

立法會

Legislative Council

LC Paper No. CB(2)874/20-21

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by the Administration)

Ref : CB2/PL/SE

Panel on Security

**Minutes of meeting by videoconferencing
held on Friday, 15 January 2021, at 8:30 am**

**Members
present**

: Hon CHAN Hak-kan, BBS, JP (Chairman)
Hon YUNG Hoi-yan, JP (Deputy Chairman)
Hon CHAN Kin-por, GBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, SBS, JP
Hon YIU Si-wing, BBS
Hon MA Fung-kwok, GBS, JP
Hon CHAN Han-pan, BBS, JP
Hon LEUNG Che-cheung, SBS, MH, JP
Hon Alice MAK Mei-kuen, BBS, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon Elizabeth QUAT, BBS, JP
Hon Jimmy NG Wing-ka, BBS, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai, JP
Hon CHAN Chun-ying, JP
Hon CHEUNG Kwok-kwan, JP
Dr Hon CHENG Chung-tai
Hon Tony TSE Wai-chuen, BBS, JP

**Member
attending**

: Hon Vincent CHENG Wing-shun, MH, JP

**Members
absent**

: Hon WONG Kwok-kin, SBS, JP
Hon CHUNG Kwok-pan

Public Officers attending : Item III

The Administration

Mr John LEE Ka-chiu, SBS, PDSM, PMSM, JP
Secretary for Security

Miss Shirley YUNG Pui-man, JP
Deputy Secretary for Security 1

Ms Joceline CHUI Shih-yen
Principal Assistant Secretary for Security E

Independent Commission Against Corruption

Mr Steven LAM Kin-ming
Assistant Director / Operations 3

Mr Diman MAK Wai-keung
Acting Senior Principal Investigator / R Group

Item IV

The Administration

Mr Sonny AU Chi-kwong, PDSM, PMSM, JP
Under Secretary for Security

Mr Cyrus CHEUNG Ho-chi
Principal Assistant Secretary for Security (Review)

Ms Yolanda YU Hoi-kwan
Chief Superintendent of Police (Crime Support)
(Crime Wing)

Mr Raymond LAM Cheuk-ho
Acting Chief Superintendent of Police
(Cyber Security and Technology Crime Bureau)

Item V

The Administration

Mr Sonny AU Chi-kwong, PDSM, PMSM, JP
Under Secretary for Security

Miss Rebecca CHEUNG Pui-ling
Principal Assistant Secretary for Security B

Mr NG Chiu-kok
Assistant Commissioner (Operations)
Correctional Services Department

Mr Jimmy TSIM Man-tat
Senior Engineer / Security / Electronic Project
Electrical & Mechanical Services Department

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 1

Staff in attendance : Mr Timothy TSO
Senior Assistant Legal Adviser 1

Ms Gloria TSANG
Senior Council Secretary (2) 7

Ms Priscilla LAU
Council Secretary (2) 1

Ms Kiwi NG
Legislative Assistant (2) 1

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I. Information paper issued since the last meeting

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

II. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)580/20-21(01) and (02))

Regular meeting in February 2021

2. Members noted that the next regular meeting would be held on 2 February 2021 from 2:30 pm to 4:30 pm to receive a briefing by the Commissioner of Police on the crime situation in 2020.

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III. Results of study of matters raised in the Annual Report 2019 to the Chief Executive by the Commissioner on Interception of Communications and Surveillance

(LC Paper Nos. CB(2)534/20-21(01), CB(2)580/20-21(03) and Annual Report 2019 to the Chief Executive by the Commissioner on Interception of Communications and Surveillance)

3. Secretary for Security ("S for S") briefed Members on the results of the Administration's study of matters raised in the Annual Report 2019 ("the Annual Report") to the Chief Executive by the Commissioner on Interception of Communications and Surveillance ("the Commissioner"), which were set out in the paper to the Panel.

4. Members noted an updated background brief entitled "Results of Study of Matters Raised in the Annual Report to the Chief Executive by the Commissioner on Interception of Communications and Surveillance" prepared by the Legislative Council ("LegCo") Secretariat.

Compliance with the statutory requirements among officers of the law enforcement agencies

5. Noting that there were 16 cases of non-compliance/irregularity/incident out of 1 339 authorization applications in 2019, in which the percentage was lower than that of 27 non-compliance cases out of 1 384 applications in 2018, Mr CHAN Chun-ying asked whether the improvement was attributed to the forum provided by the Commissioner in January 2019 to speak to frontline officers on the requirements under the Interception of Communications and Surveillance Ordinance (Cap. 589) ("ICSO"), and whether similar activities would be held regularly. S for S said that two forums were held respectively in 2018 and 2019, which were very useful as the Commissioner could explain and answer in person the detailed requirements when carrying out ICSO-related tasks. The Government would liaise with the Commissioner on holding more forums in the future. In response to Mr YIU Si-wing's enquiry on how cases of non-compliance/irregularity/incident were found, S for S said that normally, the cases were discovered by the Commissioner or law enforcement agencies ("LEAs").

6. Noting from the Commissioner's findings that most of the interception and covert surveillance operations were conducted strictly pursuant to prescribed authorizations granted and the additional conditions imposed, Mr CHAN Kin-por hoped that the control regime

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under ICSO could be maintained. He enquired about the training provided to officers newly assigned to ICSO work to ensure that they were familiar with the rules and procedures under the ICSO regime. S for S said that LEAs concerned had provided diversified training to relevant officers. For instance, officers newly assigned to ICSO work and those working at the supervisory level were provided with induction training on ICSO procedures and rules, the approval criteria of proportionality and necessity based on the Ordinance, the details regarding additional conditions imposed by panel judges. They were also briefed on previous non-compliance cases, the Commissioner's comments on those cases, as well as the corresponding improvement and revisions made to the Code of Practice ("CoP"). Besides, officers who were likely to be assuming supervisory posts relating to ICSO work would be provided with training as well. Furthermore, there were various refresher training, briefings, seminars and workshops provided to relevant officers.

7. Ms Elizabeth QUAT sought details about Case 6.1, which was a case of non-compliance due to a system bug, and asked whether such kind of technical mistakes could be avoided. S for S assured Members that technical problem was rare and if happened, was always unique. He further said that the Commissioner had stated in the Annual Report that technical mistakes were quickly resolved and reported to the Commissioner, and corresponding improvement had been set out by LEAs in a proactive manner. S for S was confident that LEA officers would discharge their duties carefully and professionally.

8. Mr Holden CHOW sought information about the follow-up actions towards officers who were not vigilant and cautious enough in discharging ICSO duties. S for S said that depending on the seriousness and circumstances of the case, appropriate actions, including verbal warning or disciplinary actions, would be taken by LEAs concerned. It was highlighted that the career prospect of an officer would be affected if disciplinary actions were taken against the officer concerned. For cases of repeated mistakes by an officer, S for S stressed that the overall performance of the officer concerned would be taken into account when deciding an appropriate follow-up action.

The Interception of Communications and Surveillance Ordinance

9. Given the proliferation of use of social media and instant message applications among members of the public, Mr CHAN Chun-ying and Mr CHAN Kin-por expressed concern as to whether there was a need to

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amend ICSO, with a view to intercepting information transmitted via new types of applications. Mr CHAN Kin-por further pointed out that some internet servers were set up at overseas in which LEAs might encounter difficulties in tracing and investigating the cases concerned. S for S explained that as stipulated in ICSO, "communication" meant "any communication transmitted by a telecommunications system"; and "intercepting act" meant "in relation to any communication, the inspection of some or all of the contents of the communication, by a person other than its sender or intended recipient". As such, it was considered that ICSO was broad enough to cover various kinds of communication despite technological changes.

10. Although ICSO was considered to be sufficient to cover various kinds of communication, Mr YIU Si-wing asked whether any improvement was needed in the handling procedure and efficiency in conducting ICSO-related tasks. S for S said that there had always been room for improvement for every single task. It was also the reason why the Commissioner was invited to give recommendations on various procedural matters in the course of overseeing LEAs' compliance with ICSO requirements. LEAs were always willing to accept the Commissioner's recommendations for better operation of the ICSO regime. When necessary, corresponding recommendations would be added to CoP to improve the workflow and ensure a clear working procedure.

11. As the Commissioner had previously mentioned in a press briefing that he had no power to oversee the interception and surveillance work conducted by the National Security Department of the Police, Dr CHENG Chung-tai expressed concern about the impact on ICSO upon implementation of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("the National Security Law"). S for S said that Dr CHENG's saying was unfair to the Commissioner's work, adding that the Commissioner had been dedicating to the statutory duties in a stringent manner. He stressed that the existing ICSO regime and the regime for interception and covert surveillance operations under the National Security Law were proceeded in parallel. The National Security Department of the Police had been discharging its duties in strict accordance with the Implementation Rules for Article 43 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("Implementation Rules"), which were drawn up having regard to the necessity and proportionality

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of ICSO-related tasks relating to national security. In conducting relevant work, the Police were under the supervision of the National Security Committee and required to report to the latter.

12. Ms Elizabeth QUAT further sought clarification relating to the conduction of interception and surveillance work on cases suspected to be endangering national security. S for S explained that cases relating to national security would be handled according to the Implementation Rules, while other cases not involving national security would be dealt with pursuant to the existing ICSO. Both regimes were equally stringent. He stressed that the implementation rules, operating principles and guidelines for application to conduct interception and covert surveillance under the National Security Law had been published in the Government gazette for public inspection.

Other issues

13. Mr Tony TSE was concerned that it would be challenging for LEAs to conduct investigation under the protection of legal professional privilege ("LPP") in ICSO, in particular on occasion where a lawyer was participating in illegal activities requested by clients. S for S explained that when making an application for a prescribed authorization for interception, an LEA applicant had to submit with his application an affidavit or written statement on his assessment of the likelihood of involvement of LPP to a panel judge for issue of a prescribed authorization. Whenever there were any subsequent changes which might affect the assessment, the LEA concerned had to notify the panel judge, who would determine whether the prescribed authorization should continue and whether any additional conditions needed to be imposed. Such arrangement had been clearly set out in CoP. In fact, there were few cases obtaining LPP information over the years. Among the 170 new cases that were likely to involve LPP information in 2019, there was one case of actual obtainment of information suspected to be subject to LPP. The panel judge had imposed additional conditions on the prescribed authorization to guard against the risk of obtaining LPP information.

14. Mr YIU Si-wing sought information on the manpower and resource estimates for conducting ICSO-related tasks. S for S said that with cautious approach in handling ICSO work, the number of authorization applications for interception or covert surveillance was expected to be similar every year. No additional resource was allocated for carrying

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out ICSO work in the current financial year. That said, the Government would keep monitoring the situation and seek extra resources as and when necessary.

IV. Proposed introduction of offences on voyeurism and non-consensual photography of intimate parts, and related offences

(LC Paper Nos. CB(2)580/20-21(04) and (05))

15. Under Secretary for Security ("US for S") briefed Members on the outcome of the public consultation on the proposed introduction of offences on voyeurism and non-consensual photography of intimate parts, and related offences, as detailed in the Administration's paper.

16. Members noted a background brief entitled "Proposed introduction of offences on voyeurism and non-consensual sexual photography of intimate parts" prepared by the LegCo Secretariat.

Voyeurism

17. Ms Elizabeth QUAT sought clarification as to whether the proposed offence of "voyeurism" would be constituted regardless of sexual purposes. Dr CHENG Chung-tai asked whether recording a police officer at public places would constitute the proposed offence of "voyeurism". He further sought clarification about the places that would "reasonably be expected to provide privacy" under the proposed offence of "voyeurism".

18. US for S explained that under the proposed offence of "voyeurism", the person observing or recording a subject individual engaged in an intimate act must act "surreptitiously". Besides, the person being observed or recorded must be in the circumstances that gave rise to a "reasonable expectation of privacy". US for S added that whether a place was expected to provide privacy depend on the specific circumstances and could not be generalized.

Non-consensual photography of intimate parts

19. While expressing support for the proposed offence of non-consensual photography of intimate parts, the Deputy Chairman, Ms Elizabeth QUAT, Mr Vincent CHENG and Mr SHIU Ka-fai

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expressed concern about reserving the legislative amendments to deal with "down-blousing" for the time being. The Deputy Chairman noted from the Administration's paper that New Zealand had offence provisions covering both "upskirt photography" and "down-blousing", and considered that "down-blousing" was in fact as serious as "upskirt photography". Mr Vincent CHENG said that the seriousness of "down-blousing" was no less than "up-skirting", and considered that it was an opportune time to cover "down-blousing" under the proposed offence. Mr SHIU Ka-fai said that "down-blousing" was also an obscene behaviour and called on the Administration to reconsider including "down-blousing" in the proposed legislation.

20. US for S said that there were different views received during the public consultation exercise as to whether the proposed offence should cover "down-blousing". For instance, there were concerns relating to the handling of transgender persons, as well as the differences in the social perception on the exposure of male and female breasts. He pointed out that the recommendations by the Law Review Commission ("LRC") in its *Report on Voyeurism and Non-consensual Upskirt-Photography* published in April 2019 did not cover "down-blousing". Besides, the Government was mindful of the gender neutrality as one of the guiding principles laid down by LRC that any person should be rendered the same legal protection from any offensive acts irrespective of one's gender. Furthermore, among the common law jurisdictions that had legislated against non-consensual photography of intimate parts, only New Zealand had offences provisions covering "down-blousing" but the scope of coverage was confined to female breasts. US for S further advised that various complicated and practical issues had to be resolved first if the legislation was to cover "down-blousing", including the scope of the offence must be clearly defined to avoid misunderstanding, and the different public views between the exposure of male and female breasts.

21. Ms Elizabeth QUAT expressed dissatisfaction at the Administration's response. She was of the view that the LRC's report was more academic-based, which was different from the Administration's objective in taking forward legislative proposals to respond to the pressing need of the society. While considering that "down-blousing" might intend to observe or record images of female breasts, she said that not tackling the issue of "down-blousing" in the current legislative exercise amounted to negligence and urged the Administration to reconsider it. The Deputy Chairman said that the proposed offence

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should be comprehensive and called on the Administration to reconsider including "down-blousing", such that non-consensual photography of the breasts of females, males and transgender persons would also be covered. US for S advised that the Law Society had expressed the views that the issues involved in "down-blousing" were not straight-forward and should require further deliberation, whereas the discussion on "upskirt photography" was more thorough and mature. Nevertheless, the Government noted Members' views and would further consider the related issues at the Bills Committee to be formed to study the relevant bill. Mr Vincent CHENG hoped that issues relating to "down-blousing" would be properly addressed at the relevant Bills Committee.

22. In response to Ms Elizabeth QUAT's further enquiry about the definition of "dishonest gain for the person himself or any other person" under the proposed offence of non-consensual photography of intimate parts, US for S said that there were some previous court cases setting out the definition.

Distribution of intimate images

23. While welcoming the two proposed offences concerning distribution of intimate image, the Deputy Chairman queried why threatening to distribute intimate image was not covered under the proposed offences, as she noted that threatening to disclose an intimate photograph or film was included in the Abusive Behaviour and Sexual Harm (Scotland) Act 2016. She said that blackmailing and threatening to distribute intimate images would cause victim's distress and pressure, and urged the Administration to consider including blackmailing under the proposed offences. Ms Elizabeth QUAT shared a similar view. She said that blackmailing and threatening to distribute intimate images were getting serious, and it was a loophole to exclude these acts from the proposed offences.

24. US for S responded that cases on threatening others to distribute intimate photos might be prosecuted under existing offences of blackmail or criminal intimidation, with maximum imprisonment of 14 and five years respectively. That said, the Government was willing to further discuss the matter with members at the Bills Committee to be formed.

25. Ms Alice MAK queried why the mere forwarding or sharing of intimate images in the absence of the requisite *mens rea* would be excluded from the scope of the proposed offences. Besides, she was

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concerned about the measures taken to ensure intimate images be permanently deleted from the internet. Mr Vincent CHENG expressed a similar concern, adding that images could be rapidly distributed via the internet. Mr SHIU Ka-fai sought information on the legal consequences about mere forwarding or sharing of intimate images. Mr MA Fung-kwok was concerned about the scenario where intimate images were released by accident, as well as the distribution of intimate images with consent being given for taking of such images, but not for subsequent distribution.

26. US for S explained that there were two proposed offences concerning distribution of intimate images, i.e. the distribution of surreptitious images obtained from committing the offence of voyeurism or non-consensual photography of intimate parts, and the distribution of intimate images where consent might have been given or was given for the taking of such intimate images, but not for the subsequent distribution. For the latter, the construct of the offence would also include the element that "the distributor intends to cause the victim distress, or knows or has reason to believe that the distribution will or is likely to cause the victim's humiliation, alarm or distress". It was highlighted that the scope of the proposed offences had to be precise to specifically target on the act of "distribution". That said, the legal drafting and details could be further discussed at the Bills Committee to be formed. US for S further pointed out that the Cyber Security and Technology Crime Bureau of the Police would perform cyber patrol daily. If any pornographic or violent contents were found on the internet, the Police would immediately request internet service providers or relevant online platforms to remove the inappropriate contents. During the investigation of cases relating to voyeurism and non-consensual photography of intimate parts, evidence found at arrestees' personal computers or mobile phones would be confiscated as well.

27. In response to Mr SHIU Ka-fai's follow-up enquiry about whether distributing intimate images involved in cases such as revenge porn constituted to the proposed offences, US for S said that every case was unique and would be handled based on evidence collected.

28. As a member of the Equal Opportunities Commission ("EOC"), Mr Vincent CHENG said that EOC and relevant organizations would make reference to some intimate images/video during investigation, and sought details about the statutory defences under the proposed offences.

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US for S said that it was proposed in the legislation that it was a defence for a person charged for any one of the proposed new offences to establish that the person had lawful authority or reasonable excuse for the action.

Sexual Conviction Record Check Scheme

29. Mr Holden CHOW expressed concern about the Administration's proposal that the two proposed offences on the distribution of intimate images would not be covered under the Sexual Conviction Record Check ("SCRC") Scheme. US for S pointed out that LRC had taken reference from the Child Care Services Ordinance (Cap. 243) and recommended to include the proposed offences of "voyeurism" and "non-consensual photography of intimate parts" in the list of specified sexual offences under the SCRC Scheme. After careful consideration, the Government considered it appropriate to include the above two offences under the Scheme. Regarding the proposed offences on the distribution of images, as it was observed that offences related to the distribution of obscene and indecent articles under the Control of Obscene and Indecent Articles Ordinance (Cap. 390) were currently not included in the list of sexual offences under the SCRC Scheme, it was proposed that the two offences on the distribution of images should by the same token not be covered.

30. Mr Tony TSE supported in principle for the proposed offences. He noted that LRC was currently conducting a public consultation exercise, which among others, had recommended that the SCRC Scheme should be extended to cover all existing employees, self-employed persons, and volunteers. He sought the way forward and the implementation timetable, if considered necessary. Mr Holden CHOW supported LRC's recommendation that the SCRC Scheme should be extended to cover volunteers. US for S said that the SCRC Scheme was an administrative measure, in which almost all sexual offences under the Crimes Ordinance (Cap. 200) were included in the list of specified sexual offences under the Scheme. Given that LRC was currently conducting a public consultation exercise on sentencing and related matters in the review of sexual offences, the Government would keep in view the outcome of the public consultation and the final recommendations of LRC in respect of the SCRC Scheme, and consider the way forward.

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Other issues

31. Mr Vincent CHENG was concerned that according to the result of a survey conducted by EOC in 2019, some 1 600 out of 14 000 tertiary students had been suffered from online sexual harassment in the past 12 months. US for S advised that cases relating to sexual harassment were mainly handled under the Sex Discrimination Ordinance (Cap. 480) at the moment. Depending on the circumstances of each case, some acts would be processed with "loitering" under Cap. 200, "outraging public decency" under the common law, and the Personal Data (Privacy) Ordinance (Cap. 486) as appropriate.

32. Ms Elizabeth QUAT enquired about whether the arrangement for the use of shield, live television link in giving evidence and the provision of special passageways would be provided to victims of the proposed offences. US for S replied that this would be considered.

33. Mr Tony TSE asked whether consideration would be given to regulating equipment used to surreptitiously observe or record images. US for S advised that upon careful consideration, instead of regulating equipment, it would be more straight-forward to assess whether the person observed or recorded was in circumstances that gave rise to "a reasonable expectation of privacy".

V. Installation of electric locks security system in Siu Lam Psychiatric Centre
(LC Paper Nos. CB(2)580/20-21(06) and (07))

34. US for S briefed Members on the proposal to install electric locks security system ("ELSS") in the Siu Lam Psychiatric Centre ("SLPC").

35. Members noted an updated background brief entitled "Installation of electric locks security system at correctional institutions" prepared by the LegCo Secretariat.

Operations of electric locks security system and the installation progress at the Siu Lam Psychiatric Centre

36. Mr CHAN Chun-ying expressed support for the proposed ELSS. He was concerned about the staff deployment in SLPC during the planning and installation stage of ELSS. He was also concerned about the security assessment and the facial recognition technology, in

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particular under the current COVID-19 epidemic situation that everyone was wearing a face mask. US for S took the opportunity to thank the Correctional Services Department ("CSD") for their effective deployment in human resources to ensure smooth operation of SLPC. Upon system commissioning, CSD would further redeploy staff, so as to strengthen the rehabilitation and other welfare programmes. US for S further stressed that the Government attached great importance to security assessment, and relevant assessment was conducted during the installation stage in compliance with the guidelines set out by the Privacy Commissioner for Personal Data. Members' attention was drawn to the fact that ELSS was an independent and closed system, which could only be operated in one institution with all wirings enclosed in conduits to protect them from being interfered or damaged. Besides, the facial recognition technology was a dual identity-verification arrangement, implying that apart from facial recognition, staff in the control room had to verify the identity of the requesting staff through the intercom and closed-circuit television system before unlocking the gate. Although the reliability rate of ELSS could be up to about 97% to 98%, the Government would further examine the impact of wearing face masks on the system.

37. Noting from the Administration's paper that the keys of the gates with manually-operated mechanical locks were kept in specific locations relatively far away from the custodial areas of persons in custody ("PICs") in SLPC during night time, the Deputy Chairman expressed support for the proposed ELSS for its security and operational needs. She hoped that ELSS would enhance institutional management and relieve work pressure of CSD officers. She further expressed concern about the long lead time for the ELSS installation. US for S explained that it took about four minutes for CSD staff to collect the keys from the concerned locations in SLPC and rush to the scene to unlock relevant gates. After installing ELSS, it saved time to collect the keys and get to the scene in case of emergency. Although the lead time of about six years was estimated upon careful consideration, the Government would take a look to see if there was any room for further shortening the time.

Future installation plan and the development of Smart Prison

38. Given that the proposed ELSS would help improve the existing facilities to better cater for the custodial needs and institutional management, Ms Alice MAK expressed support for the proposal. She asked about the Administration's plan and timetable in upgrading facilities and equipment in different correctional institutions. US for S

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said that CSD had been committing to providing a secure, safe and healthy environment for both their staff and PICs. The concept of Smart Prison and ELSS were two major projects to improve the custodial environment and working condition. While ELSS would be installed at various institutions by phases, some pilot schemes relating to the Smart Prison were in place to test the effectiveness of novel technologies. SB would fully support CSD in upgrading institutional facilities and modernizing their services.

39. Noting that the manually-operated mechanical locks and keys used at correctional institutions were bulky and might not be good for the occupational safety and health of officers concerned, Ms Elizabeth QUAT expressed support for the proposal to install ELSS in SLPC for its reliability and safety. She enquired about the development progress of the Smart Prison. Assistant Commissioner (Operations), CSD said that the concept of Smart Prison, which comprised different systems, including the Security and Monitoring System, Operation and Management System, Person In Custody Self-Management System, etc., would definitely enhance the operational efficiency and security of prison management. While different systems were being put on trial at various correctional institutions, the Tai Tam Gap Correctional Institution was expected to be transformed into the first-generation Smart Prison shortly.

40. The Chairman concluded that members had no objection in principle to the Administration's financial proposal.

41. There being no other business, the meeting ended at 10:31 am.