and prohibit any possible reference or use of such materials for investigation or in any legal proceedings. There were specific provisions in ICSO and the Code of Practice issued by the Security Bureau to regulate the handling of information subject to LPP, which included the following -
 - (i) section 62 of ICSO provided that any information that was subject to LPP was to remain privileged notwithstanding that it had been obtained pursuant to a prescribed authorization;
 - (ii) section 59 of ICSO required that any intercepted product containing information that was subject to LPP should be destroyed as soon as its retention ceased to be necessary or as soon as reasonably practicable;

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- (iii) paragraph 120 of the Code of Practice provided that dedicated units separate from the investigating units should screen out information protected by LPP, and withhold such information from the investigators;
- (c) in issuing prescribed authorizations, a panel judge would impose a standard condition whereby LEAs were required to report to the panel judge any material changes in circumstances, including any inadvertent obtaining of information which might be subject to LPP. The LEAs concerned must inform the panel judge of any such changes as soon as practicable; and
- (d) in addition to the various safeguards mentioned above, the compliance of LEAs with the relevant requirements was subject to the independent oversight of the Commissioner as well as LEAs' regular internal reviews. The Commissioner had the power to review all relevant records of LEAs, to require any public officer or other person to answer any question and provide information, and to require any officer to prepare a report on any case. He also conducted inspection visits to LEAs to check whether they had complied with the requirements.

6. Responding to Dr Philip WONG's enquiry as to whether time limits were set for the purpose of keeping and destruction of information derived from interception of communications and covert surveillance activities, Solicitor General ("SG") advised that section 59 of ICSO had provided safeguards for protected products. Generally, all interception products should be destroyed as soon as their retention was not necessary for the relevant purpose of the prescribed authorization. Where any protected product contained any information that was subject to LPP, in the case of a prescribed authorization for a postal interception or covert surveillance, the product must be destroyed not later than one year after its retention ceased to be necessary for the purposes of any civil or criminal proceedings before any court that were pending or were likely to be instituted; or in the case of a prescribed authorization for a telecommunications interception, the product concerned must be destroyed as soon as reasonably practicable.

7. Mr CHAN Hak-kan asked whether the Administration would, in considering the Commissioner's recommendations to amend ICSO, solicit views from LEAs and the Department of Justice.

8. US for S advised that the Administration had formed an inter-departmental working group ("the Working Group") to conduct the comprehensive review of ICSO. In undertaking the review, it would take into account the recommendations of the Commissioner, the views of panel judges and the operational experience of LEAs.

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9. Dr Philip WONG said that there was a need to strike a balance between protecting privacy and LPP, while allowing LEAs to carry out interception of communications and covert surveillance operations for the prevention or detection of serious crimes and the protection of public security. He considered that the Administration should bear this principle in mind in conducting the comprehensive review of ICSO.

10. US for S responded that interception of communications and covert surveillance operations were critical to the capability of LEAs in combating crime and protecting public security. The Administration recognized the need to strike a balance between combating serious crimes and protecting the privacy of individuals. Stringent safeguards were provided under ICSO at all stages of the covert operations, from the initial application to the execution of the authorization, and throughout the entire oversight process. Regarding the review of ICSO, the major proposals as set out in paragraphs 5 to 28 of the Administration's paper summarized the recommendations of the Commissioner and suggestions of LEAs. As a number of the issues involved the panel judges, the Working Group would consult the panel judges. In conducting the review, the Administration would strive to improve the operation of the ICSO regime without compromising the privacy of individuals and the effectiveness of LEAs in combating serious crimes. The Working Group would take into account the comments of Members, panel judges and the Commissioner in formulating the recommendations.

11. Mr IP Kwok-him expressed concern about the privacy of the subject of interception of communications and covert surveillance operations. In his view, the Commissioner's proposal to amend ICSO to allow his or his designated officers to check interception products might increase the risk of disclosure or leakage of confidential information.

12. US for S and SG responded that the Administration was fully aware of the privacy concern. The materials obtained by interception of communications and covert surveillance might contain sensitive personal information about the targets and other innocent persons. Improper use or disclosure of such materials would result in a serious invasion of their privacy. ICSO therefore strictly regulated the handling of such materials by LEAs. ICSO expressly required heads of LEAs to make arrangements to ensure that the extent to which such materials were disclosed, the extent to which they were copied and the number of copies made were limited to the minimum that was necessary; that all practicable steps were taken to make sure that such materials were protected against unauthorized or accidental access, processing or erasure; and that such materials were destroyed as soon as their retention was not necessary for the relevant purpose of the authorization.

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13. As regards the proposal to amend ICSO to enable the panel judges and the Commissioner to access the interception products, US for S advised that the Administration fully respected the need to facilitate the performance of the panel judges' and the Commissioner's functions under ICSO, but the public must be assured that the proposed arrangements would not add intrusion into their privacy, infringe their right to confidential legal advice or increase the risk of unauthorized disclosure or unintended leakage. The Administration would consult panel judges and the Commissioner on the detailed proposals.

14. Ms Cyd HO and Ms Emily LAU opined that during the process of reviewing and considering legislative amendments to ICSO, the Administration should consult the public widely on the proposed amendments.

15. US for S advised that the Administration was still in the process of reviewing the entire ICSO. He assured Members that in considering whether legislative amendments to ICSO were required, the Administration would take into account the views of relevant parties, including the Commissioner, the panel judges, Members and LEAs, as well as the views of the two legal professional bodies where appropriate.

16. Ms Cyd HO queried whether the ruling of the Supreme Court of Canada, which gave rise to queries on the legitimacy or propriety of the Commissioner's listening to interception products including those that contained, or might contain, privileged information, would preempt the objective and outcome of the comprehensive review of ICSO.

17. US for S and SG replied in the negative, and added that if the proposal for amending ICSO to give express authority to the Commissioner to listen to interception products obtained by LEAs was to be pursued and implemented, the Canadian case to which Ms HO referred would not be directly applicable.

Review of panel judge's determination

18. Regarding the Administration's proposal to establish a mechanism for the review of a panel judge's determination of an application for the issue of a judge's authorization, Mr WONG Kwok-kin enquired about the rationale and the implementation details for the proposal.

19. US for S replied that ICSO did not provide for any mechanism for an LEA to apply to a panel judge for a review of the latter's determination. In 2008, the numbers of interception authorizations issued and applications for the issue of interception authorizations refused were 801 and 13 respectively. The Administration planned to explore the option of establishing a statutory review mechanism under which a panel judge might, upon application by an LEA, review his own determination. This arrangement would enable LEAs to have an opportunity to explain to the panel judges their grounds for making the

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applications in person and to provide further information about their applications where necessary. The preliminary thinking of the Administration was to provide a mechanism that could set the review process in motion within a short period of time.

Review of the intelligence management system of LEAs

20. The Deputy Chairman recalled that in examining the Interception of Communications and Surveillance Bill, members of the Bills Committee had expressed concern over LEAs' intelligence management system, and there was a view that sufficient safeguards should be put in place to prevent possible abuse of retention and use of intelligence derived from interception of communications and covert surveillance activities. The Deputy Chairman said that as a member of the Bills Committee, he had requested the Administration to consider establishing a mechanism for the keeping and destruction of intelligence derived from such activities, and to review the existing intelligence management system of LEAs. He asked about the progress of the review of the intelligence management system of LEAs.

21. In response, US for S advised that information obtained in the course of a duly authorized interception of communications or covert surveillance operation might be kept as intelligence if it was related to the prevention and detection of crimes or the protection of public security, so as to assist LEAs in performing their functions. All law enforcement officers must abide by the Hong Kong Bill of Rights Ordinance (Cap. 383), the Personal Data (Privacy) Ordinance (Cap. 486) and ICSO. In addition, all LEAs had put in place a stringent intelligence management system. With regard to the keeping of intelligence, LEAs would take into account factors such as the need for continued retention and information accuracy in determining whether certain information captured by their intelligence systems should continue to be kept. During the scrutiny of the Interception of Communications and Surveillance Bill, the Administration undertook to conduct a comprehensive review of the existing intelligence management system of LEAs in a separate exercise with a view to further strengthening the systems, particularly to enhance the transparency of the policy on the use of such information. The review of LEAs' intelligence management system had already commenced and consultation with LEAs concerned was in progress. Upon the completion of the review, the Administration would report to the Panel the outcome of the review. The Administration aimed to report to the Panel the progress of the review in around one year's time.

Law enforcement agencies' cooperation and support to the Commissioner

22. Ms Emily LAU expressed concern about the sincerity of LEAs in rendering full cooperation and support to the Commissioner in his performance of oversight functions under ICSO. She asked about the measures taken by the Administration to address the issue.

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23. US for S responded that with the benefit of more practical experience gained in the implementation of ICSO, LEAs were more readily able to offer useful comments from the operational perspective in response to recommendations and suggestions made by the Commissioner for improving the checking mechanism. It should be noted that LEAs fully appreciated the importance of the Commissioner's oversight functions and would continue to put in their best endeavours to comply with the Commissioner's requests, to answer his queries and to explain cases of concern in detail, so as to facilitate his performance of statutory functions under ICSO.

Possibility of expanding the scope of the review

24. Dr Margaret NG asked whether the Administration would consider expanding the scope of the present review on ICSO to cover the following issues -

- (a) to consider expanding the definition of intercepting act and covert surveillance, with a view to enhancing the protection for Hong Kong residents' right to freedom and privacy of communications;
- (b) to consider introducing legislative amendments to ICSO so as to make it applicable also to personnel of the Central People's Government ("CPG") agencies in Hong Kong;
- (c) to re-examine the appropriateness of setting up a panel judges system and conferring non-judicial powers on panel judges to issue or grant prescribed authorizations for interception or covert surveillance;
- (d) to consider involving other relevant parties, such as the Privacy Commissioner for Personal Data, in the process of granting authorization since views from third parties, particularly from human rights and privacy perspectives, would be relevant to the panel judge's determination of the authorization;
- (e) to consider introducing penalty provisions to guard against law enforcement officers' non-compliance with ICSO or the Code of Practice, and to consider making the use of privileged information obtained through interception of telecommunications for any purposes a criminal offence;
- (f) to consider instituting a mechanism whereby LEAs, panel judges and the Commissioner could seek declarations from the court if they held different interpretations on any provisions in ICSO; and

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- (g) to consider establishing a mechanism for the keeping and destruction of intelligence derived from interception of communications and covert surveillance activities.

25. In response, US for S made the following points -

- (a) ICSO was enacted after thorough deliberations in the Legislative Council. During the Committee stage of the Interception of Communications and Surveillance Bill, the Administration had provided detailed explanation regarding the definitions of intercepting act and covert surveillance, as well as the need to appoint panel judges to consider applications for authorizations;
- (b) ICSO was intended to provide for a stringent regulatory regime for the interception of communications and the use of surveillance devices by public officers, in particular to ensure that LEAs respected the privacy and other rights of the public while combating crimes and protecting public security;
- (c) at present, there was no specific legislation regulating the use of video surveillance and telephone tapping by non-public officers, including organizations such as news agencies or the CPG agencies in Hong Kong;
- (d) the report on "Privacy: Regulating the Interception of Communications" released by the Law Reform Commission ("LRC") in 1996 recommended that it should be an offence for a person to intentionally intercept or interfere with communications in the course of their transmission, other than where authorized by a warrant. Separately, in its report on "Privacy: The Regulation of Covert Surveillance" released in 2006, LRC recommended the creation of two new criminal offences to prohibit the obtaining of personal information through trespass on private premises or by means of a surveillance device. While the conduct of interception of communications and the use of surveillance devices by public officers was regulated by ICSO, the Administration was of the view that it should not draw any conclusion lightly that the conduct of non-public officers in this respect should be regulated. As a matter of fact, the two LRC reports were highly controversial. When they were published, the Hong Kong media sector and journalists expressed worry that the recommendations might compromise press freedom. In view of the wide public concern over the issue, the Administration would not accept the recommendations lightly. In determining the way forward, the Administration would consider carefully how press freedom and privacy could be maintained at the same time. At the present

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stage, the Administration did not have any plan to introduce legislation to implement the LRC recommendations;

- (e) it should be noted that if any public officer had committed an act in contravention of the provisions in ICSO or the Code of Practice, he would be subject to disciplinary action under the disciplinary mechanism of the department concerned. Any public officer who had intentionally conducted interception of communications or covert surveillance without lawful authority was liable to be prosecuted for the common law offence of misconduct in public office;
- (f) during the monitoring process, the Commissioner and LEAs had identified a few cases of non-compliance with the relevant requirements of ICSO. Some of them involved technical errors and some were due to individual officers' failure to thoroughly understand or be familiar with the requirements. The Commissioner had indicated in his annual reports to the Chief Executive that he was satisfied with the overall performance of LEAs and their officers in their compliance with the requirements of ICSO, and that he had not found any wilful or deliberate flouting of such requirements;
- (g) the Commissioner had also pointed out in his Annual Report 2008 that the panel judges were vigilant and strict in their consideration of applications by LEAs for interception and surveillance, and he had not found a single case in 2008 in which he entertained any doubt as to the propriety of their determination, be it a grant of a prescribed authorization or a refusal; and
- (h) as regards the controls over intelligence obtained through interception or covert surveillance, LEAs would take into account various factors, including the need for continued retention and information accuracy, in determining whether certain information captured by their intelligence systems should continue to be kept. Intelligence generated from such information would be destroyed when their retention was no longer required.

26. Dr Margaret NG asked about the reasons for not legislating against interception of communications and covert surveillance activities carried out by organizations such as the CPG agencies in Hong Kong, and not providing express provisions in ICSO to guard against public officers' non-compliance. She remained of the view that if LEAs and panel judges had different interpretations on any provisions in ICSO, they should seek judicial interpretation from the court.

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27. In response, US for S advised that -
- (a) existing legislation afforded some protection from interference with private communications by non-public officers. For example, section 24 of the Telecommunications Ordinance (Cap. 106) provided that it was an offence for any person who had official duties in connection with a telecommunications service to wilfully destroy, alter, intercept or detain any message intended for delivery, or to disclose any message to any person other than the person to whom the message was addressed; and section 27 stipulated that a person who damaged, removed or interfered with any telecommunications installation with intent to intercept or discover the contents of a message was guilty of an offence. Under both sections, a person convicted of the relevant offence was liable on summary conviction to a fine of \$20,000 and to imprisonment for two years. Furthermore, there were provisions in the Post Office Ordinance (Cap. 98) and the Personal Data (Privacy) Ordinance safeguarding the privacy of individuals in relation to postal packets and personal data; and
 - (b) as regards the difference in interpretation between panel judges and LEAs, it was noteworthy that steps had been taken by SB and LEAs to address the issue. Regarding recommendations made by the Commissioner to LEAs, the LEAs concerned had accepted them in full and identified improvement measures to address the Commissioner's concerns. For those recommendations which had implications across LEAs, SB had implemented them as far as practicable and amended the Code of Practice where appropriate if the recommendations did not require legislative amendments. Regarding the remaining recommendations, including the one in connection with the Commissioner's authority to listen to interception products which required legislative amendments for implementation, the Administration would study them in detail in the comprehensive review of ICSO.

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28. Dr Margaret NG requested the Administration to provide a written response as to whether and how the penalties provisions in the three Ordinances referred to in paragraph 27(a) above applied to personnel of the CPG agencies in Hong Kong. Ms Cyd HO requested the Administration to set out an exhaustive list of legislation which controlled illegal interception of telecommunications or covert surveillance activities by non-public officers, including information on whether any of the regulatory requirements concerned could be waived.

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29. The Deputy Chairman, Dr Margaret NG and Mr WONG Yuk-man expressed strong dissatisfaction with the scope of the review on ICSO to be undertaken by the Administration. The Deputy Chairman considered the review far from comprehensive. He said that it was necessary for the Panel to appoint a subcommittee to follow up various issues of concern raised by Members and the Commissioner. His view was echoed by Dr NG, Mr WONG and Ms Cyd HO.

30. The Chairman held the view that ICSO had provided for a stringent and reliable regulatory regime for the interception of communications and specified kinds of covert surveillance operations by public officers, and the checks and balances built into the ICSO regime had struck a balance between protecting privacy and LPP, while allowing LEAs to carry out covert operations for the prevention and detection of serious crimes and the protection of public security in warranted circumstances.

31. To facilitate members' consideration of the proposal for appointment of a subcommittee at a future meeting, the Chairman suggested that the Deputy Chairman should submit a proposal in writing to the Panel, together with the proposed terms of reference, the specific study areas and the work plan of the subcommittee.

IV. Daya Bay Nuclear Station Notification Mechanism

(LC Paper Nos. CB(2)1948/09-10(03) & (04) and CB(2)1976/09-10(01))

32. The Chairman referred Members to the letter dated 5 July 2010 from Ir Dr Raymond HO, which was tabled at the meeting. Members noted that Ir Dr HO wrote to the Panel in his capacity as the Chairman of the Nuclear Safety Consultative Committee ("NSCC") of the Daya Bay Nuclear Power Station and the Ling Ao Nuclear Power Station.

(Post-meeting note: The above letter was circulated to members vide LC Paper No. CB(2)2022/09-10 on 7 July 2010.)

33. US for S briefed Members on the event which occurred at the Guangdong Nuclear Power Station ("GNPS") on 23 May 2010 ("the event") and the follow-up actions taken by the Government of the Hong Kong Special Administrative Region ("HKSAR") after the event, details of which were set out in the Administration's paper.

34. Mr Richard LANCASTER, Managing Director of CLP Power Hong Kong Limited ("CLP") provided supplementary information on the operational matter on 23 May 2010 at GNPS and the mechanism in place for the reporting of nuclear-related events, including information on the International Nuclear Event Scale ("INES") rating system, as detailed in Annexes 1 and 2 to the Administration's paper. He said that the preliminary assessment conducted by

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the Daya Bay Nuclear Operations and Management Company ("DNMC"), the operator of GNPS, indicated that the event might be due to an imperfect sealing of a fuel rod in the reactor core of Unit 2. Although the event was not considered to have any safety implications and fell below INES rating, DNMC had reported the matter to the relevant state regulatory body, namely the National Nuclear Safety Administration ("NNSA") on 25 May 2010 and informed NSCC as well as the Board of Directors of the Hong Kong Nuclear Investment Company ("HKNIC"), which included two government-nominated directors from the Environment Bureau and the Security Bureau, proactively and voluntarily in June 2010.

35. Mr CHEUNG Man-kwong and Mr WONG Sing-chi expressed strong dissatisfaction with the way the HKSAR Government handled the event on 23 May 2010. They considered that the HKSAR Government was too passive and failed to perform its monitoring role, despite the presence of an established mechanism for the relevant parties to notify the HKSAR Government of nuclear emergencies at power stations in Daya Bay. Mr CHEUNG urged the Administration to review and improve the current mechanism in monitoring nuclear and radiation-related events, including notification of such events through the Hong Kong Observatory ("HKO"), with a view to enhancing the transparency of nuclear power stations' operation and the accountability of all relevant bureaux and departments, in the implementation of the Daya Bay Contingency Plan.

36. Ms Audrey EU added that DNMC should review and fine-tune its information disclosure policy on nuclear-related events.

37. Mr WONG Kwok-hing commented that the Administration lacked sensitivity in handling the event which occurred on 23 May 2010. He cautioned that any attempt to cover up an incident would only cause public panic. He considered that there was an urgent need to enhance the transparency of GNPS's operation.

38. Mr WONG Ting-kwong shared the view that there was a need to enhance the transparency of GNPS's operation.

39. In response, US for S advised that -

- (a) upon receipt of a media inquiry concerning the matter at GNPS, the Security Bureau immediately sought verification from HKNIC. According to information provided by HKNIC, GNPS observed a slight increase in radioactivity in the cooling water in the Unit 2 reactor on 23 May 2010. Analysis was made and the preliminary assessment attributed the event to a minor imperfect sealing of one of the fuel rods in the Unit 2 reactor. Since the level of radioactivity of the cooling water remained stable and well within

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allowable limits, HKNIC informed the Administration that they did not activate the notification mechanism because the operation of GNPS had not been affected and the situation was below any rating (i.e. out of scale) on INES;

- (b) apart from seeking verification from HKNIC, the Security Bureau immediately requested HKO to confirm the monitoring data concerning the radiation level in Hong Kong from the date of the event to mid-June. According to the data collected by HKO's Environmental Radiation Monitoring Network, there were no abnormal changes in the local radiation level in Hong Kong on or after 23 May 2010, and the daily average radiation levels in May 2010 were within the normal range of fluctuation. HKO would continue to monitor the local radiation level round the clock. If any abnormality was detected, it would raise alert immediately;
- (c) it should be noted that the HKSAR Government had its own warning system to obtain first-hand information. In addition to HKO's Environmental Radiation Monitoring Network, the Water Supplies Department ("WSD") operated two identical on-line Water Contamination Monitoring Systems at Muk Wu Pumping Station to monitor incoming drinking water from Guangdong. The alarms at HKO and WSD would sound if there was any abnormal change in the radiation level. In addition to the above, if an unscheduled power interruption occurred, apart from being notified by Daya Bay Nuclear Power Stations ("DBNPS"), the CLP System Control Centre would also be able to detect it immediately through its own monitoring system. The Control Centre would alert the Electrical and Mechanical Services Department and HKO; and
- (d) the Administration noted that the matter on 23 May 2010 had aroused wide concern in the community over nuclear safety. It also acknowledged the need to meet the increasing expectation for greater transparency, responsiveness and coordination among the relevant stakeholders in case of any special event which might affect the normal operation of the power stations in Daya Bay. The Administration would review the existing arrangement for handling nuclear events and the notification mechanism, with a view to enhancing transparency and strengthening coordination with all concerned parties. The Administration aimed to complete the review as soon as possible.

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40. Responding to Mr WONG Kwok-hing's remarks about the need to enhance transparency, Mr Richard LANCASTER advised that INES was drawn up by the International Atomic Energy Agency ("IAEA") as an internationally recognized standard for facilitating better understanding by the public, media and the nuclear industry of the degree of significance of nuclear events. International nuclear events were classified from Level 0 to Level 7. Any events that came within the classification of INES were considered Licensing Operational Events ("LOE"). Level 0 was also known as "below scale", which implied that the event had no safety significance. Levels 1 to 3 events were regarded as "incidents", which had very little or no impact to the environment. Levels 4 to 7 were regarded as "accidents", representing various degrees of radiological impact. For events falling outside the classification of INES (i.e. "out of scale" or below Level 0), they were matters which did not have any relevance to safety. CLP understood the concern of the community and would focus on finding out what and how to communicate consistently to the public under such circumstances. While being open to the principle of greater transparency, it should be noted that in the absence of any international standards for reference by the concerned parties, it would be difficult to draw a line on what information should be disclosed and if so, the extent of information to be provided. HKNIC would work closely with the Administration and its mainland counterparts in this regard.

41. The Deputy Chairman held the view that the Administration should consider putting a request to the relevant authorities of the Mainland, so that they would notify the HKSAR Government of any operational events occurred in the power stations regardless of their severity. Additionally, the Administration should explore with DNMC the possibility of appointing government officials to NSCC, so as to increase the participation of the HKSAR Government in the monitoring of the safety situation of Daya Bay and Ling Ao.

42. Mr LEUNG Kwok-hung suggested that the Administration should consider appointing a number of observers to monitor the operational activities and production processes of the two power stations in Daya Bay.

43. US for S responded that -

- (a) the current notification mechanism had two channels. On one hand, DNMC, the operator of the two power stations, would notify HKNIC of any LOE. HKNIC submitted monthly reports of LOEs to its Board members, which included representatives of the Environment Bureau and the Security Bureau. HKNIC also uploaded such information on its website for public reference. On the other hand, the HKSAR Government and the Guangdong authorities had established an official notification channel. In brief, the Prevention and Emergency Administrative Commission Office of Guangdong Province for Nuclear Accident of Civil

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Nuclear Facility ("PEACO/GD") was responsible for coordinating contingency actions to be taken by various Guangdong authorities in response to events at DBNPS. In case of a contingency event or accident at the power station, DNMC would inform PEACO/GD and other relevant authorities immediately. PEACO/GD would notify Hong Kong authorities in accordance with the contingency notification arrangements agreed between the two sides. As explained earlier, the Administration would review the above arrangements in the light of the matter on 23 May 2010; and

- (b) as regards the composition of NSCC, it should be noted that NSCC was formed by DNMC in the Mainland with its members invited by DNMC to join the Committee. The suggestion of appointing representatives of the HKSAR Government to NSCC had to be considered by DNMC. The Administration would relay the suggestion to DNMC for its consideration.

Admin

44. Responding to Dr Margaret NG's enquiry about the operation of NSCC and the actions taken by NSCC after learning about the event on 23 May 2010, Prof LEE Chack-fan advised that NSCC was formed some 20 years ago by DNMC. The roles of NSCC included discussing the reports on the planning and implementation of nuclear safety on operational and construction matters of the nuclear power stations under the operation and management of DNMC; and providing opinions and suggestions on nuclear safety based on national nuclear safety regulations, with reference to the nuclear safety information of international nuclear safety organizations and nuclear safety situations. Referring to the letter from Ir Dr Raymond HO, Prof LEE informed Members that at the meeting on 10 June 2010, NSCC members had a wide-ranging discussion particularly about the event on 23 May 2010 and keenly expressed their opinions and raised questions, which were comprehensively answered by DNMC. NSCC understood from the Daya Bay management that the matter was related to a slight increase of radioactivity in the Primary Coolant Circuit. NSCC was satisfied with the report provided by the Daya Bay management, and agreed that the event was not significant enough to be classified as a Level-0 event. NSCC noted that a task force was formed to follow up on the matter. The Daya Bay management would report the findings to NSCC, once available.

45. Dr Margaret NG hoped that NSCC would share the concern of the general public about the safety of the power stations in Daya Bay. She said that in order to alleviate the worries of the residents in Hong Kong, NSCC should consider publicizing at its website more information about the operation of the two power stations in question. Prof LEE Chack-fan considered it a good idea to make full use of various channels such as website to facilitate the public in understanding the facilities, management and technology involved in nuclear-generated electricity.

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46. Mr WONG Yuk-man said that the media reports in mid-June 2010 about the event had aroused grave concern in the community about the impact of the suspected release of radioactive material from DBNPS on public safety. He asked whether NSCC had ever anticipated such a situation.

47. Prof LEE Chack-fan replied in the negative, since NSCC members had come to a preliminary conclusion after discussion that the event was only minor in nature without any impact on public safety, public health or the environment.

48. Mr WONG Yuk-man said that the matter had revealed the passive role of the Administration in the monitoring of nuclear power stations' operation and performance. He considered that there was an urgent need for the Administration to conduct an overall review of the current notification mechanisms with PEACO/GD, CLP and HKNIC as well as the Daya Bay Contingency Plan developed by the HKSAR Government for handling nuclear incidents at any one of the two nuclear power stations in Daya Bay, with a view to identifying areas for further improvement and facilitating the Administration in making proactive response to nuclear incidents. His view was echoed by Mr LEUNG Kwok-hung and Dr Margaret NG.

49. In response, US for S reiterated that apart from the notification mechanisms with PEACO/GD, CLP and HKNIC, the Administration had also set up its own warning system. The system mainly included HKO's Radiation Monitoring Network and WSD's on-line water contamination monitoring systems at Muk Wu. The alarms at HKO and WSD would sound if there was a significant increase in the radiation level. HKO and WSD would confirm whether these were false alarms, and conduct detailed analysis where necessary. HKO and WSD would alert the Security Bureau immediately if the alarm was found to be genuine after confirmation analysis.

50. Echoing the view on the need to review the current reporting and notification mechanisms for nuclear-related events, Ms Emily LAU hoped that all concerned parties would learn a lesson from the event and make necessary improvements to the established mechanisms, with particular emphasis on enhancing the transparency of nuclear power stations' operation and performance. She suggested that the Panel should follow up the review to be conducted by the Administration on the established notification mechanism for the handling of nuclear events.

51. Responding to Mr WONG Sing-chi's query as to whether the Daya Bay Contingency Plan was appropriate to meet the needs of the prevailing situation, US for S advised that to prepare for the unexpected, the HKSAR Government had put in place a comprehensive contingency plan, namely the Daya Bay Contingency Plan. In case an accident occurred at the nuclear power stations and led to a release of radioactive material, the plan could be activated for immediate response actions to minimize its impact on Hong Kong residents.

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The contingency plan was prepared in consultation with IAEA and was also tested by IAEA before promulgation.

52. Ms Cyd HO appreciated the difficulties faced by the HKSAR Government in monitoring the operation of GNPS given the fact that it was owned by the Guangdong Nuclear Power Joint Venture Company Limited, with a 75/25 joint venture between the Guangdong Nuclear Investment Company Limited and HKNIC. She considered that the Administration should include additional provisions in the Scheme of Control Agreement ("SCA") entered with CLP to the effect that it was a mandatory requirement for CLP to notify the Administration of all operational events occurred in the nuclear power station.

53. In response, Principal Assistant Secretary for the Environment (Energy) reiterated that at present, GNPS was regulated by the Mainland statutory requirements promulgated by NNSA. Against this background, the Administration did not consider it appropriate to monitor GNPS's operation through SCA.

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54. Notwithstanding the above explanation, Ms Cyd HO requested the Administration to explore the merits of requiring CLP to notify the Government of all operational events at the nuclear power station through SCA.

55. Ms Audrey EU expressed concern about the root cause of the event on 23 May 2010 and measures adopted by DNMC to prevent recurrence of similar event in future.

56. In response, Prof LEE Chack-fan advised that on 10 June 2010, the Daya Bay management reported the matter to NSCC, including the preliminary findings from the investigation, work done thus far and precautionary steps taken to ensure operational safety. The preliminary analysis and assessment attributed the event to a minor imperfect sealing of one of the fuel rods in the Unit 2 reactor. Based on the information available at that point of time, NSCC members surmised that the root cause of the event was due to a number of cracks, mostly hair line cracks along the weld lines of the rod. To avoid recurrence of similar event, DNMC had already set up an expert group to conduct a follow-up investigation into the matter. DNMC was expected to provide detailed investigation findings as early as practicable. Ms Audrey EU requested that a copy of the report should be provided to the Panel.

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57. Mr WONG Yung-kan noted that in tandem with the notification system between the Administration, CLP and HKNIC outlined in paragraphs 13 and 14 of the Administration's paper, the HKSAR Government and the Guangdong authorities had established an official contingency notification channel. According to the mechanism agreed between the two sides, the classification of "emergency situation" followed IAEA's four-category system for classifying nuclear emergencies depending on the impact of an incident on safety in

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ascending order of severity, as set out in paragraph 8 of the Administration's paper. Mr WONG enquired whether the event on 23 May 2010 fell outside both the INES's seven-level and IAEA's four-category classification systems.

58. US for S replied in the affirmative and added that it was the main reason why the reporting system was not activated.

59. In response to Mr WONG Yung-kan's enquiry about the local radiation level after the event, Assistant Director, HKO advised that HKO's Environmental Radiation Monitoring Network, consisting of 10 field stations, monitored the ambient gamma radiation level in Hong Kong. The monitoring data concerning the radiation level from the date of the event to mid-June 2010 confirmed that there were no abnormal changes in the local radiation level in Hong Kong, as compared to measurements before GNPS came into operation in 1994. For example, according to the data collected at Ping Chau, which was the radiation monitoring station closest to GNPS, the daily average radiation levels in May 2010 were within the normal range of fluctuation.

60. Ir Dr Raymond HO declared that he was the Chairman of NSCC, and recapitulated the major issues raised and the conclusion made by NSCC members at the meeting on 10 June 2010. He said that NSCC had always attached great importance to enhancing the transparency of the operation of DBNPS and fostering communication with the public and the media. Regarding the event on 23 May 2010, he noted that an investigation was in progress. To his knowledge, the investigation findings would be disclosed to the HKSAR Government and NSCC, in line with normal procedures.

61. Mr WONG Ting-kwong asked whether NSCC had a responsibility to report its work to the HKSAR Government.

62. In reply, US for S advised that NSCC was formed by DNMC in the Mainland with its members invited by DNMC to join the Committee. As NSCC was neither formed nor appointed by the HKSAR Government, it did not have an obligation to submit work reports to the HKSAR Government.

63. Responding to Mr WONG Ting-kwong's enquiry about the classification of the two events which occurred in the nuclear power stations in Chernobyl and the Three Mile Island respectively in 1986 and 1979, US for S advised that the nuclear accident in Chernobyl was classified as a "major accident (Level 7)" in accordance with INES, and the accident at the Three Mile Island was known as an "accident with off-site-risk (Level 5)".

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64. Concluding the discussion, the Chairman requested the Administration to take note of Members' concerns over various issues and requests for reviewing the event itself, the existing arrangement for handling nuclear events and the notification mechanisms agreed with PEACO/GD, CLP and HKNIC. As

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regards the Daya Bay Contingency Plan, the Chairman said that it was time for the Administration to also review the validity of the plan. The Chairman suggested and members agreed that the Panel should follow up relevant issues and discuss the subject at the beginning of the next legislative session. The Administration should provide the Panel with the results of the reviews before the meeting.

(Members agreed to extend the meeting by 15 minutes.)

V. Updating and replacement of fire services equipment and apparatus
(LC Paper Nos. CB(2)1909/09-10 (01) and (02), CB(2)1948/09-10(05) and (06))

Presentation of views by deputations

Hong Kong Fire Services Officers Association

65. Mr MAN Siu-fung presented the views of Hong Kong Fire Services Officers Association ("FSOA") on the manpower shortage problem in the Fire Services Department ("FSD"), as set out in its submission. Mr MAN expressed reservations about the following three pre-requisites as recommended by the Standing Committee on Disciplined Services Salaries and Conditions of Service ("SCDS") in its Report on the Grade Structure Review of the Disciplined Services in respect of reducing the conditioned hours of work for staff of FSD's Fire Stream from 54 to 48 hours per week -

- (a) cost neutrality;
- (b) not involving additional manpower; and
- (c) maintaining the same level of service to the public.

Hong Kong Fire Services Department Staffs General Association

66. Mr CHIU Sin-chung presented the views of Hong Kong Fire Services Department Staffs General Association ("FSDSGA") views as set out in its submission.

Discussion

67. Members generally shared the views of FSOA and FSDSGA regarding the need to increase FSD's manpower. Mr WONG Kwok-hing, Mr LEE Cheuk-yan, Mr WONG Yung-kan and Dr Margaret NG considered that the conditioned hours of work of FSD staff should be reduced from 54 to 48 hours per week. They considered that additional resources should be provided to FSD for

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addressing its manpower shortage problem. Mr LEE Cheuk-yan considered that the three pre-requisites for reducing the conditioned hours of work should be abolished.

68. US for S responded that SCDS adopted an open attitude towards proposals to reduce the conditioned hours of work of FSD staff in the Fire Stream, bearing in mind the three pre-requisites laid down by SCDS. He added that SCDS was aware of the unique shift pattern of "24 hours on duty and 48 hours off-duty" for staff working in the Fire Stream. Deputy Director of Fire Services ("DDFS") added that it was difficult to reduce the conditioned hours of work of FSD staff while fulfilling SCDS's three pre-requisites. Nevertheless, FSD would continue its discussion with FSD staff unions on how the conditioned hours of work could be reduced, such as whether it could be made through the reduction of fire appliances or the scaling down of standard manning of fire appliances, or revising the shift pattern.

69. Noting from the Administration's paper that a study on the procurement process of fire services equipment and apparatus commissioned by the Security Bureau and FSD was being conducted by the Efficiency Unit of the Government, Mr WONG Kwok-hing asked whether the study could be completed in October 2010.

70. Deputy Secretary for Security ("DS for S") responded that besides studying the existing procurement arrangement of FSD, the adequacy of manpower for procurement and the application of information technology in supplies management, the Efficiency Unit of the Government would also study FSD's arrangements in respect of inspection of fire safety installations in buildings and food premises. It was expected that the study would be completed by the end of the year.

71. The Deputy Chairman asked whether FSD's performance pledge of responding to 92.5% of all building fire calls within six minutes in built-up areas only referred to the arrival of the first fire appliance at the scene.

72. Mr CHIU Sin-chung pointed out that despite a shortage of manpower, fire personnel had strived hard to arrive at the scene as soon as possible and at the same time exercised extreme care to other road users, with a view to meeting the performance pledge. He pointed out that the response time was currently counted on the basis of arrival of the first fire appliance at the street level of the building concerned. He added that the proliferation of high-rise buildings had posed increasing risk to fire personnel. He illustrated that having regard to the risk within the station boundary of Sham Tseng Fire Station, three fire appliances should be the appropriate deployment instead of the existing one fire appliance. DDFS pointed out that such a method of measuring the response time to fire calls was also adopted in many other countries.

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73. Referring to paragraph 14 of the Administration's paper, Ms Emily LAU expressed concern about the increasing number of building fire calls over the past few years and that the performance pledge could still be maintained at 95.6%. DS for S responded that around 80% of the calls were false alarms. With enhanced publicity and education on fire prevention, the total number of real building fire calls had dropped by 40% in 10 years from 4 139 cases in 1999 to 2 466 cases in 2009. At the request of the Chairman, DS for S agreed to provide the statistics for 2008.

(Members agreed to further extend the meeting by another 15 minutes.)

74. Mr LEE Cheuk-yan and Ms Cyd HO expressed concern that according to FSDSGA's submission, the number of firemen deployed for each fire appliance was one fireman less than the standard manning. Dr Margaret NG and the Deputy Chairman asked about the number of additional firemen needed if their conditioned hours of work were to be reduced to 48 hours per week. Ms Cyd HO asked about the additional numbers of fire appliances and firemen needed to meet the original plan of deploying sufficient firemen, i.e. seven firemen, for each fire appliance. Ms Cyd HO added that the Security Bureau should give priority to increasing FSD's manpower in the following financial year.

75. Mr SO Chi-wah said that the shortfall, which was difficult to estimate, was in the region of about 10%. DDFS stated that, as a rough estimate, about 800 firemen were needed if the conditioned hours of work of firemen were to be reduced to 48 hours per week and that standard manning was to be fully deployed for fire appliances. DDFS advised that while there was standard manning for each fire appliance, a minimum manning for each fire appliance was allowed to cater for temporary absence of staff due to training, sickness, injuries, etc.

76. Members requested the Administration to consider Members' views and revert to the Panel before the end of 2010 on the proposed increase of manpower in FSD and reduction of the conditioned hours of work of FSD staff to 48 hours per week.

VI. Any other business

Special meeting in July 2010

77. The Chairman reminded members that a special meeting would be held on Wednesday, 21 July 2010, at 10:45 am to discuss the item "Operation of the statutory Independent Police Complaints Council".

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78. There being no other business, the meeting ended at 5:31 pm.

Council Business Division 2
Legislative Council Secretariat
13 September 2010