

**For discussion on
6 November 2012**

Legislative Council Panel on Security

**Creation of a Supernumerary Assistant Director,
Commission Against Corruption Post in the
Independent Commission Against Corruption**

PURPOSE

This paper seeks Members' views on the proposal to create a supernumerary Assistant Director, Commission Against Corruption (AD, CAC) post on ICAC Pay Scale Point 46, equivalent to D2, in the Operations Department of the Independent Commission Against Corruption (ICAC) for a period of 30 months from 12 December 2012 to 11 June 2015 to spearhead corruption investigations and preparation for criminal proceedings of major public interest, notably the case ESCC 2530/2012 (HKSAR v HUI Rafael Junior & four others).

BACKGROUND

2. There is a need to create a supernumerary post of Assistant Director, Commission Against Corruption (AD, CAC) (ICAC Pay Scale Point 46, equivalent to D2) in the Operations Department of the ICAC to spearhead corruption investigations of great sensitivity, exceptional magnitude and complexity upon the lapse of the existing supernumerary post of Assistant Director / Special Duty (AD/SD) in the Operations Department on 12 December 2012 which was created under delegated authority with effect from 12 June 2012 for six months.

PROPOSAL

3. We propose to create one supernumerary AD, CAC post in the Operations Department of the ICAC, designated as AD/SD, for a period of 30 months from 12 December 2012 to 11 June 2015 to continue to pursue the investigations and preparation for related criminal proceedings.

JUSTIFICATION

The case

4. Emanating from the major investigations to be spearheaded by the proposed supernumerary AD/SD is the prosecution involving a former Chief Secretary for Administration of the Hong Kong Government and some key personnel of listed companies (i.e. ESCC 2530/2012). The case involves eight charges – two of misconduct in public office, contrary to Common Law; three of conspiracy to commit misconduct in public office, contrary to Common Law and Section 159A of the Crimes Ordinance (Cap. 200); two of conspiracy to offer advantages to a public servant, contrary to Section 4(1)(a) of the Prevention of Bribery Ordinance (Cap. 201) and Section 159A of the Crimes Ordinance; and one of furnishing false information, contrary to Section 19(1)(b) of the Theft Ordinance (Cap. 210). The defendants were charged on 13 July 2012 and were brought before the Eastern Magistracy on the same day. On 12 October 2012, the case was adjourned to 25 January 2013 for mention. More details of the case are set out in the press release issued by the ICAC on 13 July 2012 at **Enclosure 1**.

Interim staffing arrangements

5. There are at present nine Investigation Groups under two Investigation Branches (i.e. Investigation Branches 1 and 2) in the Operations Department of the ICAC which are responsible for conducting investigations into the public and private sector corruption complaints. They are heavily engaged in the investigations of corruption complaints received. As at 1 October 2012, the caseload stood at 2 258 (including 413 election cases), which was 9% higher than the caseload in the same period in 2011. It is therefore operationally infeasible and undesirable to assign the aforesaid major investigations and preparatory work for related criminal proceedings to the existing Investigation Groups as they have no spare capacity to undertake the tasks involved.

6. To centralise efforts in handling the highly sensitive, complex and extensive investigations and pre-trial preparation, in addition to the supernumerary AD/SD post created under delegated authority, a dedicated Special Duty Group staffed by one Senior Commission Against Corruption Officer (SCACO), two Commission Against Corruption Officers (Upper) (CACOs(U)), eight Commission Against Corruption Officers (Middle/Lower) (CACOs(M/L)) and four Assistant Commission Against Corruption Officers (ACACOs) has been temporarily established through redeployment of resources within the Operations Department. The work of these officers in their original Investigation Groups has been taken up by their peers in the interim.

Longer-term need for directorate steer

7. The complexity, sensitivity and significance of the major investigations undertaken by the Special Duty Group require the full-time steer of a senior officer at AD level who has a wealth of experience in leading investigations of a large scale and complex nature to ensure that effective and timely investigative actions are taken and professional support is provided to the Prosecuting Counsel. Apart from overseeing the highly sensitive investigations handled by the Special Duty Group, notably case ESCC 2530/2012 which is still under investigation and pre-trial preparation, a senior officer at AD level is required to actively engage in conducting enquiries with high-ranking officials of the Government, quasi-government agencies and business entities on major policy issues; liaising with local and overseas law enforcement agencies on investigation-related matters; attending conferences with the Director of Public Prosecutions and Counsel in the prosecution team both locally and overseas on pre-trial preparation; apprising the Senior Directorate of the progress of investigations; and making recommendations to the Senior Directorate in response to issues requiring attention. Taking case ESCC 2530/2012 as illustration, it is not only the large number of parties involved and voluminous documents and transactions stretched across a prolonged period of time, but also the serious and complex nature of the case which is unprecedented, that requires the steer of a senior and experienced officer at directorate level. His personal attention is of utmost importance in evidence collection and establishing the proof in view of the obliqueness and subtlety of the matters involved. His professional experience and management skills are also essential in supervising the investigations and preparatory work at the pre-trial stage and assisting the prosecution team during the trial proper.

8. Given the above, there is a need to create a time-limited AD/SD post upon the lapse of the current supernumerary post after 11 December 2012. Time-limited non-directorate posts to man the Special Duty Group will be created under delegated authority to support the proposed AD/SD post. Having practically assessed the progress of the investigations, including the trial and potential applications made before the trial in respect of case ESCC 2530/2012, we anticipate that the post of AD/SD and the Special Duty Group will be required until June 2015 to cope with the operational requirements. AD/SD, together with AD/Investigation Branch 1 (AD/1) and AD/Investigation Branch 3 (AD/3), reports to Director of Investigation / Government Sector.

9. The proposed job descriptions of the AD/SD post are set out at **Enclosure 2**. The organisation chart of the Operations Department showing the proposed creation of the AD/SD post is at **Enclosure 3**.

NON-DIRECTORATE SUPPORT

10. The Special Duty Group comprising one SCACO, two CACOs(U), eight CACOs(M/L) and four ACACOs as mentioned in paragraph 6 above is providing and will continue to provide investigative support for the supernumerary AD/SD post. One time-limited Personal Secretary I post will also be created to provide secretarial and administrative support.

ALTERNATIVES CONSIDERED

11. At present, there are four ADs on permanent establishment in the Operations Department overseeing the functioning of four Investigation Branches across a spectrum of investigation and related duties. We have critically examined the possible redeployment of existing directorate officers in the Department to take up the tasks of AD/SD. As the recurrent work schedules have already fully occupied the four ADs, it is operationally infeasible to deploy any of them to take up the responsibilities of AD/SD in addition to their own commitments without adversely affecting the discharge of their duties and compromising the quality of work.

12. AD/1 and AD/2 are responsible for directing and overseeing investigations into corruption complaints in the public sector and the private sector undertaken by Investigation Branches 1 and 2 respectively. Under the two Branches are nine Investigation Groups (four under Investigation Branch 1 and five under Investigation Branch 2) each assigned with their own charter of cases. AD/1 and AD/2 steer the investigations under their charge; monitor the progress and quality of the investigations; liaise with counterparts in the Department of Justice, disciplined forces, other government departments, public / regulatory / advisory bodies on case-related matters; and deploy resources and oversee the administration of the Branches. The workload of both ADs is increasing with an increased number of corruption complaints (including election complaints) received.

13. AD/3 and AD/4 command Investigation Branches 3 and 4 respectively in providing a range of operational and administrative support for Investigation Branches 1 and 2. AD/3 oversees intelligence gathering and management, surveillance and undercover operations, informant handling, witness protection, and provision of technical equipment for frontline operations. He also supervises Senior Principal Investigator (SPI) (at the rank of Chief Commission Against Corruption Officer, D1-equivalent level) of G Group in respect of his duties relating to the Interception of Communications and Surveillance Ordinance (ICSO). Whilst the other SPI (head of R Group) who is the Compliance Assurance Officer under the ICSO is directly answerable to Director of Investigation / Government Sector in respect of inquiries into suspected cases of irregularity or non-compliance, he is administratively under the supervision of AD/3. On the other hand, AD/4 supervises a series of support functions including the receipt and processing of corruption complaints by the Report Centre, the operation of the Detention Centre, the handling of minor complaints by the Quick Response Team, international and Mainland operational liaison, confiscation of crime proceeds, legal, statistical and management research, training and development of CACO grade officers, information technology management and computer forensics, general administration and internal audit. Under his command is also a Chief Forensic Accountant at D1-equivalent level who heads the Forensic Accountant Group in providing professional and dedicated forensic accounting services for frontline investigations. Similar to their counterparts in Investigation Branches 1 and 2, AD/3 and AD/4 are also responsible for deployment of resources and administration within their Branches.

14. The scope, complexity and significance of the duties outlined above require the personal attention of the four ADs on a full-time basis. There are no viable alternatives except for the creation of the supernumerary AD/SD post in order to continue to spearhead the investigations and preparation for criminal proceedings of such sensitivity, magnitude and complexity.

FINANCIAL IMPLICATIONS

15. The proposed creation of the supernumerary AD/SD post in the ICAC will bring about an additional notional annual salary cost at mid-point of \$1,696,200. The full annual average staff cost, including salaries and staff on-cost, is \$2,162,000.

16. The notional annual salary cost at mid-point of the 16 non-directorate posts as stated in paragraph 10 above is \$10,608,660 and the full annual average staff cost, including salaries and staff on-cost, is \$14,775,000.

17. We have earmarked sufficient provision in the 2012-13 Estimates and will include sufficient provision in the draft Estimates of the subsequent years to meet the cost of this proposal.

ADVICE SOUGHT

18. Members are invited to comment on the proposal. Subject to Members' support, we will proceed to seek the recommendation of the Establishment Subcommittee in November 2012 and approval from the Finance Committee afterwards.

Independent Commission Against Corruption
November 2012



Former Chief Secretary and four others face ICAC charges of bribery and misconduct

A former Chief Secretary for Administration (CS) of the Hong Kong Government, three senior members of a listed company in Hong Kong (Company A) and a businessman have been charged by the ICAC today (Friday) with a total of eight alleged offences including conspiracy to offer advantages to a public servant and misconduct in public office, and will appear in Eastern Magistracy at 2:30 pm today for mention.

The defendants are D1, 64, former CS of the Government of the Hong Kong Special Administrative Region and former managing director of the Mandatory Provident Fund Schemes Authority (MPFA); D2, 60, D3, 59, both joint chairmen of Company A; D4, 65, executive director of Company A; and D5, 61, businessman.

The eight charges include two of misconduct in public office and three of conspiracy to commit misconduct in public office; two of conspiracy to offer advantages to a public servant, contrary to Section 4(1)(a) of the Prevention of Bribery Ordinance and Section 159A of the Crimes Ordinance; and one of furnishing false information.

D1 alone faces two misconduct charges, which allege him of, in the course of or in relation to his public office, namely managing director of MPFA and CS, having wilfully misconducted himself by accepting the rent free use of two flats and three unsecured loans, failing to disclose or declare such matters to the MPFA and the Hong Kong Government, and involving himself in matters in his official capacities.

D1 and D2 face a joint charge of conspiracy to commit misconduct in public office, while D1 and D3 jointly face a similar conspiracy charge.

D1, D2, D4 and D5 are also charged with one count of conspiracy to commit misconduct in public office, which alleges them of having conspired together for D1 to receive a series of payments from D2, D4 and D5.

D1 and D3 face one count of conspiring together to offer D1 the annual extensions of an unsecured loan advanced by a subsidiary of Company A as a reward for D1 to remain favourably disposed to D3 and/or his interests.

D1, D4 and D5 are also jointly charged with one count of conspiring together to offer D1 a series of payments from D4 and D5 as a reward for D1 to remain favourably disposed to D4 and/or his interests.

D1 and D3 also jointly face one count of furnishing false information on an invoice for settlement of consultancy fees.

The above offences allegedly took place between June 2000 and January 2009.

The case arose from a corruption complaint. Subsequent ICAC enquiries revealed the above alleged offences.

The defendants have been released on ICAC bail, pending their court appearance this afternoon.

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Job Description
Assistant Director / Special Duty

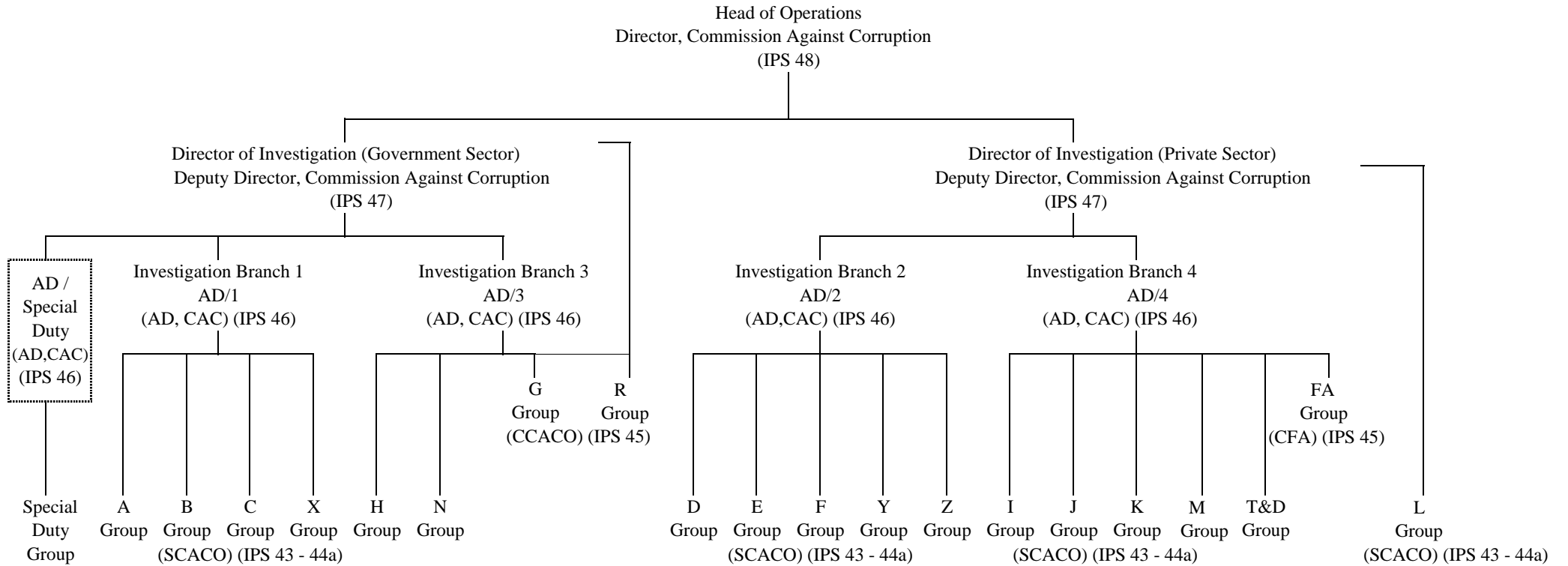
Rank : Assistant Director, Commission Against Corruption (IPS 46)

Responsible to : Director of Investigation / Government Sector

Major Duties and Responsibilities –

1. To steer the investigations and preparation for criminal proceedings undertaken by the Special Duty Group to ensure that effective and timely investigative actions are taken and a high standard is maintained for pre-trial preparation.
2. To conduct enquiries with high-ranking officials of the Government, quasi-government agencies and business entities on major policy issues.
3. To liaise with local and overseas law enforcement agencies on investigation-related matters.
4. To attend conferences with the Director of Public Prosecutions and Counsel in the prosecution team both locally and overseas on pre-trial preparation.
5. To apprise the Senior Directorate of the progress of investigations, and to make recommendations to the Senior Directorate in response to issues requiring attention.

Organisation Chart of the Operations Department, ICAC



Legend

Rank

- AD Assistant Director
- CFA Chief Forensic Accountant
- CCACO Chief Commission Against Corruption Officer
- SCACO Senior Commission Against Corruption Officer
- Supernumerary AD post proposed to be extended

Group / Section

- FA Forensic Accountant
- T&D Training & Development