# *立法會*
# *Legislative Council*

LC Paper No. CB(2)1918/09-10

Ref: CB2/PL/SE

**Report of the Panel on Security**
**for submission to the Legislative Council**

## Purpose

This report gives an account of the work of the Panel on Security during the 2009-2010 session of the Legislative Council. It will be tabled at the meeting of the Council on 7 July 2010 in accordance with Rule 77(14) of the Rules of Procedure of the Council.

## The Panel

2. The Panel was formed by resolution passed by the Council on 8 July 1998 and as amended on 20 December 2000, 9 October 2002, 11 July 2007 and 2 July 2008 for the purpose of monitoring and examining Government policies and issues of public concern relating to security, public order, corruption-related matters and nationality and immigration matters. The terms of reference of the Panel are in **Appendix I**.

3. The Panel comprises 19 members in the 2009-2010 session. Hon LAU Kong-wah and Hon James TO were elected Chairman and Deputy Chairman of the Panel respectively. The membership list of the Panel is in **Appendix II**.

## Major Work

Outcome of public consultation on the proposed introduction of the Medical Priority Dispatch System

4. The Panel was briefed on the outcome of the public consultation on the proposed introduction of a Medical Priority Dispatch System ("MPDS") and the Administration's proposed way forward for implementing MPDS in Hong Kong. Under the proposed MPDS, a three-tier system would be adopted for the categorization of emergency ambulance calls, namely, "Response 1" calls for critical or life-threatening cases, "Response 2" calls for serious but non-life-threatening cases, and "Response 3" calls for non-acute cases. The target response time would be set at nine minutes for Response 1 calls, 12 minutes for Response 2 calls and 20 minutes for Response 3 calls.

5. Members supported in principle an improvement in response time of the emergency ambulance service ("EAS"). Most members, however, expressed reservations about the Administration's proposal to set the target response time at 20 minutes for Response 3 calls. They considered it a retrogressive move in the provision of EAS, since this response time target under MPDS was slower than the current response time target of 12 minutes for all emergency calls under the existing single pledge ambulance dispatch system. Some members considered that the response time target of 12 minutes should be adopted as the baseline, and a quicker response time target should be set for more critical patients or life-threatening cases.

6. The Administration advised that Response 3 calls by definition were non-acute in nature. They were not time-critical and there were examples overseas of not setting any response time target for Response 3 calls under MPDS. Nevertheless, to underline the Government's continued commitment to providing quality EAS, the Administration saw merit in committing to a specific response time target and providing the public with a safety baseline for all emergency ambulance calls. Having considered the relative needs of patients of Response 1, Response 2 and Response 3 calls, as well as the practices adopted overseas, the Administration proposed to pitch the response time target for Response 3 calls at 20 minutes. The differentiation in response time should help increase the awareness of the community about the need to use ambulance services judiciously.

7. Noting that callers would under the proposed MPDS be asked a set of entry questions before ambulances were dispatched, members expressed concern about the reliability of the MPDS questioning protocol. They were particularly concerned whether the questions and answers would cause delay in the dispatch of ambulances and the provision of emergency treatment to patients, and whether the Administration had fully assessed the effectiveness of the MPDS questions in ascertaining the patients' conditions. Some members cautioned that not every patient could describe accurately his condition over the phone. New arrivals from the Mainland and the elderly, for instance, were high-risk groups who might not be able to provide clear and accurate information about their conditions when making emergency calls. These members questioned whether the caller or the Government should be held responsible for a delay in the dispatch of ambulances in the event that it was caused by the caller's failure to give clear or specific responses to the protocol questions.

8. The Administration explained that according to the design of MPDS, operators of the Fire Services Communications Centre ("FSCC") would solicit essential information from the callers by asking straight-forward but structured questions according to the MPDS protocol, and simple and direct responses would be expected from the callers. The MPDS questioning protocol would assist FSCC operators in assessing the degree of urgency of incoming calls. In the interest of the patients, if the caller was unable to give clear or specific responses to the protocol questions, FSCC operators would classify uncertain calls as Response 1 calls and send ambulances to the scenes as soon as possible.

9. Regarding the effectiveness of the MPDS questions in ascertaining the patients' conditions, the Administration advised that advanced ambulance services in over 20 countries had already adopted a priority dispatch system to prioritize their response to ambulance calls. A total of over 50 million ambulance calls were received each year in these countries, and discrepancy in assessment was only found in 1% to 2% of all calls. According to the Administration's understanding, the implementation of the priority dispatch system in many overseas countries had been smooth, safe and effective. The reliability of the MPDS questioning protocol in distinguishing patients who were in urgent need of EAS was generally high.

10. Members noted that the Administration proposed the adoption of a phased approach in the introduction of MPDS. They enquired about the reason for and details of the proposal.

11. The Administration advised that it would work on the detailed preparation for introducing MPDS in Hong Kong. In the light of the views received during public consultation and the best practices overseas, the Administration planned to adopt a phased approach in the introduction of MPDS to enable early improvements to the new system. This approach would also provide the public with reasonable time to become familiar with the system and gain confidence in it before full-scale implementation. According to the Administration, the proposed MPDS would be put on trial. In Stage I, for certain easily identified injuries, the Fire Services Department ("FSD") would provide simple first-aid and time-saving advice to callers after the dispatch of ambulance. In Stage II, FSD would adopt a MPDS questioning protocol for the taking of emergency ambulance calls to facilitate the provision of more sophisticated and elaborate first-aid advice to callers. It should be noted that despite the proposed use of the MPDS questioning protocol, the dispatch of ambulance would continue to be made under the existing mode with a target response time of 12 minutes and 92.5% compliance in both Stages I and II. The categorization of calls in Stage II was for internal reference only. The Administration would assess the risks and benefits of implementing MPDS, in the light of operational experience in both Stages I and II. It would keep the Panel informed of the progress in various stages, particularly before the commencement of Stages II and III, before making a final decision on the way forward. The Administration would also conduct a review and consult the Panel probably within a year after the implementation of Stage II, tentatively in 2014, before it embarked on the full implementation of MPDS.

12. Some members remained unconvinced of the need to introduce MPDS. They queried whether the ultimate objective of the Administration's introduction of MPDS was to pave way for imposing charges on EAS in the long run or to reduce the alleged abuse of EAS.

13. The Administration stressed that in proposing the implementation of MPDS, it did not have any plan to introduce charges on EAS. The proposed adoption of a three-tier system for the categorization of calls was in no way

related to the prevention of abuse of ambulance service. The primary objective of the proposal was to enhance the existing EAS by providing speedier response to patients in critical or life-threatening conditions. By doing so, the Administration could make better and more effective use of the valuable ambulance resources, and enable people in greatest need to receive timely pre-hospital medical treatment at the scene and during emergency transport to a hospital.

14. Members were generally of the view that as EAS was a matter of life and death to patients making ambulance calls, the Administration should be mindful of the knock-on effect of introducing MPDS in Hong Kong. The Panel passed a motion opposing the introduction of a three-tier categorization system under the proposed MPDS, and proposing the adoption of the current response time target of 12 minutes as the baseline for the provision of EAS.

Police's handling of public meetings and public processions

15. The Panel was briefed on the measures taken by the Police to regulate public meetings and processions and the right of an individual in such activities.

16. With regard to the demonstrations outside the Legislative Council ("LegCo") Building on 15 and 16 January 2010, members were concerned about the protection for LegCo Members and other people not participating in public meetings and processions, and the capability of the Police in handling large-scale public order events outside the LegCo Building in future. They asked whether the Administration had learned any lesson from the incident.

17. The Administration advised that the freedom or right of peaceful assembly and procession was enshrined in Article 27 of the Basic Law and Article 17 of the Hong Kong Bill of Rights. It was the Police's policy to facilitate all lawful and peaceful public meetings and processions. As Hong Kong was a crowded place, large-scale public assemblies and processions would affect other people or road users, and might have impacts on public safety and order. In this connection, while facilitating the expression of views by participants of processions, it was also the Police's responsibility to maintain public order and ensure the rights of other people to use the public place or road as well as their safety.

18. The Administration emphasized that participants of public processions, in expressing their views to the public, should observe the law and public order. The Police would not tolerate violence during public order events. On occasions where the law was, or was likely to be, violated during public meetings or processions by acts of individuals (especially when there were acts which might cause danger to others or acts which led to a breach of the public order), the Police would, based on the assessment at scene and professional judgment, issue verbal warnings where appropriate. Depending on whether the person involved had ceased the illegal acts and whether his acts led to a breach of public order, or even affected public safety, the Police would,

depending on the situation, take appropriate actions at scene. These actions included issuing verbal warnings or orders at scene, collection of evidence for subsequent investigation and consideration of prosecution, peaceful dispersal of the crowd or other law enforcement actions.

19. The Administration further advised that whenever a large-scale public meeting or procession was held, the Police would carry out a review after the event, and the event outside the LegCo Building on 16 January 2010 was no exception. The aim of the review was to ensure that the tactics deployed and the use of force in the demonstrations and public assemblies concerned were justified and complied with the Police's operational guidelines for regulating public order events. If there were conflicts and confrontations, the Police would investigate into the incidents concerned to ascertain whether there were reasonable grounds to arrest any persons for having breached the laws. The Police would consult the Department of Justice to ascertain whether there was sufficient evidence for instituting prosecution.

20. Some members queried the propriety of using pepper spray against demonstrators and the effectiveness of the Police's liaison with the organizer of the public meeting on 16 January 2010. They also queried the effectiveness of the deployment of mills barriers to barricade certain areas and streets in the vicinity of the LegCo Building to stop the demonstrators from marching on the street, which resulted in disputes and confrontations between the demonstrators and the Police. A member suggested that the Administration should review its guidelines regarding the deployment of mills barriers during large-scale public order events. To minimize the potential harm that might be caused to demonstrators and Police officers, the Administration should also consider replacing the metal mills barriers with those made of other materials.

21. The Administration advised that in the evening of 16 January 2010, in view of the large number of demonstrators staging demonstrations outside the LegCo Building, the Police had set up mills barriers in certain areas and streets in the vicinity of the LegCo Building to ensure the safety of the demonstrators, other people, LegCo Members and government officials attending the Finance Committee meeting. A few police lines were stationed at the mills barriers, which were set up as a basic security measure, to prevent any unauthorized persons from entering the LegCo Building. Late in the same evening, some participants of the public meeting had become antagonistic and besieged the LegCo Building on all sides and blocked the driveway. Taking into account the chaotic situation at that point in time, the Police had deployed pepper spray on the demonstrators when they made several attempts to break through the Police lines by pushing and climbing over the mills barriers. The Police had examined the justifications and propriety of the use of force after the 16 January 2010 incident. The preliminary findings concluded that the Police's use of force during the event was justified and the degree of force used was appropriate.

22. In response to some members' criticism that the Police had used excessive force in the removal of demonstrators, the Administration

emphasized that the Police had all along been upholding the principles of exercising maximum restraint and using minimum force in facilitating public order events and dealing with violent incident. According to the Police's internal guidelines on the use of force, a Police officer should display self-discipline and exercise a high degree of restraint when dealing with the public and should not resort to the use of force unless such action was strictly necessary and he was otherwise unable to effect his lawful purpose. Police officers should identify themselves as such and, when circumstances permitted, a warning should be given of the intention to use force and of the nature and degree of force which it was intended to use.

23. Members were informed that it was a general practice of the Police to maintain close communication with the event organizers and discuss with them how order could be maintained on the day of the public meeting or public procession. The event organizers were responsible for arranging wardens to maintain order during the public meeting or public procession. Apart from providing advice in advance and agreeing on certain arrangements in relation to the event, a Police Community Relations Officer might also be present during the event to act as a channel of communication between the organizer and the Field Commander. In assessing the crowd management measures and manpower required for maintaining public safety and public order during the event, the Police would make reference to the information provided by the organizer, past experience in handling similar events as well as other operational considerations. With regard to the public meetings on 16 January 2010, the Police stressed that it had maintained communication with the organizer throughout the event.

Review of the torture claim screening mechanism

24. The Panel continued to follow up the progress of the Administration's review of the torture claim screening mechanism. In briefing members on the major enhancements made to the existing screening mechanism, the Administration advised that it aimed to put in place a statutory regime for handling torture claims lodged under Article 3 of the United Nations' Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT") in the long run.

25. Some members expressed concern that there were still a number of outstanding issues, including the guidelines on the pilot scheme for provision of publicly-funded legal/assistance, the training arrangement for duty lawyers, the role of the United Nations High Commissioner for Refugees in screening of CAT claims and the proposed fees rates for torture claim related work, which were not well addressed. These members expressed reservations about the Administration's proposal to resume the screening process in December 2009 and the parallel implementation of a pilot scheme to provide publicly-funded legal assistance to torture claimants who met the means-test requirements.

26. The Administration advised that there were about 300 new torture claims per month. As at the end of October 2009, a total of 6 203 outstanding

claims were pending screening. To deal with the backlog of claims, the Administration saw a need to resume screening as soon as possible. Having reviewed the torture claim screening mechanism in the light of the Court of First Instance's judgment in a judicial review case on the screening procedures and relevant experiences of other common law jurisdictions, the Administration planned to enhance the existing screening mechanism by implementing a series of improvement measures by the end of 2009, with a view to achieving effective screening, ensuring procedural fairness and preventing abuses. The enhanced mechanism would be reviewed with experience gained in practice.

27. Notwithstanding the explanation provided by the Administration, some members expressed disappointment at the reluctance of the Administration to take heed of the views and suggestions of the Law Society of Hong Kong and the Hong Kong Bar Association. They enquired whether the Administration was prepared to reconsider the requests of the two legal professional bodies in respect of the guidelines for the handling of torture claims, the lawyer fees proposed for the new legal assistance scheme, and the qualification and experience required for lawyers participating in the scheme. These members questioned the suitability of extending the Duty Lawyer Scheme to undertake legal representation work for CAT claimants and the appropriateness of adopting the current payment rates under the Duty Lawyer Scheme, i.e. at $670 per hour or $2,710 per half day, as the remuneration paid to lawyers undertaking torture claim related work.

28. The Administration stressed that it appreciated the views put forth by the legal professional bodies on the proposed legal assistance scheme for torture claimants. The Administration explained that it had stretched reasonable flexibility and accepted the suggestions from the profession on certain issues of concern, as evidenced by the fact that it had agreed to extend the time permitted for returning the completed questionnaire from 14 days to 28 days. The Administration considered the 28-day time limit a reasonable period that struck a balance between the need to ensure that a claimant was given a reasonable opportunity to establish his case and the requirement for early screening of a case without undue delay. This was in line with the Canadian practice in that an asylum claimant in Canada would be given 28 days to return the specified form containing the required information in support of his claim for assessment by the relevant authority, and was longer than the United Kingdom practice where a claimant was given only 10 working days to complete a standard form in lodging his asylum claim. The Administration was prepared to allow for a time extension for returning the completed questionnaire, if the issues involved in a particular case were complicated and circumstances so justified.

29. The Administration informed members that it had reached agreement in principle with the Duty Lawyer Service ("DLS") on launching the pilot scheme in December 2009 for a period of 12 months. Under the scheme, duty lawyers would provide legal advice in the screening process in respect of the grounds of claims and petitions as appropriate, and would represent eligible claimants at petition hearings. DLS had started the recruitment of qualified lawyers for the

pilot scheme. It would generally require and recruit qualified lawyers with a minimum of three years' post-qualification experience to be enrolled as duty lawyers for the new legal assistance scheme for torture claimants. In considering individual cases, DLS would also take into account the practical experience and training of the lawyers in the field. As at 20 November 2009, about 400 lawyers, among whom over 50% were barristers having substantial experience in the field, had indicated interest to be enrolled as duty lawyers for the new scheme. The Administration hoped that more lawyers with the requisite qualifications and experience would join the scheme at a later stage.

30. Regarding the contention that remuneration paid to lawyers undertaking torture claim related work should be sufficient for attracting lawyers of the calibre and experience needed to competently handle the claims, the Administration pointed out that the proposed fee rate, which had been revised to $720 per hour in line with the revision made to the duty lawyer rates, had been the fee rate adopted by DLS for its duty lawyer service. The Administration considered the adoption of the payment rates under the Duty Lawyer Scheme appropriate because legal assistance was available to virtually all torture claimants, whether or not their claims involved legal issues or disputes in fact. The Administration emphasized that the assistance to be provided in the screening process was not of the same nature as litigation work in High Court or District Court cases. Based on the existing duty lawyer rates and the proposed scope of assistance agreed by the legal professional bodies, it was estimated that the legal cost alone to assist a torture claimant in making his case up to the petition stage was in the region of $51,000 for a simple case. Bearing in mind the current influx of 300 new claims per month and those 6 203 outstanding cases pending screening as at the end of October 2009, the proposed adoption of the current payment rates under the Duty Lawyer Scheme would already pose a significant financial burden to the Administration. If the rates for civil cases, ranging from $1,600 to $4,000 per hour depending on the years of practice, proposed by the two legal professional bodies were to be applied, the legal cost would surge to the region of $120,000 to $300,000 per case, which would not be viable and sustainable in the long term. While the Administration would conduct a review on the enhanced screening mechanism and make necessary adjustments in the light of practical experience, the lawyer fees might also be reviewed in that context, including the issue on whether the fees were sufficiently attractive to lawyers with relevant qualifications to provide service as highlighted by the legal profession.

31. Responding to members' enquiry about the reasons for not extending to Hong Kong the United Nations' 1951 Convention relating to the Status of Refugees, the Administration explained that Hong Kong's relative economic prosperity in the region and its liberal visa regime would make the territory vulnerable to possible abuses if the Convention was to be extended to Hong Kong. Hence, the Government had a firm policy of not granting asylum and its established position on the Convention remained unchanged.

Results of study of matters raised in the Annual Report 2008 to the Chief Executive by the Commissioner on Interception of Communications and Surveillance

32. The Panel was briefed on the results of the Administration's study of matters raised in the Annual Report 2008 to the Chief Executive ("Annual Report 2008") by the Commissioner on Interception of Communications and Surveillance ("the Commissioner").

33. Noting the Commissioner's comments about the attitude of a law enforcement officer, which was described as "arrogant and presumptuous, bordering and recalcitrance", some members expressed grave concern about the overall attitude of law enforcement officers towards the Commissioner's oversight and review functions. These members enquired about the measures taken by the Administration and the Independent Commission Against Corruption ("ICAC") to address the attitude problem among law enforcement officers and to ensure their strict compliance with the Interception of Communications and Surveillance Ordinance (Cap. 589) ("ICSO") and full cooperation with the Commissioner.

34. The Administration advised that it noted the Commissioner's comments about the attitude of a law enforcement officer in a reported case involving an irregularity due to system failure in effecting discontinuance resulting in the facilities covered by five prescribed authorizations being disconnected six to 18 minutes after the expiry of the authorizations. Although the way how the officer responded to the Commissioner's enquiry appeared to be unsatisfactory, it was an isolated incident possibly due to the fact that the officer had not got used to the Commissioner's oversight authority. As a matter of fact, the Commissioner had stated in his Annual Report 2008 that the heads of the law enforcement agencies ("LEAs") had provided him with all the assistance he needed, enabling him to perform his review and oversight functions under ICSO.

35. The Administration further advised 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. Regarding recommendations made by the Commissioner to LEAs, the LEAs concerned had accepted them in full or were actively identifying improvement measures to address the Commissioner's concerns. The Security Bureau had also amended the Code of Practice, as and where appropriate, to resolve common issues that had implications across LEAs.

36. ICAC assured members that it was committed to ensuring ICAC officers' full compliance with the ICSO requirements in conducting interception and covert surveillance. In tandem with the introduction of a package of improvement measures, a dedicated Compliance Assurance Group had been set up to deal with ICSO-related matters. Although investigations into the cases of irregularities/non-compliance had not revealed any evidence

of bad faith on the part of ICAC officers, the ICAC management agreed that officers should have been more vigilant in the implementation of ICSO and in responding to the Commissioner's enquiries or requests. ICAC would continue to render full cooperation and support to the Commissioner to facilitate his performance of the statutory functions under ICSO.

37. Notwithstanding the responses provided by the Administration and ICAC, some members expressed grave reservations about the sincerity of the Administration and LEAs in rendering full support and cooperation to the Commissioner in his performance of statutory functions under ICSO. These members took the view that law enforcement officers appeared to regard investigation and detection of crimes as their first and foremost task, thus showing resistance towards the Commissioner's oversight of their interception of communications and covert surveillance operations.

38. Members noted that the Commissioner had doubted the fairness and appropriateness of the disciplinary actions taken by ICAC against various offending officers in a reported case, which related to an irregularity concerning the inclusion of a wrong facility number in the application for and the obtaining of a prescribed authorization for interception resulting in the interception for a few days of a facility of a person who was not the subject under investigation. Members were gravely concerned that the Commissioner had made inquiries with ICAC and sought the reasoning of its decision, and despite the Commissioner making known to ICAC his analyses of the blameworthiness of each of the officers concerned, ICAC did not consider that there was unfair treatment. Some members queried the propriety of ICAC's decision to uphold its stance, especially when the difference in treatment was considered by the Commissioner as magnifying the culpability of the junior while playing down the mistakes committed by the superior who similarly lacked diligence and vigilance in performing their duties. These members cautioned that the unfair disciplinary actions taken against various offending officers might give the public an impression that such decisions were not entirely impartial, and the fact that ICAC did not pay heed to the views of the Commissioner might affect the community confidence in the work of ICAC.

39. ICAC advised that following the submission of a report to the Commissioner, the Compliance Assurance Group had conducted a full investigation into the incident to determine, among other things, the appropriate disciplinary actions to be taken. Taking into account a number of matters including the duties and responsibilities of the officers concerned, the nature and extent of contravention and mitigating circumstances, the four officers involved were respectively given either a disciplinary warning or a disciplinary advice. ICAC noted the Commissioner's comments and analyses about the case and appreciated his concerns. In the light of the Commissioner's observations, the ICAC management had reviewed the disciplinary actions taken, but considered that they were not inappropriate or unfair. This notwithstanding, ICAC had assured the Commissioner that his comments would be taken into consideration in the performance review of each and every officer concerned together with other aspects of their performance.

40. Members were also concerned about the queries regarding the legitimacy or propriety of the Commissioner's listening to interception products including those that contained, or might contain, LPP information, which had been lawfully obtained by LEAs, for the purposes of performing his functions under ICSO. Noting that the Commissioner had made a recommendation to the Administration for amending ICSO to give express power and authority to the Commissioner to listen to interception products held by LEAs, members asked whether the Administration was prepared to do so.

41. The Administration admitted that there was an absence of express and unambiguous provisions in ICSO empowering the Commissioner to listen to interception products. It was also doubtful whether section 53(1)(a) regarding the power of the Commissioner to require any person to provide information for the purpose of performing his functions under ICSO could be construed as having the effect of empowering the Commissioner to listen to interception products. With the existence of legal uncertainty, the Commissioner considered that the safest way was to amend ICSO to allow the Commissioner and the staff designated by him to conduct the checking. The Administration advised that it would carefully consider the recommendations raised in the Commissioner's annual reports, including the one in connection with the Commissioner's authority to listen to interception products which required legislative amendments for implementation, during the comprehensive review of ICSO. The Administration noted that the Commissioner would cease listening to the recordings before it took any final decision on the matter. Nevertheless, LEAs would continue to preserve the recorded products containing LPP information or possible LPP information and other related materials for the purposes of the Commissioner's inquiry or performance of his oversight functions under ICSO.

Quality Migrant Admission Scheme and Capital Investment Entrant Scheme

42. The Panel was briefed on the latest position regarding the implementation of the Quality Migrant Admission Scheme ("QMAS") and the Capital Investment Entrant Scheme ("CIES").

*Quality Migrant Admission Scheme*

43. Some members noted with grave concern that after the relaxation of selection criteria in 2008 to allow younger degree holders in the 18 to 29 age groups with less than five years' working experience or even no working experience to enter the selection pool, a higher number of people with such background were admitted to Hong Kong under QMAS. They considered that the relaxed requirement would cause negative impact on the employment opportunities of young people in Hong Kong and queried whether the underlying purpose of QMAS would be defeated if the minimum requirement for admission was too low.

44. The Administration advised that the revised QMAS aimed to cast the net wider for talents from places all over the world and expand the pool of candidates for selection. Under the revised QMAS, an applicant with less working experience would be able to attain the passing mark for further assessment through the General Points Test ("GPT"). However, a passing mark did not guarantee admission under QMAS. The applicant would still have to compete with other applicants for the allocation of quota. The Administration pointed out that although the quota for QMAS was 1 000 per year, only 956 applications had been approved under GPT since the revised QMAS was put in place. It was also noteworthy that the overall academic qualifications of the successful QMAS applicants remained at a high level, as about 60% of them had qualifications at master degree or two bachelor degrees level or above.

45. The Administration pointed out that since the implementation of QMAS in June 2006, only 1 333 applicants were approved to enter Hong Kong. The figure was small and hence, the impact on the employment opportunities of local graduates should be insignificant. The Administration stressed that there was a need to bring in talented people from outside Hong Kong to meet the manpower needs of the local economy and to enhance Hong Kong's competitiveness in the global market.

*Capital Investment Entrant Scheme*

46. Some members were concerned whether the Administration had assessed the impact of investors investing capital in real estate under CIES on the price of real estate in Hong Kong. They pointed out that the permissible investment classes under the relevant schemes in Australia, Canada and the United Kingdom did not cover real estate. In Singapore, although an entrant was allowed to invest in real estate, the investment on residential property for self-occupation could not exceed 50% of his total investment amount. These members enquired whether the Administration would draw experience from overseas and impose conditions on investment under CIES, such as setting a maximum investment limit on real estate or removing the property market option.

47. The Administration advised that as at November 2009, only 29% of the annual investment made under CIES was invested in the property market, which was more or less the same as that for the first year after the scheme was launched. CIES had brought Hong Kong some $40.1 billion capital investment since its introduction in October 2003, of which around $11.7 billion went to the property market. This amounted to less than 1% of the total trading volume in the property market in the same period of around $2.4 trillion. Hence, the Administration considered that CIES did not and would not have much effect on the local property market. To attract new capital into Hong Kong, the Administration considered it necessary to provide capital investors with greater flexibility to make their own investment choices. To this end, a wide range of investment options, covering real estate, equities, debt securities, certificates of deposits, subordinated debts, and eligible collective investment schemes, were offered under CIES.

48. The Administration stressed that as an open market economy, any non-Hong Kong residents could choose to invest in Hong Kong's properties and shares without going through CIES, as long as the funds were legitimate.

49. Some members considered it timely to review CIES which had been implemented for six years. They pointed out that in some Western countries where similar capital investment schemes were implemented, their governments would encourage persons to bring in capital and to engage in the running of business, since this could create more employment opportunities thereby generating more economic benefits. The Administration advised that it would review the scheme from time to time, with a view to improving its attractiveness to investors.

50. A member criticized the Administration for failing to balance the interest of the prospective entrants and the general public in implementing CIES. The member considered that the negative impact of investors investing capital in real estate and financial assets under CIES was apparent, as evidenced by the sharp rise in the prices of commercial and residential properties and the climb in rental in recent years. The member cautioned that the scheme would only widen the disparity between the rich and the poor in Hong Kong. Another member, however, expressed support for the continued implementation of QMAS and CIES.

51. The Administration advised that QMAS and CIES had contributed to the development of Hong Kong by attracting talented people and capital investors. Many local business sectors, in particular finance, commerce, real estate, property agency, construction and interior decoration, had benefited directly or indirectly from the schemes. The Administration would review the two schemes from time to time to ensure that they could meet the needs and challenge of the society.

Employment service support for rehabilitated offenders

52. Members considered that the best way to re-integrate offenders into the community was successful employment after release. They were very concerned about the employment service support for rehabilitated offenders. Some members urged the Government to take the lead in providing employment opportunities for rehabilitated persons. These members considered that consideration should be given to appointing them to less sensitive government posts, such as cleansing worker or workmen. Applicants for posts in the civil service should not be required to indicate in the application form whether they had any criminal convictions.

53. The Administration explained that the requirement to provide past criminal conviction record in the application form for employment with the Government had been removed since January 2004, thus ensuring that rehabilitated offenders would be considered on equal terms with other applicants for appointment to the civil service. It was the recruitment policy

of the Government that appointments to the civil service should be based on the principle of open and fair competition. In considering applications for civil service posts, the Government, as an equal opportunity employer, would select the most suitable candidate for the post concerned, having regard to the applicant's character, qualifications, abilities and merits.

54. Some members asked whether the Government would, in outsourcing the service contracts, require the contractors concerned to adopt a similar recruitment policy of not asking the job applicants to furnish information on whether they had any criminal convictions. Some members considered that the Administration should take the lead to employ rehabilitated offenders.

55. The Administration advised that civil servants should have a high standard of integrity. To ensure that all civil servants were of good character and high integrity and could be entrusted to perform the relevant duties, all recruiting departments would require candidates who were initially considered to be suitable for appointment to provide information for the purpose of integrity checking. If a rehabilitated person met the entry requirements for a job and was shortlisted for appointment, he would not be disqualified for appointment merely because he had a criminal conviction record. The recruiting department, in deciding whether an individual candidate should be appointed, would take into account such considerations as the nature and seriousness of the offence, its relevance to the duties of the post and the operational needs of the post. Each case would be considered on its own merits.

56. The Administration also advised that for government positions to be filled by non-civil service contract staff or vacancies provided by service contractors, as they were of a short-term or temporary nature, the recruiting departments or the relevant service contractors should be given the discretion to decide whether disclosure of past criminal records by job applicants was needed or integrity checking should be conducted for selected candidates, having regard to the nature and operational needs of the jobs.

57. Some members took the view that the measures taken by the Administration were far from adequate to resolve the problem of discrimination against rehabilitated offenders in their job seeking. They considered that the Administration should explore further measures to augment the employment prospects of rehabilitated persons in the private sector. If necessary, the Administration should consider actions, such as introducing legislation, to protect the right of rehabilitated offenders in this respect.

58. Some members pointed out that to eliminate discrimination against rehabilitated offenders in seeking employment, the Administration should put into practice an equitable policy and prove to the public that ex-offenders were not discriminated when seeking employment in the civil service. They suggested that the Administration should take affirmative actions, such as allocating certain portion of jobs in the civil service to rehabilitated offenders or providing tax incentives to encourage the employment of rehabilitated persons by private organizations, to achieve the purpose.

Police's handling of sex workers and searches of detainees

59. The Subcommittee on Police's Handling of Sex Workers and Searches of Detainees formed under the Panel completed it work and submitted its report to the Panel in December 2009 after holding eight meetings with the Administration. The Subcommittee had inspected Police detention facilities and observed the conduct of custody search and the Police's procedures for the inputting of records related to such a search in the Communal Information System. The Subcommittee had received a closed-door briefing by the Police on their undercover operations against vice activities. The Subcommittee had also perused the Police's report on its internal review regarding the searches of arrestees in the Lee Tung Street incident at another closed-door session. Issues discussed by the Subcommittee included the scope and classification of searches on detainees, ranking of authorizing officers for searches involving full removal of underwear, the use of equipment to assist Police officers in the conduct of searches, improvement measures regarding the searches of detainees, monitoring of undercover operations against vice activities, and monitoring of Police officers engaged in undercover anti-vice operations. At the request of the Subcommittee, the Administration has undertaken to provide the Panel with statistics on Level III(c) searches involving full removal of underwear conducted on detainees and the nature of the offences involved on a quarterly basis.

Other issues

60. The Panel had also discussed other issues with the Administration. These included overall progress of anti-drug efforts and the trial scheme on school drug testing in Tai Po District, removal of persons refused entry into Hong Kong, allegation of Mainland law enforcement officers taking enforcement actions in Hong Kong, Law Reform Commission Report on sexual offences records checks for child-related work, crime situation in 2009, updating and replacement of fire services equipment and apparatus, security matters under the "Framework Agreement on Guangdong/Hong Kong Co-operation", integrity management and behavioural guidelines of the Hong Kong Police Force, replacement of emergency ambulances, manpower situation in ICAC, review of ICSO, Daya Bay Nuclear Station Notification Mechanism and operation of the statutory Independent Police Complaints Council.

61. The Panel was also briefed on a number of legislative and financial proposals. These included a legislative proposal to adapt military-related references in the laws of Hong Kong, subsidiary legislation relating to the Castle Peak Bay Immigration Centre, and funding proposals to develop the Aberdeen Fire Station cum Ambulance Depot, enhance Information Technology Infrastructure for the Hong Kong Police Force, inject capital into the Beat Drugs Fund, replace a crash fire tender in the Airport Fire Contingent and enhance the computer systems of the Immigration Department for extension of the e-Channel services.

Meetings held

62. Between October 2009 and June 2010, the Panel held a total of 15 meetings and conducted one visit. The Panel also received a briefing by the Commissioner on Interception of Communications and Surveillance on his Annual Report to the Chief Executive.

Council Business Division 2
Legislative Council Secretariat
30 June 2010

**Appendix I**

**Legislative Council**
**Panel on Security**

**Terms of Reference**

1. To monitor and examine Government policies and issues of public concern relating to security, public order, public safety, corruption-related matters, nationality and immigration.

2. To provide a forum for the exchange and dissemination of views on the above policy matters.

3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.

4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.

5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

**Appendix II**

**Legislative Council**
**Panel on Security**

**Membership list for 2009-2010 session**

| | |
|---|---|
| **Chairman** | Hon LAU Kong-wah, JP |
| **Deputy Chairman** | Hon James TO Kun-sun |
| **Members** | Hon Albert HO Chun-yan<br>Dr Hon Margaret NG<br>Hon CHEUNG Man-kwong<br>Dr Hon Philip WONG Yu-hong, GBS<br>Hon WONG Yung-kan, SBS, JP<br>Hon LAU Wong-fat, GBM, GBS, JP (up to 31 December 2009)<br>Hon Emily LAU Wai-hing, JP<br>Hon Timothy FOK Tsun-ting, GBS, JP<br>Hon Audrey EU Yuet-mee, SC, JP<br>Hon Andrew LEUNG Kwan-yuen, SBS, JP<br>Hon CHIM Pui-chung<br>Hon Cyd HO Sau-lan<br>Hon CHAN Hak-kan<br>Hon WONG Kwok-kin, BBS<br>Hon IP Kwok-him, GBS, JP<br>Hon Paul TSE Wai-chun<br>Hon LEUNG Kwok-hung (up to 28 January 2010)<br>(rejoined on 19 May 2010)<br>Hon WONG Yuk-man (up to 28 January 2010)<br>(rejoined on 26 May 2010)<br><br>(Total : 19 Members) |
| **Clerk** | Mr Raymond LAM |
| **Legal advisers** | Ms Connie FUNG<br>Mr Bonny LOO |
| **Date** | 26 May 2010 |