

立法會
Legislative Council

LC Paper No. CB(2)1178/10-11
(These minutes have been seen
by the Administration)

Ref : CB2/PL/SE

Panel on Security

Minutes of meeting
held on Tuesday, 7 December 2010, at 2:30 pm
in Conference Room A of the Legislative Council Building

Members present : Hon James TO Kun-sun (Chairman)
Hon LAU Kong-wah, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Dr Hon Margaret NG
Hon CHEUNG Man-kwong
Hon WONG Yung-kan, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon CHIM Pui-chung
Hon Cyd HO Sau-lan
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Hak-kan
Hon IP Kwok-him, GBS, JP
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun
Hon LEUNG Kwok-hung
Hon WONG Yuk-man

Members absent : Dr Hon Philip WONG Yu-hong, GBS
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Kwok-kin, BBS

**Public Officers : Item VI
attending**

The Administration

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

Mr CHOW Wing-hang
Principal Assistant Secretary for Security (D)

Mr David CHIU Wai-kai, IDSM
Assistant Director (Personal Documentation)
Immigration Department

Item VII

The Administration

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

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

Mr NG Ka-sing
Assistant Commissioner of Police (Crime)

Mr CHEUNG Kwai-kee
Chief Superintendent of Police
Commercial Crime Bureau

Mr LEE Wing-kong
Senior Superintendent of Police
Commercial Crime Bureau

Ms CHAN Kam-kuk
Chief Inspector of Police
Crime Wing Headquarters

Item VIII

Independent Commission Against Corruption

Dr Timothy TONG Hin-ming
Commissioner

Mr Ryan WONG Sai-chiu, IDS
Head of Operations (Acting)

Mr Ricky YAU Shu-chun
Director of Investigation/Private Sector (Acting)

Mrs WONG CHEUK Wai-kuen
Assistant Director/Administration

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

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

Mr Watson CHAN
Head (Research)

Dr Yuki HUEN
Research Officer 8

Miss Josephine SO
Senior Council Secretary (2) 1

Mr Ian CHOW
Council Secretary (2) 1

Ms Camy YOONG
Clerical Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)416/10-11)

The minutes of the special meeting held on 19 October 2010 were confirmed.

II. Information papers issued since the last meeting

2. Members noted that no information paper had been issued since the last meeting.

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III. Date of next meeting and items for discussion

(LC Paper Nos. CB(2)435/10-11(01) and (02))

Regular and special meetings in January 2011

3. Members noted that the Administration proposed to discuss the following items at the next regular meeting to be held on 4 January 2011 at 2:30 pm -

- (a) Replacement of the Case Processing System of Customs and Excise Department;
- (b) Construction of fire station-cum-ambulance facility at Cheung Yip Street, Kowloon Bay;
- (c) Review on procurement of fire services equipment; and
- (d) Daya Bay Nuclear Power Station Notification Mechanism - Progress Report.

4. The Chairman said that the Civil Human Rights Front had suggested in its submissions dated 10 November 2010 and 6 December 2010, which had been circulated to members vide LC Paper Nos. CB(2)263/10-11(01) and CB(2)485/10-11(01), that the Panel should hold a meeting to receive the views of deputations on the subject "Police's handling of public meetings and public processions, and prosecution of assault on Police officers", which had been discussed by the Panel at the special meeting on 11 November 2010.

5. The Deputy Chairman noted with grave concern that traffic and passenger flow at various boundary control points ("BCPs") had kept on increasing. As the "Individual Visit Scheme" continued to expand, he was particularly concerned about the capacity of facilities at BCPs and the capability of the relevant departments in the handling of passenger and vehicular clearance travelling between Hong Kong and the Mainland, especially during the festive periods. He suggested that measures taken by the Administration to facilitate immigration clearance of passengers and vehicles at BCPs should be discussed by the Panel before the coming Chinese New Year holidays in early February 2011.

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6. The Chairman expressed concern about recent media reports that according to WikiLeaks, there was intelligence suggesting that Hong Kong was likely to be a target for terrorist attack during the Olympic Equestrian Events in 2008. The Chairman recalled that while the Director of Immigration informed the media on 16 June 2008 that there was intelligence suggesting that Hong Kong was likely to be a target for such attack, the Administration denied in a press release issued in the same evening that there was such intelligence and stated that the terrorist threat level remained "Moderate". The Secretary for Security also informed the media in a press briefing in August 2008 that there was no accurate intelligence suggesting that Hong Kong was a target. The Chairman was gravely concerned about the Administration's handling and dissemination of information relating to terrorist threat level. He said that the Panel should discuss the issue at the earliest possible time.

7. In view of the number of items proposed for discussion in January 2011, the Chairman advised that he would consider holding a special meeting in January 2011, in addition to the regular meeting on 4 January 2011, to enable members to discuss all the items proposed respectively by the Administration and members.

(Post-meeting note: With the concurrence of the Chairman, a special meeting of the Panel would be held at 8:45 am on 17 January 2011. The notices of the regular and special meetings were issued to members respectively vide LC Paper Nos. CB(2)611/10-11 and CB(2)612/10-11 on 16 December 2010.)

8. The Chairman reminded members that another special meeting would be held on 26 January 2011 at 8:30 am for the Panel to receive a briefing by the Commissioner of Police on the crime situation in 2010.

Other issues

9. Mr Albert HO noted from recent media reports that Vietnamese boat people and nationals of certain countries, such as Cuba or Korea, were not eligible for acquiring Chinese nationality even if they were Hong Kong permanent residents with right of abode in Hong Kong. He expressed concern whether and why certain categories of foreign nationals who had resided in Hong Kong for years were not eligible for Chinese nationality, and whether such policy would contravene the Hong Kong Bill of Rights and any other international conventions currently applied to Hong Kong. The Chairman suggested and members agreed

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that the Administration should be requested to provide information on how application for Chinese nationality was handled, the total number of such applications received, approved and rejected so far, as well as the number of stateless persons currently residing in Hong Kong.

IV. Outline of research study on mechanisms for handling torture claims in selected jurisdictions

(LC Paper No. CB(2)435/10-11(03))

10. Head (Research) briefed members on the proposed research outline on mechanisms for handling torture claims in selected jurisdictions.

11. Members noted that the Research Division proposed to study the relevant mechanisms in the United Kingdom, Australia, the United States and Switzerland.

12. The Deputy Chairman suggested that the research study should also cover the experience of Asian countries, such as Japan, in the handling of torture claims.

Legal Adviser

13. Dr Margaret NG suggested that the research study should provide information on whether the mechanisms for handling/assessing torture claims in the selected overseas jurisdictions were able to meet the high standards of fairness, as required by the courts in the Hong Kong Special Administrative Region. She asked the legal adviser to the Panel to provide input on whether the mechanisms in the selected overseas jurisdictions had been subject to legal challenge.

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14. Dr Margaret NG added that she was given to understand that there was some confusion in the legal sector regarding the process and procedures for the handling of torture claims under the enhanced screening mechanism. She considered that the Administration should be requested to provide the relevant information, including the procedures involved in processing torture claims, how a duty lawyer was assigned and the duties/role of a duty lawyer in the process.

15. Members endorsed the proposed research outline.

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V. Proposal to form a subcommittee to review the Daya Bay Nuclear Power Station Notification Mechanism
(LC Paper No. CB(2)451/10-11(01))

16. The Chairman referred members to the Administration's letter dated 6 December 2010, which was tabled at the meeting, in response to the Panel's proposal to form a subcommittee to review the Daya Bay Nuclear Power Station Notification Mechanism.

(Post-meeting note: The Administration's letter was circulated to members vide LC Paper No. CB(2)503/10-11 on 8 December 2010.)

17. Noting that the item "Daya Bay Nuclear Power Station Notification Mechanism - Progress Report" would be discussed at a meeting to be held in January 2011, the Chairman suggested and members agreed to defer the discussion on whether to form a subcommittee to review the Daya Bay Nuclear Power Station Notification Mechanism until the latest developments were discussed at the January meeting.

VI. Privacy Compliance Assessment Report for the Smart Identity Card System
(LC Paper Nos. CB(2)2137/09-10(01), CB(2)435/10-11(04) and (05))

18. Under Secretary for Security ("US for S") and Assistant Director (Personal Documentation) of the Immigration Department ("AD of ImmD") briefed members on the recommendations made by the Office of the Privacy Commissioner for Personal Data ("PCO") in the Privacy Compliance Assessment Report ("the Report") on the Smart Identity Card System ("SMARTICS"), and the follow-up actions taken by the Immigration Department ("ImmD") as set out in the Administration's paper.

19. The Deputy Chairman enquired about the follow-up actions taken by ImmD in respect of Recommendation 9 in the Annex to the Administration's paper, where PCO recommended ImmD to enhance the practice of its Confidential Records Unit ("CRU") in providing smart identity ("ID") card data to other government departments.

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20. AD of ImmD responded that under the current practice, the smart ID card data of the person were retrieved from the computer system and the specific data requested in the printed copy were extracted manually before they were provided to the requesting government department. ImmD was enhancing the system so that only the specific data requested would be extracted automatically by the computer system before being printed and provided to the requesting government department. The enhancement work would be completed by February 2011.

21. Referring to paragraphs 4.18 and 4.19 of the Report, the Deputy Chairman asked how ImmD had followed up the issues raised by PCO.

22. AD of ImmD responded that although there were currently guidelines on the classification of personal data in SMARTICS as "restricted" or "confidential", PCO was of the view that the guidelines were not clear enough. Thus, the SMARTICS Security Guidelines had been revised to provide more detailed classification of information in SMARTICS and the relevant handling procedures.

23. Referring to the findings in part (B) of Appendix V to the Report, Dr Margaret NG opined that the findings indicated that ImmD staff had not been provided with sufficient guidelines and training on privacy protection. Dr PAN Pey-chyou asked whether refresher training courses were provided to existing ImmD staff on a regular basis.

24. AD of ImmD responded that all new staff of ImmD were provided training on privacy protection. Refresher training courses were also provided to all staff on a regular basis. Instructions and guidelines specific to a post were also provided to ImmD staff before posting. Circulars, orders and guidelines were circulated to all ImmD staff on a half-yearly basis. In response to the findings of PCO, training sessions on personal data protection had been conducted for ImmD staff between September and November 2010. Such training sessions would also be provided to all new staff. Dr Margaret NG requested the Administration to provide a written response detailing the training on privacy protection provided to ImmD staff after the Report was released.

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25. Dr PAN Pey-chyou asked whether ImmD had adopted any measures to prevent unauthorized access to or downloading of personal data in SMARTICS, such as through the USB ports of the computer workstations.

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26. AD of ImmD explained that unauthorized access to SMARTICS by ImmD staff was prohibited. The workstations of ImmD had no USB ports for its staff to download any data from SMARTICS. All access to personal data in SMARTICS was recorded by the system and such record would serve as evidence in the event of prosecution against the staff concerned.

27. Referring to paragraphs 4.32 and 4.33 of the Report, the Chairman asked whether ImmD had implemented PCO's recommendation of revising the identity card application form to specify clearly the consequences of failing to supply personal data.

28. AD of ImmD responded that as the proposed amendment would apply to all relevant forms involving the collection of personal data by ImmD and other government departments, ImmD had sought further advice from PCO and the Department of Justice on the necessary amendments and wordings. The recommendation concerned had been implemented and the electronic version of the forms on the website of ImmD had been updated. For green management, the paper version of the forms would be revised when the existing stock was used up. In the meantime, if the issue of non-compliance arose upon receipt of an application made in the old form, ImmD staff would verbally explain to the applicants the consequences of failure to supply personal data.

29. Referring to paragraphs 5.54 to 5.59 of the Report, Mr WONG Yuk-man queried why three backup tapes, which were supposed to be recalled from the backup office to the headquarters for recycle use, could not be located in the backup office but were later found located among a pool of scratch tapes in the headquarters.

30. AD of ImmD explained that the discrepancy between the reported and actual location of the tapes was caused by a software error of the recall system. The software error, which was identified in August 2009, was fixed and tested in December 2009. In the meantime, a standing instruction on the handling of such discrepancy scenario in future had been issued. The standing instruction required all ImmD staff to report such irregularities as soon as possible, so that staff of the following shift could proceed to recover the missing backup tapes. He stressed that data stored in backup tapes could only be retrieved by ImmD and all backup tapes would automatically become obsolete after 14 days. Referring to paragraph 5.59 of the Report, Mr WONG Yuk-man requested the Administration to provide a more detailed response on how the

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movements of backup tapes would be rigorously monitored and how guidelines and procedures would be beefed up where necessary.

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31. The Chairman requested the Administration to provide an update of the measures adopted and actions taken by ImmD between the release of the Report in July 2010 and December 2010.

VII. Police measures against cross boundary deceptions

(LC Paper Nos. CB(2)435/10-11(06) and (07))

32. US for S briefed members on the major features and *modus operandi* of the more common types of cross-boundary deception cases, including "street deception", "telephone scam" and "lottery fraud", and their respective trends. Assistant Commissioner of Police (Crime) ("ACP") advised that the Police had all along been adopting a four-pronged strategy to combat cross-boundary deceptions. Details of the measures taken by the Police against cross-boundary deceptions were set out in the Administration's paper.

33. Mr IP Kwok-him and Mr Paul TSE expressed concern about the prevalence of internet fraud. Referring to common technology crimes, such as electronic auction fraud ("e-auction fraud") and bogus websites, Mr IP and Mr TSE enquired about the Police's measures against such crimes.

34. Echoing Mr IP's and Mr TSE's concern about internet fraud, Dr PAN Pey-chyou said that to his knowledge, there was an increasing trend of swindlers sending out "fishing" emails that purported to be official online correspondence from a company or bank. Victims were then misdirected to a bogus website, which apparently looked the same as the legitimate website. Victims were thus tricked into thinking that they were logging into a genuine website, and entered their personal information as prompted, such as user ID, PIN number, name, address and credit card number. Their personal information was then misused in a variety of ways causing monetary loss to the victim.

35. In response, ACP advised that -

- (a) as computer and information technology was advancing rapidly, criminals had taken advantage of technology to commit cyber crimes. The Technology Crime Division ("TCD") under the Commercial Crime Bureau was

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committed to the prevention and detection of technology crime. It was tasked to carry out technology-related investigations, collection of digital evidence, forensic examinations of computer systems, and liaison with local and international agencies for timely and efficient exchange of intelligence;

- (b) it was the job of TCD to remind all "netizens" to stay vigilant, thereby avoiding potential crime hazards. To increase public awareness, much publicity had been launched through the media over the past few years. The Police also disclosed the *modus operandi* adopted by fraudsters and disseminated anti-deception messages to the public through various media, such as television programmes, publicity leaflets and posters; and
- (c) whilst the *modus operandi* employed might be different and sophisticated, technology crime was basically not that much different from traditional crime. As a smart "netizen", one should not disclose his or her personal data such as name, email address and passwords in online forums. Any victims of cyber deception cases should report to the Police immediately.

36. Responding to Mr IP Kwok-him's enquiry about the detection rate in respect of e-auction frauds, ACP and Chief Superintendent of Police (Commercial Crime Bureau) advised that -

- (a) the detection rate of e-auction frauds was comparatively low, since deception cases of such nature might involve acts committed outside Hong Kong, thereby imposing technical difficulties in investigation, search for or follow-up on relevant leads, collection of evidence, enforcement and exercise of jurisdiction;
- (b) notwithstanding the difficulties, the Police attached great importance to improving the detection rate of technology crimes. As a matter of fact, TCD had made every effort to detect e-auction frauds. It had issued investigation guidelines to various investigation units. Training of frontline investigators had also been strengthened to enhance their professional capability in investigating technology crimes; and

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- (c) in a previous operation, the Police had successfully cracked down an e-auction fraud syndicate and arrested two persons suspected of engaging in e-auction fraud.

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37. The Chairman requested the Administration to provide in writing more detailed information on the number of e-auction fraud cases in the past few years and the detection rate for such crime.

38. The Deputy Chairman expressed concern over recent media reports about tourists/customers suspected of selling fake gold items to jewellery and goldsmith stores. He asked about the figures and trends in deception cases involving the selling of fake gold items.

39. ACP responded that the Police was aware of the recently reported deception cases involving the selling of fake gold artefacts to jewellery and goldsmith stores. Although the cases were widely reported by the media, no report of financial loss had been received from any jewellery or goldsmith shops. The Crime Prevention Bureau had already contacted the leading trade associations in the goldsmith and the jewellery industries to give them advice and to seek their co-operation in reporting fake gold deception cases to the Police if any confirmed or suspected cases were detected.

40. The Deputy Chairman held the view that the Police should follow up those cases widely reported by the media in a more proactive manner. He said that the Police should take the initiative to contact the media reporting on the incidents and find out which jewellery stores had suffered loss.

41. The Deputy Chairman said that he had recently learned from some members of the public that complaint cases about timeshare schemes which had been reported to the Police were not followed up. He asked whether timeshare schemes were classified as deception, and the Police's course of actions when members of the public who suffered financial loss as a result of joining direct-marketing timeshare schemes reported such cases to the Police.

42. In reply, ACP advised that -

- (a) the Police did not receive any reports concerning the marketing/sales tactics of timeshare schemes in 2008. There were six cases in 2009, compared with five in the first nine

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months of 2010. The Police had investigated into all 11 cases, to determine whether they contained the elements of the crime of fraud;

- (b) in determining whether or not to conduct an investigation into alleged cases of deception, the Police would take into account various factors, including whether the facts of a case as provided by the complainants would amount to fraud, whether the timeshare sales representatives had used high-pressure sales tactics to persuade customers to join the timeshare schemes, and the legal advice obtained from the Department of Justice; and
- (c) the Police would spare no efforts in taking out prosecutions against deception once sufficient evidence was available.

43. Noting the difficulty in collecting evidence to prove the offence of deception in the sales of timeshare schemes, the Deputy Chairman suggested that the Police should consider staging undercover operations to detect whether such element of crime existed.

44. Sharing the Deputy Chairman's concern over the selling of fake gold items, Mr Paul TSE cautioned that such deception cases would have adverse impact on Hong Kong's reputation as a shopping paradise. He urged the Police to step up its efforts in preventing and combating such crime.

45. Dr PAN Pey-chyou said that he had recently received complaints from Mainland residents about investment fraud in the trading of London Gold. He asked whether and what assistance could be provided to the complainants. The Chairman suggested that Dr PAN might pass information about the cases to the Police for follow-up.

46. Responding to the Chairman's enquiry about the mechanism for the dissemination of information and advice to the public on new *modus operandi* identified in deception activities, ACP advised that the Police would ensure timely dissemination of information to the public to avoid the recurrence of similar incidents.

47. The Chairman considered that the Police should step up its efforts to prevent all form of deception through enhanced publicity and education. He suggested that the Police should consider publishing a booklet with exemplary cases featuring the *modus operandi* adopted by

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fraudsters in different types of deception, to enhance the public's understanding of the subject.

48. ACP took note of the Chairman's suggestion. He stressed that the Police had all along been organizing territory-wide public education and publicity programmes to enhance public's alertness about deception cases commonly found in Hong Kong.

VIII. Creation of a Forensic Accountant Grade and a Chief Commission Against Corruption Officer Rank
(LC Paper No. CB(2)435/10-11(08))

49. Commissioner, Independent Commission Against Corruption ("C/ICAC") briefed members on the proposal for the creation of a new grade of Forensic Accountant ("FA") comprising three ranks and a new rank of Chief Commission Against Corruption Officer ("CCACO") in the Commission Against Corruption Officer ("CACO") grade in the Independent Commission Against Corruption ("ICAC"), as detailed in the paper provided by ICAC.

50. Dr Margaret NG said that investigation of complex corruption cases and supervision of the use of covert surveillance and telecommunications interception in ICAC investigations under the regime provided in the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589) had all along been part of the major duties of ICAC officers. She asked whether there were significant changes over time in the nature of ICAC investigations or the workload among the officers concerned that justified the creation of a new FA grade and the Chief Forensic Accountant ("CFA") post at directorate level, as well as the creation of a new rank and two posts of CCACO in the CACO grade.

51. In response, C/ICAC and Head of Operations/ICAC (Acting) made the following points -

- (a) in its report on the Grade Structure Review of the Disciplined Services issued in November 2008, the Standing Committee on Disciplined Services Salaries and Conditions of Service ("SCDS") fully recognized the need for ICAC to develop a special professional cadre of FA by offering a reasonably attractive remuneration package and establishing a clear career path. SCDS considered that establishing a

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dedicated grade of FA in ICAC would openly manifest the determination and efforts of ICAC in fighting corruption and enable ICAC to adjust its pay and requirements to meet its dynamic operational needs;

- (b) there had been an upsurge of corruption-related fraud cases in recent years, many of which involved complex business transactions, financial markets, global flow of funds and cross-border money laundering. Between 2007 and 2009, ICAC processed a total of 515 cases. The heavy caseload had posed a strain on ICAC's manpower resources;
- (c) with the advent of information technology and the rapid changes in the financial markets, corruption cases facilitated by financial fraud were becoming more complex. ICAC was in need of experienced professional with knowledge and integrated skills in accounting, auditing and investigation to provide professional advice to frontline officers in the investigation of complex corruption cases, and give evidence in court on financial and accountancy related matters;
- (d) however, in recent years, there had been an acute shortage of experienced accountants in the market and ICAC had encountered difficulties in retaining qualified and experienced forensic accountants; and
- (e) to rationalize the manpower support in forensic accounting, ICAC proposed to create a new FA grade which would facilitate the offer of a reasonably attractive remuneration package, establish a clear career path for the officers concerned and serve as a form of non-cash recognition for officers working in the Financial Investigation Sections. The establishment of a dedicated grade of FA which had experience and professional expertise in forensic accounting would also increase the credence of ICAC expert witnesses in court proceedings.

52. Regarding the proposal to upgrade two Senior Commission Against Corruption Officer ("SCACO") posts to the proposed new rank of CCACO, Director of Investigation/Private Sector (Acting) advised that at present, each of the 19 investigation/support groups in the Operations Department of ICAC was led by a Principal Investigator ("PI") pitched at the rank of SCACO. Two PIs were, however, performing at a level of

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responsibilities and accountability higher than those required of their rank. To cope with the functional requirements arising from their increasing responsibilities both in terms of complexity and volume, ICAC proposed to upgrade two SCACO posts to the proposed rank of CCACO which would be filled by promotion.

53. Dr Margaret NG hoped that ICAC could explain in its paper to be submitted to the Establishment Subcommittee ("ESC") the need to create the CFA and CCACO posts under discussion, with emphasis on the changes over time necessitating the increase in manpower support.

54. The Deputy Chairman said that all the difficulties encountered by ICAC should have been anticipated from the beginning when ICSO came into operation in August 2006, and ICAC should have reviewed and planned ahead the overall requirement for manpower resources. He expressed concern about ICAC's late submission of the staffing proposal. He was also concerned whether any of the duties of the two proposed CCACO posts would overlap with each other, considering that their core duties were primarily ICSO-related.

55. C/ICAC responded that the present staffing proposal was drawn up more than three years ago. Before the proposal was submitted to the Legislative Council for consideration, ICAC needed to obtain the support of SCDS first. C/ICAC further assured members that there would not be any overlapping of duties between the two proposed posts of CCACO as there would be a clear delineation and separation of duties between the posts.

56. The Chairman concluded that members had no objection to the submission of the staffing proposal to ESC for consideration. He requested ICAC to follow up the issues and concerns raised by members in its paper to be submitted to ESC.

57. The meeting ended at 4:30 pm.