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Establishment Subcommittee of the Finance Committee

Minutes of the 9th meeting
held in Conference Room 2 of Legislative Council Complex
on Friday, 22 February 2019, at 8:30 am

Members present:

Hon Mrs Regina IP LAU Suk-ye, GBS, JP (Chairman)
Hon Holden CHOW Ho-ding (Deputy Chairman)
Hon James TO Kun-sun
Hon WONG Ting-kwong, GBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Steven HO Chun-yin, BBS
Hon WU Chi-wai, MH
Hon YIU Si-wing, BBS
Hon CHAN Chi-chuen
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon IP Kin-yuen
Dr Hon Elizabeth QUAT, BBS, JP
Hon Martin LIAO Cheung-kong, SBS, JP
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, SBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon Alvin YEUNG
Hon CHU Hoi-dick
Hon SHIU Ka-fai
Hon SHIU Ka-chun
Dr Hon Pierre CHAN
Hon CHAN Chun-ying, JP

Hon Jeremy TAM Man-ho
Hon AU Nok-hin
Hon Vincent CHENG Wing-shun, MH
Hon Tony TSE Wai-chuen, BBS

Members absent:

Hon HO Kai-ming
Hon YUNG Hoi-yan

Public Officers attending:

Ms Carol YUEN Siu-wai, JP	Deputy Secretary for Financial Services and the Treasury (Treasury) 1
Mr Brian LO Sai-hung, JP	Deputy Secretary for the Civil Service 1
Dr CHUI Tak-yi, JP	Under Secretary for Food and Health
Mr Gilford LAW Sun-on	Principal Assistant Secretary for Food and Health (Food)2
Mrs Avia LAI WONG Shuk-han, JP	Head, Private Columbaria Affairs Office Food and Environmental Hygiene Department
Mr Sonny AU Chi-kwong, PDSM, PMSM, JP	Under Secretary for Security
Ms Maggie WONG Siu-chu	Deputy Secretary for Security 3
Mr Billy WOO Tak-ying	Principal Assistant Secretary for Security (Review)
Mr LAW Chun-nam, IDSM	Deputy Director of Immigration
Mr Isaac SO Chi-keung	Acting Assistant Director of Immigration (Removal Assessment and Litigation)
Mrs Cherry TSE LING Kit-ching, JP	Permanent Secretary for Home Affairs
Mrs Angelina CHEUNG FUNG Wing-ping, JP	Deputy Secretary for Home Affairs (2)
Ms YING Fun-fong, JP	Project Manager (Home Affairs Bureau)
Mr Eric CHENG Siu-fun	Principal Assistant Secretary for Home Affairs (West Kowloon Cultural District)
Ms Alice PANG, JP	Project Manager (South) Civil Engineering and Development Department

Mr Edmund CHAN Ping-wa	Chief Engineer (South 2) Civil Engineering and Development Department
Mr Wallace LAU Ka-ki, JP	Deputy Secretary for Transport and Housing (Transport) ⁴
Mr Simon LI Tin-chui, JP	Director-General of Civil Aviation
Miss Linda SO Wai-sze	Deputy Director-General of Civil Aviation (2)
Mr LAM Sai-hung, JP	Permanent Secretary for Development (Works)
Mr John KWONG Ka-sing	Head of Project Cost Management Office Development Bureau
Mr Joseph LO Kwok-kuen	Chief Assistant Secretary (Works) ¹ , Development Bureau

Clerks in attendance:

Mr Hugo CHIU	Senior Council Secretary (1) ⁴
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Staff in attendance:

Miss Sharon LO	Senior Council Secretary (1) ⁹
Ms Alice CHEUNG	Senior Legislative Assistant (1) ¹
Miss Yannes HO	Legislative Assistant (1) ⁷
Ms Haley CHEUNG	Legislative Assistant (1) ¹⁰

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The Chairman drew members' attention to the information paper ECI(2018-19)14, which set out the latest changes in the directorate establishment approved since 2002 and the changes to the directorate establishment in relation to the seven items on the agenda. She then reminded members that in accordance with Rule 83A of the Rules of Procedure ("RoP"), they should disclose the nature of any direct or indirect pecuniary interest relating to the item under discussion at the meeting before they spoke on the item. She also drew members' attention to RoP 84 on voting in case of direct pecuniary interest.

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EC(2018-19)22 Proposed creation of one supernumerary post of Senior Principal Executive Officer (D2) in the Food and Environmental Hygiene Department with immediate effect upon approval of the Finance Committee up to 29 June 2022 for the implementation of the regulatory regime on private columbaria

2. The Chairman remarked that the staffing proposal was to create a supernumerary Senior Principal Executive Officer ("SPEO") (D2) post in the Food and Environmental Hygiene Department ("FEHD"), designated as Assistant Director (Private Columbaria) ("AD(PC)"), with immediate effect upon the approval of the Finance Committee ("FC") up to 29 June 2022, to enhance the directorate support for the Private Columbaria Affairs Office ("PCAO") for the implementation of the regulatory regime on private columbaria ("PC"). She pointed out that discussion of the item was carried over from the meeting on 15 February 2019.

Duties of the proposed supernumerary post

3. Mr CHAN Chi-chuen noted that PCAO anticipated that specified instruments ("SIs") applications from PC operators might eventually be refused by the Private Columbaria Licensing Board ("PCLB") for failing to meet the application requirements. As a result, many PC would have to close down in the next few years and remove the ashes interred in their niches ("ashes removal"). He enquired whether PCAO would help settle disputes between claimants of ashes and PC arising from ashes removal, and whether FEHD would extend the tenure of the AD(PC) post in the future with a view to handling follow-up issues arising from the potential closure of PC.

4. Head, Private Columbaria Affairs Office ("H/PCAO") remarked that PCAO would take enforcement actions in accordance with the Private Columbaria Ordinance (Cap. 630) against PC that failed to meet the application requirements and require PC closing down to conduct ash disposal procedures so as to appropriately dispose the ashes interred in such PC.

5. Mr CHAN Chun-ying noted that ADs of the Environmental Hygiene Branch and the Administration and Development Branch under FEHD were responsible for the tasks of one division or one area only but AD(PC) was required to lead a total of four divisions under PCAO. He enquired about the reasons for such an arrangement.

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6. H/PCAO replied that she and AD(PC) shared the heavy workload, but their job nature was with different levels of work. Under Secretary for Food and Health ("USFH") supplemented that compared with PCAO, other departments under FEHD had been established many years ago, and various divisions, supervised by different Ads, had been set up to meet operational needs. As PCAO was newly established, the tasks of its four divisions could be temporarily placed under the supervision of H/PCAO as assisted by AD(PC).

Consulting residents living in the vicinity of private columbaria

7. Dr Fernando CHEUNG reiterated the view he had expressed at the meeting on 15 February and urged the Administration to improve the consultation work at the district level regarding PC operating at certain land lots. He pointed out that PCLB had recently considered a licence application from a columbarium located in the Tuen Mun District, but neither residents living in the vicinity nor the Tuen Mun District Council was aware of any consultation regarding the application. Besides, information about such application indicated that no opinions from residents had been received during the consultation period. Dr CHEUNG requested the Administration to contact and consult residents living near PC and members of relevant District Councils directly in the future.

8. H/PCAO reiterated that PC that had submitted SIs applications were mainly columbaria in operation before 8:00am on 18 June 2014 (i.e. cut-off time) with ashes interred in niches (i.e. "pre-cut-off columbaria"). Applications for SIs and their summaries had been uploaded to the website of PCLB for public information. In addition, FEHD would post notices regarding SIs applications at the entrance of the relevant PC. If the PC concerned were located in multi-storey buildings, FEHD would, with the agreement of property managers, post relevant notices at the entrances and exits of such buildings. H/PCAO stressed that PCLB would endeavour to handle applications from PC expeditiously. Regarding PC located in multi-storey buildings along with other users (in particular buildings for residential purposes) where the applicants had not yet submitted all necessary documents and information for the purpose of their SIs applications, PCLB would come up with a decision on such applications as soon as possible. She remarked that PCLB would take into account the views of Dr Fernando CHEUNG regarding consultation arrangements for SIs applications from PC.

Handling specified instruments applications from private columbaria

9. Mr CHU Hoi-dick pointed out that some residents living in the vicinity of PC had relayed that some PC had allegedly exaggerated the

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number of niches in their applications for temporary suspension of liability ("TSOL"). He asked how residents could convey their views to PCAO and PCLB, and what follow-up actions would be taken.

10. H/PCAO replied that currently, most of the pre-cut-off columbaria had already submitted SIs applications. FEHD had taken forward a Notification Scheme in 2014 requesting operators of pre-cut-off columbaria to provide operational data against which reference would be made for handling their SIs applications in the future. FEHD officers had also visited relevant pre-cut-off columbaria to record information regarding their operational, including the number of niches. Upon receipt of SIs applications, in addition to verifying the information submitted by PC, PCLB would also re-visit such PC to verify the details of their application on-site, in order to ensure that the details of the application and the record entered under the Notification Scheme were consistent with the on-site situation.

11. Mr CHU Hoi-dick pointed out that H/PCAO had remarked at the meeting on 15 February that if PC applicants kept procrastinating in the submission of supporting documents required for TSOL, PCLB would take follow-up actions in accordance with the law and consider setting a deadline for submission of supporting documents. He asked whether PCLB had discussed issues relating to SIs application procedures, including the proposal for setting a deadline for submission of supporting documents, and details of such discussion, if any.

12. H/PCAO replied that meetings for consideration of SIs applications from PC would be held in public. PCLB had also held a number of meetings in camera to discuss other issues relating to SIs applications from PC. She remarked that PCLB had discussed arrangements for expediting the application procedures of SIs. Regarding applications from PC located in multi-storey buildings with other users where the applicants had not yet submitted all necessary documents and information for the purpose of their SIs applications, PCLB would come up with a decision on such applications as soon as possible.

A motion proposed by a member under paragraph 31A of the Establishment Subcommittee Procedure

13. At 8:51 am, the Chairman advised that she had received a proposed [motion](#) to be moved by Mr CHU Hoi-dick under paragraph 31A of the Establishment Subcommittee Procedure. She was of the view that the motion was directly related to the agenda item under discussion and should be proceeded with. The Chairman put to vote the question that the motion proposed by Mr CHU be proceeded forthwith. The Chairman was of the

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view that the majority of the members voting were against the question; she declared that the Subcommittee did not agree to proceed with Mr CHU's motion.

Voting on the item

14. The Chairman put the item to vote. She was of the view that the majority of the members voting were in favour of the item. She declared that the Subcommittee agreed to recommend the item to FC for approval.

15. No members requested that the item be voted on separately at the relevant FC meeting.

16. Mr CHU Hoi-dick requested the Administration to provide information on whether the Administration and PCLB would set a deadline for submission of documents for TSOL applications from PC prior to FC's discussion on this item.

(Post-meeting note: The supplementary information provided by the Administration was circulated to members on 11 March 2019 vide LC Paper No. ESC69/18-19(01).)

EC(2018-19)23 Proposed retention of two supernumerary directorate posts of one Administrative Officer Staff Grade C (D2) in the Security Bureau and one Assistant Director of Immigration (GDS(C)2 or D2-equivalent) in the Immigration Department with effect from 1 April 2019 or upon approval of Finance Committee (whichever is later) to 31 March 2022 to continue steering the comprehensive review of handling non-refoulement claims and to step up relevant measures

17. The Chairman remarked that the staffing proposal was to retain two supernumerary directorate posts of one Administrative Officer Staff Grade C ("AOSGC") (D2), designated as the Principal Assistant Secretary (Security) Review ("PAS(S)Review") in the Security Bureau ("SB") and one Assistant Director of Immigration ("AD of Imm") (GDS(C)2 or D2-equivalent), designated as Assistant Director (Removal Assessment and Litigation) ("AD(RAL)") in the Immigration Department ("ImmD") with effect from 1 April 2019 or upon approval of Finance Committee ("FC") (whichever was later) to 31 March 2022 to continue steering the comprehensive review of handling non-refoulement claims and to step up

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relevant measures.

18. The Chairman pointed out that the Administration had consulted the Panel on Security on this staffing proposal on 2 November 2018. The Panel had discussed the progress of the Administration's comprehensive review of the strategies of handling non-refoulement claims, the immigration control measures that had been introduced and updates on handling non-refoulement claims. The majority of the members expressed concern about the massive number of outstanding cases on non-refoulement claim, appeal and judicial review ("JR"). They supported this staffing proposal with a view to helping the Administration clear the backlog as early as possible and removing rejected claimants to their country of origin expeditiously. However, some members opined that, given the dwindling backlog of non-refoulement claims, it was not necessary to extend the tenure of the two supernumerary directorate posts. Most of the members taking part in the discussion supported this proposal, with the exception of two members, who did not support it. In principle, the Panel did not object to the Administration's submission of the proposal to the Establishment Subcommittee for consideration.

Non-refoulement claims, appeals and judicial review cases pending handling

19. Mr Alvin YEUNG declared his involvement in non-refoulement claims in his legal practice. He was concerned about the huge pressures on the court arising from the massive number of appeal cases and JR cases, and he asked how the Administration and the Judiciary would address this issue. Furthermore, given the dwindling backlog of non-refoulement claims, Mr YEUNG asked, whether the Administration, in its estimation, could clear all the backlog within the three-year extended tenure of the two supernumerary directorate posts, and whether it had set a target on the number of non-refoulement claims to be handled, against which a decision could be made with regard to retention of the two supernumerary posts or not in the future.

20. Under Secretary for Security advised that SB had been maintaining close communication with the Judiciary, and no requests or specific suggestions had been received from the Judiciary so far regarding JR cases in relation to non-refoulement claims. He pointed out that as at end of November 2018, the number of non-refoulement claims pending screening by ImmD had dropped significantly to 920, while the backlog of appeals stood at around 6 500. Coupled with the anticipated increasing number of appeal cases, SB and ImmD were in need of dedicated directorate officers to supervise relevant work in order to expedite the processing of non-refoulement claims at various stages. Furthermore, holders of the two

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supernumerary posts would be responsible for matters relating to the review of the Immigration Ordinance (Cap. 115), including drafting the amendment bill, consulting the Legislative Council ("LegCo") and stakeholders, securing smooth passage of the amendment bill and ensuring that the transitional arrangements and enhanced procedures were smooth upon passage of the bill.

Main duties of the two supernumerary posts and justifications for retention

21. Mr Martin LIAO declared that he was a barrister and that, as far as he could remember, he had not handled any cases relating to non-refoulement claims. He noted the duties of PAS(S)Review, including closely monitoring the trends of claimants in order to identify new measures as and when necessary, such that the number of new claims received would continue to stay low; reviewing the provisions of the Immigration Ordinance in respect of the screening procedures and related issues as well as submitting a bill; screening the non-refoulement claims and handling appeals efficiently; and preventing arrival of potential claimants. He was concerned whether creation of the PAS(S)Review post alone could address the heavy workload as mentioned above. He asked the level, in terms of number of claims, to be reached for new measures to be introduced and the details of such measures.

22. Under Secretary for Security replied that the two supernumerary directorate posts proposed to be retained were mainly responsible to supervise work in the following areas, including arrival prevention (e.g. cooperation with Mainland's law enforcement agencies ("LEAs") to combat illegal immigration through interception of non-ethnic Chinese ("NEC") illegal immigrants at the source); expediting the commencement of screening procedures for pending claims, shortening the screening time per claim and expediting the handling of appeals; expediting repatriation of the claimants whose claims had been rejected; studying detention policies and stepping up law enforcement. Furthermore, PAS(S)Review was also responsible for reviewing the Immigration Ordinance. Upon passage of the bill, AD(RAL) and the Removal Assessment and Litigation ("RAL") Branch under his/her supervision would have to prepare for the implementation of the amended procedures and requirements as well as ensure that the enhanced screening and appeal procedures were smoothly executed.

23. Mr YIU Si-wing noted that the job duties of PAS(S)Review included monitoring and optimising the pre-arrival registration ("PAR") requirement for Indian nationals. He pointed out that subsequent to the implementation of the measure, the number of incoming Indian visitors had dropped and rebounded. He asked about the details of the reviews

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conducted since the implementation of the measure as well as the enhanced measures that had been introduced; and whether there was any plan to review the measure.

24. Deputy Director of Immigration ("DD of Imm") advised that the PAR requirement for Indian nationals had been operating smoothly since its implementation with an approval rate of approximately 93%, and the measure did not lead to any significant drop in the number of incoming Indian visitors. During PAR application, Indian nationals were only required to provide relevant information via the computer system. The system would conduct risk assessment and provide an application result instantly. In general, the application process took about 15 minutes to complete and no fee would be charged on the applicants. For further service enhancement, ImmD had introduced a new measure of including a two-dimensional barcode on the Notification Slip issued to successful applicants to enable transport operators (e.g. airlines) to access to information thereon with mobile device for instant verification of PAR. ImmD would continue to consult relevant stakeholders to enhance the existing immigration measures.

25. Mr Tony TSE expressed support for this staffing proposal. He pointed out that despite the significant drop in the number of pending claims, the Administration had to handle a large number of appeal cases and JR cases and repatriate rejected claimants to their country of origin. Hence, it was necessary to retain the two supernumerary posts to supervise relevant work. He opined that the Administration should strike a balance between maintaining high standards of fairness and preventing the non-refoulement mechanism from abuses. He urged the Administration to conclude the review on the Immigration Ordinance expeditiously and submit the bill for LegCo's scrutiny as soon as possible.

26. Mr AU Nok-hin expressed concern that the amendments introduced to the Immigration Ordinance might affect claimants' right to a fair screening. He opined that it would not be necessary to extend the tenure of the two supernumerary posts for three years if scrutiny of the bill could be completed in 2019.

27. In reply, Under Secretary for Security said that the Administration aimed to introduce the bill into LegCo in the first half of 2019. During LegCo's scrutiny of the bill, holders of the two proposed retained supernumerary posts would enhance communication with LegCo Members to ensure smooth passage of the bill. Furthermore, the Administration would continue to enhance the procedures for screening of claims and handling of appeals with a view to ensuring effective and efficient screening of claims in accordance with high standards of fairness.

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28. Mr Holden CHOW expressed support for this staffing proposal. He noted the duties of PAS(S)Review included ensuring smooth implementation of the transitional arrangements and the enhanced procedures, as well as closely monitoring the implementation of legislative proposals upon passage of the bill. Considering the on-going nature of the aforesaid work, he asked whether consideration would be given to making permanent the PAS(S)Review post. He also asked whether the Administration anticipated a drop in the number of appeal cases upon implementation of the enhanced screening and appeal procedures.

29. Under Secretary for Security explained that considering the need for prudent use of public resources, the Administration had come up with the current proposal for extending the tenure of the two supernumerary posts for three years. The Administration would continue to closely monitor the progress of the comprehensive review and examine the need of further extending the tenure of the two supernumerary posts in due course. On the backlog of cases, Under Secretary for Security remarked that the 6 500 pending appeals could be handled within two to three years. Given the current backlog of JR cases which stood at around 4 000, coupled with the number of claimants remaining in Hong Kong exceeding 13 000, there were genuine needs to retain the two supernumerary posts for conducting and monitoring the comprehensive review under dedicated directorate supervision.

30. Mr CHU Hoi-dick noted the duties of PAS(S)Review included continuing to monitor the effectiveness of facilities at the existing and new border control points, as well as enforcement actions currently undertaken by various LEAs at land, sea and air; and providing strategic and directional steer on liaison with the Mainland authorities to effectively curb illegal immigration. He requested the Administration to provide the detailed information on interception of NEC illegal immigrants.

31. Under Secretary for Security pointed out that nearly half of the claimants in Hong Kong were illegal immigrants, and the other half of them were overstaying visitors who had come to Hong Kong through legitimate channels. ImmD had been stepping up cooperation with Mainland authorities to intercept illegal immigrants entering Hong Kong through China at the source. He added that SB had no background information on the illegal immigrants intercepted in the Mainland, and he believed that Mainland LEAs would detain or repatriate such immigrants to their country of origin according to relevant law. Over the past two to three years, Mainland LEAs had intercepted over 60 000 people in the interdiction exercises against illegal immigrants.

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32. Dr Fernando CHEUNG criticized the Administration for handling non-refoulement claims in an inhumane way without regard to the requirements of international covenant. He pointed out that in the proposed amendments to the Immigration Ordinance, the Administration had significantly shortened the deadline for filing non-refoulement claims, submitting claim forms and lodging appeals, and it was proposed that ImmD be allowed to remove people who had already applied for JR from Hong Kong (saving JR applications for which leave had been granted by the court). He expected that subsequent to the implementation of the bill, the number of non-refoulement claims and the number of rejected claimants remaining in Hong Kong would drop significantly. He asked the Administration the time required for processing all claims currently in backlog and to explain why retention of the two supernumerary posts was necessary.

33. Under Secretary for Security said that in the screening of claims and handling of appeals, the Administration had met the statutory requirement in terms of meeting the highest standards of fairness, whereas necessary assistance would be given to claimants, including publicly-funded legal assistance ("PFLA"). The purpose of amending the Immigration Ordinance was to address the aspirations of society and protect public interests. He reiterated that in addition to reviewing the Immigration Ordinance, holders of the two proposed supernumerary posts to be retained were also responsible for facilitating the scrutiny of the bill, including communication with LegCo and other stakeholders to ensure smooth passage of the bill. Thereafter, they would be responsible for ensuring the smooth implementation of the transitional arrangements and the enhanced screening procedures. On the backlog of cases, Under Secretary for Security advised that there were approximately 6 500 outstanding appeals filed by claimants rejected by ImmD. He anticipated that it would take two to three years to process those appeals and future appeals. Furthermore, around 4 000 JR cases were pending the Judiciary's handling. Upon completion of all appeals and litigations, it would also take time for ImmD to remove rejected claimants to their country of origin.

34. DD of Imm advised that at present, more than 280 immigration staff were responsible for duties relating to the screening of non-refoulement claims, including supervision and handling of issues relating to appeals and JR. ImmD would flexibly deploy internal staff to handle claims on various stages as appropriate and on a need basis. He added that RAL Branch of ImmD also needed to stay alert on updates of the latest worldwide development on matters relating to the handling of non-refoulement claims, such that prompt responses and effective measures to any further emerging legal and operational issues could be developed and introduced in a timely manner.

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Screening procedures for non-refoulement claims

35. Mr AU Nok-hin remarked that he would support the staffing proposal if the purposes of retaining the two directorate supernumerary posts were to simplify the screening procedures for non-refoulement claims and to enhance efficiency. He expressed concerns about the complex and lengthy screening procedures (e.g. claimants were required to answer more than 70 questions, whereas lawyers had to submit information about the claim within 14 days; after submission of the claim form, claimants would have to wait for a long time for the first screening interview to be arranged, etc.). He requested the Administration to simplify the screening procedures and draw up target indicators for various tasks. He opined that consideration should be given to changing the term "NEC illegal immigrants" (which might have a connotation of racial discrimination) to "non-Chinese illegal immigrants".

36. Under Secretary for Security advised that the term "NEC illegal immigrants" had been used in the Police force for a long time and it was also a commonly used term in the disciplined services; the term was not specifically used against non-refoulement claimants. DD of Imm explained that the claim form was designed to facilitate claimants to set out the information pertaining to their case in an orderly manner. On expediting the screening procedures, DD of Imm remarked that while the daily quota for duty lawyer service stood at 13 only in the past, the PFLA quota had increased to 23 subsequent to the launch of the the Pilot Scheme for Provision of Publicly-funded Legal Assistance for Non-refoulement Claimants ("Pilot Scheme "). In addition, ImmD had recruited additional dedicated staff to provide interpretation service for claimants and translation of the documents submitted by claimants. At present, most screening interviews were conducted in about two weeks upon the return of claim form. The processing time per claim had been shortened to about 10 weeks on average, as compared to 25 weeks on average at the preliminary stage of implementing the Unified Screening Mechanism.

Detention policy for non-refoulement claimants

37. Citing the common law principles known as *Hardial Singh*, Mr AU Nok-hin remarked that ImmD could not continue to detain a person if it became apparent that it would not be able to effect removal or screening within a reasonable period. He was concerned about the provisions introduced in the bill for disapplying the *Hardial Singh* principles, and he was of the view that the proposed amendments were inconsistent with the duties of PAS(S)Review to ensuring that implementation of the future statutory mechanism would be consistent with latest jurisprudence. He

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requested the Administration to explain in detail the policy and measures regarding detention of non-refoulement claimants.

38. Dr Fernando CHEUNG raised a question related to the *Hardial Singh* principles. He pointed out that the Administration, when consulting the Panel on Security on the proposed amendments to the Ordinance, had indicated that consideration was given to stipulating that, under specified circumstances, ImmD could continue detaining the claimants without being subject to any common law principles. He asked for clarifications on this policy.

39. Under Secretary for Security advised that SB and ImmD had been handling all claims under the doctrine of the highest standards of fairness as required by the court and the *Hardial Singh* principles. The Administration noted the views and concerns expressed by some LegCo Members on the major proposed amendments to the Immigration Ordinance; the proposed amendments were still under consideration and had not been finalized. Regarding the policy on detention, Under Secretary for Security pointed out that PAS(S)Review had been taking lead in considering different practical proposals from the legal, public security and resources perspectives with a view to formulating the best strategy for claimants. Work in this regard would continue.

40. Mr CHU Hoi-dick noted that the Administration had plans for setting up detention cells in the new Immigration Headquarters in Tseung Kwan O. He asked whether there was any plan for providing additional detention facilities for claimants.

41. Under Secretary for Security clarified that the detention cells in the Immigration Headquarters in Tseung Kwan O were not used for detaining claimants. At present, detained claimants would generally be detained in the Castle Peak Bay Immigration Centre. Regarding the methods and facilities for detention of claimants, the Administration would continue to explore any legitimate, practical and effective options and report on the latest development to LegCo in due course.

Pilot Scheme for Provision of Publicly-funded Legal Assistance for Non-refoulement Claimants

42. Mr Martin LIAO asked about the timetable for conclusion of the review on the Pilot Scheme; he also asked the measures in place to prevent abuses of the pilot scheme and to ensure proper use of public monies pending completion of the review.

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43. Under Secretary for Security remarked that the Pilot Scheme had been in operation for one year. Review on the pilot scheme had already commenced; meanwhile, the pilot scheme, together with the duty lawyer service, would be in operation in tandem to facilitate the processing of claims.

Voting on the item

44. The Chairman put the item EC (2018-19) 23 to vote. At the request of Mr Steven HO, the Chairman ordered a division, and the division bell rang for five minutes. Sixteen members voted for and one voted against the motion. Four members abstained. The Chairman declared that the Subcommittee agreed to recommend the item to FC for approval. The votes of individual members were as follows:

For

Mr WONG Ting-kwong	Mr WONG Kwok-kin
Mr Steven HO	Mr WU Chi-wai
Mr YIU Si-wing	Dr KWOK Wai-keung
Mr Christopher CHEUNG	Dr Martin LIAO
Mr POON Siu-ping	Mr CHUNG Kwok-pan
Mr Alvin YEUNG	Mr Holden CHOW
Dr Pierre CHAN	Mr CHAN Chun-ying
Mr Jeremy TAM	Mr Vincent CHENG
(16 members)	

Against

Dr Fernando CHEUNG
(1 member)

Abstain

Mr CHAN Chi-chuen	Mr CHU Hoi-dick
Mr SHIU Ka-chun	Mr AU Nok-hin
(4 members)	

(At 10 am, the Chairman declared that the meeting be suspended for five minutes. The meeting resumed at 10:05 am.)

45. Mr AU Nok-hin requested that the item EC(2018-19)23 be voted on separately at the relevant FC meeting.

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EC(2018-19)24 **Proposed retention of three supernumerary posts of one Principal Government Engineer (D3) and one Administrative Officer Staff Grade C (D2) in the Home Affairs Bureau; and one Chief Engineer (D1) in the Civil Engineering and Development Department with effect from 1 April 2019 or upon approval of the Finance Committee (whichever is later) up to 31 March 2023 to continue to monitor and facilitate the implementation of the West Kowloon Cultural District ("WKCD") project and to drive the implementation of the integrated basement and government infrastructure projects in WKCD**

46. The Chairman remarked that the staffing proposal was to retain the three supernumerary posts of one Principal Government Engineer ("PGE") (D3) and one Administrative Officer Staff Grade C ("AOSGC") (D2) in the Home Affairs Bureau ("HAB") (designated as Project Manager (HAB) ("PM(HAB)")) and Principal Assistant Secretary (West Kowloon Cultural District) ("PAS(WKCD) ") respectively); and the supernumerary post of one Chief Engineer ("CE")(D1) in the Civil Engineering and Development Department ("CEDD") (designated as Chief Engineer/South 2 ("CE/S2")), with effect from 1 April 2019 or upon approval of FC (whichever is later) to 31 March 2022 to continue to monitor and facilitate the implementation of the WKCD project and to drive the implementation of the integrated basement and government infrastructure projects in WKCD.

47. The Chairman pointed out that the Administration had consulted the Joint Subcommittee to Monitor the Implementation of the West Kowloon Cultural District Project ("the Joint Subcommittee") on the staffing proposal on 11 June 2018. Members of the Joint Subcommittee generally supported the proposal. At the meeting, individual members expressed concerns about the roles and major duties of the three posts in implementing the WKCD project (including monitoring the projects undertaken by the West Kowloon Cultural District Authority ("WKCDA") and supervising the progress of the implementation of the WKCD project and related financial arrangements etc.) now and in the next few years. The Administration had responded at the meeting to some of the questions raised by members. The supplementary information provided by the Administration after the meeting had been circulated to all Members vide LC Paper No. CB(1)123/18-19(01).

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Ways and mechanisms for the Government to monitor the West Kowloon Cultural District project

48. Mr WU Chi-wai asked whether WKCD works project ("WKCD works") were commissioned to WKCDA through entrustment agreements. He was concerned that works projects so commissioned in recent years (such as the Shatin to Central Link ("SCL")) had experienced serious problems in terms of construction, supervision and cost overrun, and asked how holders of the three posts could prevent similar issues from occurring in the WKCD works. He further asked whether the Administration had monitored the WKCD works through direct supervision or through a "check the checker" approach indirectly, and requested the Administration to explain in detail how the works were monitored.

49. The Chairman asked how the Administration monitored the WKCD works, including whether the task was carried out by Government Engineers or outsourced consultants. She was concerned about the adequacy of manpower, and enquired about the frequency of site inspections conducted by government staff every year. Mr Holden CHOW expressed similar concerns. Dr KWOK Ka-ki was concerned whether the three post-holders could supervise the implementation of the WKCD works (including cost and quality control) effectively.

50. On ways of monitoring, Permanent Secretary for Home Affairs ("PSHA") remarked that the WKCD works were not commissioned to WKCDA by entrustment agreements. She pointed out that the WKCD project involved hardware and software development. The Administration had been working closely with WKCDA, and Secretary for Home Affairs, Secretary for Development, and Secretary for Financial Services and the Treasury were members of the WKCDA Board. Regarding hardware facilities, WKCDA was tasked to construct cultural facilities, while the Administration was responsible for taking forward the integrated basement for WKCD and government infrastructure works projects ("government infrastructure projects"). Besides, CEDD had been monitoring relevant infrastructure projects, while HAB took up the role of overseeing the development and operation of WKCD, facilitating the coordination of work between relevant bureaux/departments ("B/Ds"), as well as assisting WKCDA in the implementation of WKCD projects, such as helping the Xiqu Centre to obtain the public entertainment licence required for operation. PSHA emphasized that if the three posts were not retained, the Administration would not be able to monitor the WKCD project and its works effectively. She remarked that in light of the public concerns on other public works (e.g. the SCL works), the Administration and WKCDA would study ways to optimize the monitoring mechanism of the WKCD project. It was estimated that the review could be completed

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in one to two months.

51. With regard to specific monitoring work, PM(HAB) pointed out that WKCD had, in addition to employing consultants, hired a full-time resident engineering site team to help monitor the WKCD project. HAB and CEDD staff would conduct on-site inspections and surprise inspections at construction sites and advise WKCD on different areas of the works projects. Project Manager (South), CEDD supplemented that a dedicated team of CEDD had been monitoring various government infrastructure projects related to WKCD. When conducting on-site inspections, the dedicated team would review various issues, including the availability of appropriate resident engineering site staff to oversee the works, reviewing the construction procedures of critical works, obtaining samples of certain essential materials, and giving witness to the sampling and on-the-spot testing of certain key materials during on-site inspections on a random sampling basis. The dedicated team would also conduct spot checks on certain documents and records. Project Manager (South), CEDD remarked that for a more comprehensive review on relevant documents and records, the dedicated team was working with WKCD to review and perfect the system. PSHA stressed that the Project Manager (Home Affairs Bureau) ("PM(HAB)"), who had personally conducted a number of on-site inspections in the past, would work closely with the Development Committee of WKCD.

52. Mr Holden CHOW asked, under the existing monitoring mechanism, whether PM(HAB) and her team would take part in the daily routines of the WKCD works. He also asked in case PM(HAB) had identified issues not within her authority, whether she would report the issues to LegCo, apart from putting into record and reporting them to her supervisor.

53. PSHA responded that if PM(HAB) identified issues not within her authority, she would report them to her supervisor. PM(HAB) supplemented that at present, she monitored the WKCD project mainly through reports submitted by the Development Committee of WKCD. On reporting to LegCo, PSHA advised that the Administration and WKCD had been reporting the progress of WKCD project to the Joint Subcommittee on a regular basis, and the Chairman of WKCD would report in person the latest development and financial status of the WKCD project every year.

54. Mr WU Chi-wai noted that the Administration would work with WKCD to review the arrangements for keeping the records of WKCD project (including the availability of all necessary works documents). He asked about the existing arrangements, and whether the Administration and

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WKCD A could smoothly obtain the required works documents from the contractors.

55. PSHA reiterated that WKCD A had devised a record keeping mechanism for the WKCD project. In view of recent public concerns about the SCL works, the Administration and WKCD A would review the relevant mechanism. PM(HAB) added that WKCD A had set up an electronic document platform for managing works-related documents ("e-platform"), including Inspection and Survey Checking Forms.

56. At the request of Mr WU Chi-wai, PM(HAB) undertook to provide supplementary information on the details of the e-platform, including the types and details of documents processed by the platform.

(Post-meeting note: The supplementary information provided by the Administration was circulated to members on 12 March 2019 vide LC Paper No. ESC72/18-19(01).)

57. Dr KWOK Ka-ki enquired whether WKCD A would make reference to the practice of the Project Cost Management Office ("PCMO") of the Development Bureau ("DEVB") to improve the cost management of the WKCD project; and whether PCMO had given any advice on the WKCD works. PM(HAB) responded that PCMO had conducted reviews on the government infrastructure projects of WKCD.

58. Regarding monitoring of the WKCD works, Mr Jeremy TAM enquired whether any public officers should be held accountable for the M+ museum incident in 2018. In the incident, WKCD A had to appoint another contractor subsequent to the termination of the employment of Hsin Chong Construction Company Limited ("HCC"), which faced serious financial problems, as the main contractor. He queried why WKCD A did not confirm that HCC had paid sub-contractors their entitlements prior to settling payment for HCC.

59. PM(HAB) responded that the works undertaken by HCC had been progressing well. However, HCC might not be able to complete relevant works due to the serious financial problems of its parent company. After careful consideration, WKCD A had decided to terminate the construction works contract with HCC. PSHA added that WKCD A had been monitoring the financial status of HCC closely. Since HCC's parent company was a listed company, WKCD A must have grasped concrete evidence before it could terminate the construction works contract with HCC so as to avoid contractual disputes. Regarding the concerns on whether the contractor had paid the sub-contractors their entitlements, PSHA said that WKCD A had entered into a contract with the contractor

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only and it had no contractual relationship with the sub-contractors. As such, WKCD in general would not monitor the financial matters between the contractor and the sub-contractors. In the case of M+ museum, WKCD finally decided to make payment to the major sub-contractors of HCC direct to ensure that the progress of the relevant works projects would not be affected.

Effectiveness and tenure of the relevant posts

60. Mr CHAN Chi-chuen remarked that he was not opposed to this staffing proposal. He was concerned about the discrepancies between some completed cultural facilities of the WKCD works and their initial concepts. He asked how the Administration would evaluate the performance of holders of the three posts; and whether they would monitor the remaining cultural facilities works and the operation of the Build-Operate-Transfer ("BOT") mode. Both the Chairman and Mr CHAN asked whether the three posts would be retained upon their expiry.

61. PSHA advised that WKCD was a massive project which took time to build. She also advised that the Administration had held a number of meetings with WKCD and relevant stakeholders regarding the construction of the WKCD cultural facilities. Over the past four years, the WKCD Board had held over 30 meetings, while its panels and subcommittees had held up to 150 meetings. The Joint Subcommittee also held a meeting every two months. The officers taking up the three posts were subject to heavy workload in preparing the businesses relating to relevant discussion and/or attending those meetings. Subsequent to completion of the government infrastructure projects, retention of the post of Chief Engineer (South 2) might not be necessary. As regards the post of Project Manager and Principal Assistant Secretary (West Kowloon Cultural District), consideration might be given to retention of the two posts because they were responsible for monitoring the development and operation of the remaining cultural facilities works and implementing BOT system (if so implemented). The post of Project Manager and Principal Assistant Secretary (West Kowloon Cultural District) might have to change to a permanent basis.

62. Mr James TO said that members of the public were concerned about the Government's insufficient monitoring of public works. He requested the Administration to provide actual cases/examples to illustrate the work efficiency of holders of the three posts in the past, including identification and resolution of issues in supervision of relevant works.

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(Post-meeting note: The supplementary information provided by the Administration was circulated to members on 12 March 2019 vide LC Paper No. ESC72/18-19(01).)

63. Dr KWOK Ka-ki requested the Administration to provide supplementary information to illustrate the work flow of the three posts in monitoring implementation of the WKCD project (including cost and quality control).

(Post-meeting note: The supplementary information provided by the Administration was circulated to members on 12 March 2019 vide LC Paper No. ESC72/18-19(01).)

Financial arrangement of the West Kowloon Cultural District project

64. Dr CHIANG Lai-wan asked whether the Administration would submit further funding applications to LegCo for the WKCD project; and about the details of the future operation of the cultural facilities of the WKCD project and a breakdown on its income and expenses. She urged the Administration to take measures to ensure timely completion of various WKCD works.

65. The Chairman noted that construction of certain cultural facilities of the WKCD projects would be undertaken by private sector organizations. She enquired about relevant details and whether WKCDA had sufficient resources to build the remaining cultural facilities (i.e. small part of the Batch 2 and Batch 3 facilities) ("the remaining cultural facilities"). Mr WU Chi-wai raised similar concerns.

66. PSHA advised that WKCD was a huge project covering an area of around 40 hectares. Completion of the whole development project was estimated to take over 20 years. FC approved in July 2018 a one-off upfront endowment of \$21.6 billion (in 2008 net present value) for WKCDA to implement the WKCD project. The one-off upfront endowment and relevant investment income were only sufficient to cover the construction of Batch 1 and most of the Batch 2 facilities, while the implementation arrangement for the remaining cultural facilities was pending review. The Administration announced in 2017 the enhanced financial arrangement for WKCD, under which WKCDA would be granted the development right of the entire hotel/office/residential ("HOR") portion of WKCD. WKCDA would jointly develop WKCD with private sector organizations through BOT mode and income sharing, which would provide another source of recurrent income for WKCDA. The Government had submitted a paper on the latest financial situation of the WKCD project to the Joint Subcommittee (LC Paper No.

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CB(1)559/17-18(01)) ("paper on WKCD's financial situation"). In spite of the above, WKCD might have to implement an external borrowing plan from 2023 to 2024 to maintain the operation of WKCD and the construction of the remaining cultural facilities. The Administration was discussing with WKCD about its future financial arrangement, including whether WKCD should implement an external borrowing plan. PM(HAB) supplemented that the one-off upfront endowment of \$21.6 billion mainly covered the construction of five cultural facilities, including Xiqu Centre, Art Park, Freespace, M+ Museum and its protective storage facilities as well as Lyric Theatre Complex. Construction of these facilities would be completed progressively. Meanwhile, donation from the Hong Kong Jockey Club Charities Trust would support the construction of the Hong Kong Palace Museum, and the Administration would strive for its completion in 2022. Construction of the remaining cultural facilities, including Music Centre, Musical Theatre, Great Theatre and Medium Theatre would depend on the availability of financial resources in the future.

67. Mr Martin LIAO enquired about the measures in place to avoid cost overrun of various cultural facilities of the WKCD project. Mr WU Chi-wai enquired about the details of cost overrun of the WKCD works, including cost overrun arising from claims lodged by contractors.

68. PSHA pointed out that the Administration had been monitoring the expenses of the WKCD works and reviewing critically whether the tender prices of the bids were reasonable. However, project constructions were susceptible to situations beyond control, such as the termination of the employment of HCC as the main contractor for M+ Museum due to the financial problems of its parent company. PM(HAB) supplemented that WKCD would invite open tenders for the WKCD works and estimate the reasonable costs prior to tender invitation. It was currently estimated that, with the exception of M+ Museum, there would be no major cost overrun for projects involving other cultural facilities.

69. Regarding claims lodged by contractors, PM(HAB) explained that contractors in general would make a claim for unforeseeable construction delays or modifications to the design during the construction period. The major reasons for making such claims included unforeseeable factors (e.g. inclement weather), coordination issues arising from different works and modifications to the design for compliance with legal requirements.

70. Mr CHU Hoi-dick requested the Administration to clarify whether the cost of the remaining WKCD cultural facilities works would be covered by the income generated from the HOR portion, which was delivered through BOT and jointly carried out by WKCD and private sector

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organizations; and whether the total expenditures of the WKCD works stood at \$56.3 billion comprising the \$21.6 billion one-off upfront endowment, \$23 billion for government infrastructure projects, and \$11.7 billion for the remaining cultural facilities as set out in the paper on WKCD's financial situation.

71. PSHA advised that the estimated expenditure of \$11.7 billion was based on 2016 prices. WKCAD might consider an external borrowing plan for constructing the remaining cultural facilities. As such, the income generated from BOT deliverables might not necessarily be used to cover the relevant costs. PM(HAB) supplemented that the estimated expenditure for the integrated basement for WKCD was \$23 billion, while the estimated expenditure for government infrastructure under construction (including roads, drainage and sewage systems) was \$1.5 billion. The Administration would seek further funding from LegCo for the remaining government infrastructure projects in due course.

Develop the hotel/office/residential portion of the West Kowloon Cultural District through the Build-Operate-Transfer

72. Mr Holden CHOW enquired how holders of the proposed posts would monitor the formulation and operation of BOT, and whether they would report to LegCo regularly.

73. PSHA replied that BOT involved many complicated issues, including the need to ensure that WKCDA only possessed the development right at the relevant land lots but not the right to sell the developed properties, and the drafting of land leases and project agreements premised on protection of the interests of the Government and WKCDA. WKCDA had established the Public Private Partnership Projects Committee to study relevant issues, including enhancing governance and transparency. Given that future BOT agreements would be the contractual documents between WKCDA and its private sector partners, the Administration would review the relevant documents and the preparation of tenders in a critical manner. HAB, DEVB and the Financial Services and the Treasury Bureau ("FSTB") had been working closely on the relevant issues.

74. Dr KWOK Ka-ki criticised that WKCDA was like an independent kingdom. He queried whether it was justifiable for the Administration to grant the development right of the entire HOR portion of WKCD to WKCDA to private sector organizations, given that those were the most profit-making items among all WKCD projects. He was also concerned about issues including overly high tender prices and monopolization of projects by a single developer. He asked how the Administration could ensure that holders of the proposed posts possessed relevant experience to

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handle these potential problems properly. The Chairman enquired whether the duties of the post holders included overseeing the tendering exercises for projects to be delivered through BOT.

75. PSHA disagreed with Dr KWOK Ka-ki's view that WKCDA was an independent kingdom. She stressed that during LegCo's scrutiny of the West Kowloon Cultural District Authority Bill, Members strongly considered that WKCDA should be a statutory body operating independently from the Government. She reiterated that the Administration had decided to provide the enhanced financial arrangement for WKCD with a view to maintaining its operation and building the remaining cultural facilities after taking into account the inadequacy of the one-off upfront endowment. Open tenders would be conducted for the HOR portion of WKCD in different batches, and it was not expected that the project would be monopolized by a single private sector organization.

76. Regarding tendering arrangements, PSHA pointed out that the Public Private Partnership Projects Committee under WKCDA would be responsible for the conduct of tendering exercises, and the WKCDA Board would make the final decision. The WKCDA Board and its relevant committees comprised professionals with experience in engineering and finance (including commercial experience). WKCDA would establish a mechanism for BOT and tendering, and PM(HAB) would also engage in relevant work. PM(HAB) supplemented that delivering the remaining cultural facilities of the WKCD project through BOT would enable WKCDA to focus more on taking forward culture-and art-related work. Successful tenderers would have to recruit contractors for developing the HOR portion of WKCD.

Application of the Buildings Ordinance to the West Kowloon Cultural District works

77. Mr CHU Hoi-dick remarked that, to his understanding, government works projects were not subject to the regulation of the Buildings Ordinance (Cap. 123) ("the Ordinance"), and projects not subject to the regulation of the Ordinance were not subject to the oversight of the Buildings Department ("BD"). Given that WKCD was located within government land, he asked whether the following three categories of works, namely works projects under WKCDA, government infrastructure projects, and Public Private Partnership projects delivered through BOT, would be regarded as government works projects and thus not subject to the regulation of the Ordinance and oversight of BD.

78. PM(HAB) advised that works projects under WKCDA, the integrated basement and Public Private Partnership projects were subject to

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the regulation of the Ordinance. She added that the Administration was now drafting a private treaty grant ("PTG") for WKCDA. Given that WKCDA was an independent statutory body, buildings in WKCD were subject to the regulation of the Ordinance.

79. Mr CHU Hoi-dick further remarked that he learnt from the website of the Lands Department that the area covering WKCD remained government land, and the relevant PTG remained in the drafting stage. He enquired why WKCD works were subject to the regulation of the Ordinance, and whether WKCD works were currently under the oversight of BD. He also asked whether the PTG would cover the underground area of WKCD.

80. PM(HAB) responded that the PTG under preparation would cover the underground area of WKCD, exclusive of the underground road ("UR") and underground utilities. She also remarked that as it was anticipated that the land of WKCD would be granted to WKCDA, the WKCD works would be subject to the regulation of the Ordinance. As a result, WKCDA had been required to submit to BD for approval the design plans of the cultural facilities. She pointed out that BD would handle the WKCD works pursuant to the established procedures, while HAB would be responsible for coordinating the work among relevant B/Ds. PSHA supplemented that the WKCD cultural facilities would need to obtain the occupation permits issued by BD.

81. Mr CHU Hoi-dick requested the Administration to provide supplementary information on the roles of and division of responsibilities between HAB/CEDD/BD in monitoring and facilitating the implementation of WKCD project.

(Post-meeting note: The supplementary information provided by the Administration was circulated to members on 12 March 2019 vide LC Paper No. ESC72/18-19(01).)

Voting on the item

82. At 11:54 am, no members raised any further questions on the item. As a quorum was not present, the Chairman directed that members be summoned to vote on the item. At 11:55 am, a quorum was present. The Chairman put the item to vote. The Chairman was of the view that the majority of the members voting were against the item. She declared that the item was negatived.

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EC(2018-19)25 Proposed retention of one supernumerary post of Administrative Officer Staff Grade B (D3) in the Civil Aviation Department with effect from 1 April 2019 or upon approval by the Finance Committee (whichever is later) to 31 March 2025 to continue strengthening the senior management of the Department

83. The Chairman remarked that the staffing proposal was to retain the supernumerary post of Administrative Officer Staff Grade B (D3), designated as Deputy Director-General of Civil Aviation (2) ("DDGCA(2)"), in the Civil Aviation Department ("CAD") with effect from 1 April 2019 or upon approval of FC (whichever is later) to 31 March 2025 to continue strengthening the senior management of the Department.

84. The Chairman pointed out that the Administration had consulted the Panel on Economic Development on this staffing proposal on 26 November 2018. Members of the Panel were generally supportive of the proposal. Some members opined that consideration should be given to making the post permanent to cope with the future air traffic growth and the increased workload arising from the commissioning of the Three-Runway System ("3RS"). Besides, some members were concerned about the human resources issues of CAD, in particular the wastage of air traffic control officers ("ATCOs"). The information provided by the Administration after the meeting was circulated to members of the Panel vide LC Paper No. CB(4)368/18-19(01).)

Development of the aviation industry and relevant facilities

85. Dr KWOK Ka-ki said that he did not oppose to this staffing proposal. Referring to the Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area ("Outline Development Plan") promulgated by the Central Government, he was concerned if the planning of the Central Government would weaken and marginalize the development of Hong Kong International Airport ("HKIA") and the aviation industry. He asked how the proposed retention of the DDGCA(2) post could help strengthen the internal governance of CAD and ensure that issues arising from the previous procurement and application of the new Air Traffic Management System ("ATMS") would not recur in the procurement of the new air navigation service ("ANS") equipment as well as replacing/upgrading existing ANS equipment for 3RS.

86. Director-General of Civil Aviation ("DGCA") and Deputy Secretary for Transport and Housing (Transport)4 ("DS(T)4") said that the Outline Development Plan clearly indicated support for consolidating and

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strengthening Hong Kong's position as an international aviation hub. Airport Authority Hong Kong had taken forward the 3RS construction works in 2016 to cope with the growing air traffic demand and to maintain Hong Kong's competitive edge in the aviation sector. The 3RS project was expected to commence full operation by the end of 2024. Regarding ATMS, DGCA advised that the system had been fully commissioned in November 2016 and had been operating smoothly after the teething period, with satisfactory overall performance. CAD would learn from the experience of procuring the new air traffic control ("ATC") system, including the recommendations made by the Public Accounts Committee ("PAC") and Audit Commission, when building the ATC tower and associated air field facilities as well as procuring new ANS equipment. CAD would ensure that the relevant procedures were compliant with the regulations of the Government Logistics Department and that requirements and regulations of such facilities would be set out in detail in the tender documents.

87. Referring to the memorandum of understanding ("MoU") recently signed between the Transport and Housing Bureau ("THB") and the Civil Aviation Administration of China to expand the Air Services Arrangement between the Mainland and the Hong Kong Special Administrative Region, Mr YIU Si-wing pointed out that the Outline Development Plan also mentioned further expansion of internal and external air traffic network of the Greater Bay Area and proactively taking forward the inter-modal code-sharing. He asked the Administration for specific work plan in implementing the MoU and the items set out in the Outline Development Plan, and whether redeployment of internal manpower and rearrangement of duties would be necessary for CAD.

88. DS(T)4 responded that the MoU Mr YIU Si-wing referred to would further consolidate and strengthen Hong Kong's position as an international aviation hub as set out in the Outline Development Plan. Under inter-modal code-sharing, operators of land and sea transport might share the codes of flights operated by designated airlines of both sides as an extension of flights. It was anticipated that the new code-sharing arrangements would provide more convenience for tourists who travelled between the Mainland and HKIA via different land and sea transport (railway, passenger cars and coaches etc.). Furthermore, in accordance with the MoU, the scope of commercial cross-boundary helicopter services would be expanded to cover points in Guangdong Province to further facilitate the development of Hong Kong as a regional aviation hub. DGCA supplemented that CAD was now liaising with the Mainland and Macao through the Tripartite Working Group on airspace management in the Pearl River Delta region. On manpower planning, DGAC advised that holder of the DDGCA(2) post was mainly responsible for internal control,

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administrative supervision and manpower planning. In light of the development of 3RS and optimization of airspace management, there was a pressing need for CAD to increase its manpower, and DDGCA(2) would be responsible for relevant manpower planning for the long term.

Manpower arrangement of the Civil Aviation Department

89. Mr YIU Si-wing pointed out that it took a very long time for the training of all-rounded ATCOs; he asked how CAD could ensure that a sufficient number of professionals were available to address the manpower demand arising from the commissioning of 3RS in 2024.

90. Mr Holden CHOW noted that CAD required additional manpower to cope with the air traffic demand from the development of the 3RS project. It normally took five to seven years to train up an all-rounded ATCO. Hence, he agreed it was necessary for CAD to formulate a comprehensive long-term manpower plan. He asked the number of Student Air Traffic Control Officers ("SATCOs") to be recruited for CAD to address the future manpower demand.

91. DGAC and DDGCA(2) remarked that after joining CAD, SATCOs were generally required to receive training for approximately three years to obtain their first professional qualification. CAD had secured resources in 2018-2019 for creation of 40 non-directorate posts under the Air Traffic Management Division to enhance frontline operational support. CAD would continue to seek resources and recruit ATCOs and staff of other professional grades for provision of airspace management service and take forward 3RS projects.

92. Mr Tony TSE noted that, in order to strengthen Hong Kong's position as an international aviation hub, CAD had taken forward a number of initiatives in recent years that were pivotal for the development of the aviation industry and created a supernumerary DDGCA(2) post in 2016. Given the volume and complexity of the duties of the post, including steering CAD's Three-Runway System-related projects, manpower planning and reviewing the regulatory regime for unmanned aircraft system ("UAS"), he asked whether consideration would be given to making the post permanent.

93. DGAC said that creation of any permanent posts would be assessed by the Administration in a prudent manner given public monies were used. Taking into account the workload of CAD before full commissioning of 3RS, CAD considered it necessary to retain the DDGCA(2) post to 2025. To ensure proper use of public monies, CAD would, taking into account its manpower demand and organizational structure, review whether it was

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necessary to retain the DDGCA(2) post, making it permanent, or creating another directorate post in the professional grade before the post expired.

Follow-up actions arising from the Director of Audit's Report No. 63

94. On issues relating to the provision of toilet/shower facilities in DGCA's office mentioned in the Director of Audit's Report No. 63 ("Report No. 63"), Mr Jeremy TAM enquired about CAD's follow-up actions in response to the recommendations made by the Audit Commission. DDGCA(2) replied that the toilet/shower facilities had been converted into a store room of the department.

95. Mr Jeremy TAM further pointed out that Report No. 63 stated that CAD did not classify incidents relating to "airport vehicles not giving way to aircraft" as mandatory occurrence reporting ("MOR") cases (a total of 174 such cases from 2009-2010 to 2013-2014). In addition, he also noted that CAD had a large number of outstanding MOR cases which were long overdue. He asked about the improvement measures put in place by DDGCA(2) regarding those MOR cases.

96. DGCA explained that "airport vehicles not giving way to aircraft" cases usually occurred in the apron area and mostly involved slow-moving taxiing aircraft and vehicles; such cases did not meet the reporting criteria of an obstruction in runways or aircraft manoeuvring areas as set out in CAD's guidelines on reportable occurrences. As a result, CAD did not classify them as MOR cases, and PAC had accepted CAD's explanation. He added that CAD had taken follow-up actions on the recommendations set out in Report No.63 and had reported details of the follow-up actions to PAC.

Regulatory regime for unmanned aircraft system

97. Mr Tony TSE said that UAS had been developing rapidly, however, Hong Kong's UAS regulatory regime was relatively obsolete. He urged the Administration to review the UAS regulatory regime and implement enhanced measures expeditiously to ensure public safety. He requested the Administration to provide a concrete timetable for taking forward an enhanced regulatory regime.

98. DGCA remarked that in April 2018, CAD had published a report on the consultancy study commissioned on the regulation of UAS and conducted a public consultation exercise regarding the directions for regulation of UAS. Taking into account the recommendations of the consultancy study and the views gathered during the public consultation, CAD was preparing a detailed proposal for an enhanced regulatory regime,

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including setting up a registration system, specifying the training requirement for operating different categories of UAS, providing drone maps and prescribing the insurance requirements, etc. Different stakeholders had been consulted on the proposal. CAD targeted to consult the relevant LegCo Panels on the legislative proposals in mid-2019, and concluding the legislative amendment exercise by 2020.

Voting on the item

99. The Chairman put the item to vote. She was of the view that the majority of the members voting were in favour of the item. She declared that members of the Subcommittee agreed to recommend the item to FC for approval.

100. No members requested that the item be voted on separately at the relevant FC.

EC(2018-19)26 Proposed creation of one permanent post of Principal Government Engineer (D3) and making permanent of one Government Engineer (D2) supernumerary post in the Works Branch of the Development Bureau with effect from 1 April 2019 or upon approval of the Finance Committee (whichever is later) to lead the new Project Strategy and Governance Office for implementing strategic initiatives and enhancing capabilities in cost surveillance and project governance

101. The Chairman remarked that the staffing proposal was to create one permanent Principal Government Engineer ("PGE") (D3) post, designated as the Head of Project Strategy and Governance Office ("H/PSGO"), and make permanent of one Government Engineer ("GE") (D2) supernumerary post, designated as Principal Assistant Secretary (Project Capability and Strategy) ("PAS(PCS)") in the Works Branch of the Development Bureau ("DEVB(WB)") with effect from 1 April 2019 or upon approval of FC (whichever is later) to lead the new Project Strategy and Governance Office ("PSGO") for implementing strategic initiatives and enhancing capabilities in cost surveillance and project governance.

102. The Chairman pointed out that the Administration had consulted the Panel on Development on this staffing proposal on 27 November 2018. Most of the Panel members supported or did not oppose the proposal. Individual members remarked that the Government's justifications had failed to convince them to support the proposal. The major concerns and

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suggestions raised by members included: (a) the effectiveness of PCMO in enhancing the cost management and control of public works projects; (b) how PSGO, upgraded from PCMO, would enhance cost management and uplift the performance of public works projects with a view to curbing cost overrun and programme delays; the stage at which PSGO would start intervening in and following up on projects, and whether it had the power to call for termination of projects; and (c) the target students, training programmes and cost effectiveness of the proposed Centre of Excellence for Major Project Leaders ("CoE"). The Administration had addressed some of the questions raised by members at the meeting; the supplementary information provided by the Administration was circulated to members after the meeting vide LC Paper No. CB(1)347/18-19(01) and CB(1)465/18-19(01).

(At 12:24 pm, the Chairman asked if members agreed to extend the meeting by 15 minutes. No Members raised any objection.)

Duties of the Project Strategy and Governance Office

103. Mr Holden CHOW enquired about the differences between PCMO and PSGO in intervening and participating in public works projects. Mr CHOW noted that the United Kingdom ("UK") had established regulatory bodies similar to PSGO. He asked whether those regulatory bodies had set up key performance indicators, and whether PSGO would set up similar indicators.

104. Permanent Secretary for Development (Works) ("PSD/W") advised that due to manpower constraints, PCMO could only focus on projects for which funding approval would be sought from LegCo. This snap-shot approach at such late stage was effective, but the room for design optimization was quite limited and hence less room for project cost saving, as the project design was often maturely developed for funding application. Upon the establishment of PSGO, the project vetting process would be conducted at the inception stage with regular reviews and follow-up actions to track the development of projects through detailed design and till funding application stage. Regarding key performance indicators, PSD/W advised that in addition to strengthening cost management, PSGO would also establish CoE, which was anticipated to provide training for 150 to 200 civil servants responsible for major projects within three years to enhance their leadership skills in the delivery of public works project. Head of PCMO, DEVB remarked that the UK established the Major Projects Leadership Academy in 2012. According to the review conducted by the Academy, since its establishment, the percentage of public works projects in the UK completed within budget had increased from 30% to 85%.

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105. Dr LO Wai-kwok and Mr Tony TSE expressed support for this staffing proposal. They both opined that PSGO could address public concerns on cost overrun in public works. Mr TSE appreciated PSGO for making proposals on public works apart from vetting the construction costs. However, he was concerned if PSGO could operate independently, particularly whether other B/Ds would be reluctant to accept PSGO's proposals (especially those relating to works strategies) given that H/PSGO was merely a D3 post. Mr TSE also enquired whether PSGO would review the railway works and development strategies entrusted to the MTR Corporation Limited ("MTRCL"); and whether PSGO had sufficient non-directorate supporting staff.

106. PSD/W responded that H/PSGO would directly report to him, while PSGO would operate separately from other Deputy Secretaries for DEVB. He said that since its establishment in 2016, PCMO had been operating smoothly. It would discuss with relevant B/Ds on matters relating to management of project cost with a view to reaching a common ground. He anticipated that the work of PSGO would be similar. If PSGO and B/Ds had different views, coordination or discussions at a higher-level would be conducted in accordance with the established procedures. If necessary, PSD would communicate with the Permanent Secretaries of other bureaux direct and report to his/her superior to settle any differences. On cost management of railway works, PSD/W remarked that certain railway works commissioned by way of entrustment agreement, including the construction of SCL and the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL") had been underway prior to the establishment of PCMO. PSGO would vet the project costs should the Administration take forward similar public works in the future. Regarding non-directorate support, PSD/W advised that PSGO would be supported by a cross-disciplinary team comprising architects, quantity surveyors and engineers of various fields.

107. In response to Mr Tony TSE's enquiry about whether PSGO would review public works with variations, PSD/W advised that PSGO would review a variation order of public works if its amount exceeded a certain level.

Tendering arrangements for public works

108. Dr LO Wai-kwok said that the current tendering process for public works were unsatisfactory, including the general practice of selecting tenderers on the basis of lowest price tender, as well as inclusion of multiple works projects in some tenders, resulting in enormous project fees and making it difficult for small-and-medium construction companies to

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take part in the tendering exercises. Dr LO urged PSGO to review the tendering arrangements for public works.

109. PSD/W said that DEVB would review the tendering system for public works from time to time. The existing marking schemes for tenders mainly covered two aspects: technical and financial. The weighting of the two aspects would be adjusted according to the nature of the works project. He stressed that for works projects, tenders would not necessarily be awarded to those with the lowest price. In some cases, as much as 40% to 50% of the weighting would be accorded to the technical aspect. DEVB would also review the marking criteria for the technical aspect from time to time.

Tendering arrangements for the construction project of elevated pedestrian corridor in Yuen Long Town connecting with Long Ping Station

110. Mr CHU Hoi-dick said that the exorbitant construction costs for the construction project of the elevated pedestrian corridor in Yuen Long Town connecting with Long Ping Station ("the construction project of the elevated pedestrian corridor in Yuen Long Town") had aroused concerns of the public and LegCo. He pointed out that in its paper submitted to FC on 12 February 2019 regarding the project (LC Paper No. FC115/18-19(01)), the Transport and Housing Bureau ("THB") stated that the Administration would incorporate requirements in the tender documents of projects to invite tenderers to propose more cost-effective construction methods with a view to reducing the construction cost, and encouraging tenderers to submit innovative proposals to enhance the aesthetics of the proposed elevated pedestrian corridor and its integration with the surroundings. He asked whether the Administration had required tenderers to propose more cost-effective construction methods to reduce construction cost in the past; whether the arrangement could effectively reduce the construction cost; whether PCMO had given any advice on such an arrangement; whether the estimated cost of the Administration or the tendering price would be used in the funding applications submitted to FC in the future; and whether consideration would be given to adopting such arrangements in the tendering exercises for other public works.

111. Head of PCMO, DEVB advised that PCMO had reviewed the construction project of the elevated pedestrian corridor in Yuen Long Town. He said that PCMO found the construction cost of the deck structure of the project reasonable. However, a number of complicated factors involving the project (including the need to carry out the works on nullahs) had given rise to the overall high construction cost. On THB's tendering arrangement for the project, Head of PCMO, DEVB remarked that PCMO noted the arrangement. However, as the tendering exercise was currently

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underway, he refrained from commenting on the matter. The market price derived from the tendering exercise would provide a more solid reference for the preparation of funding applications. He added that in accordance with the guidelines of the Treasury Branch, FSTB, B/Ds could conduct tendering for uncontroversial public works projects and use the market price as a reference for preparing funding applications.

112. The Chairman remarked that as some members were still waiting for their turn to ask questions, the Subcommittee would continue the discussion on this item at the meeting on 22 March 2019.

113. The meeting ended at 12:45 pm.

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