

立法會
Legislative Council

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Establishment Subcommittee of the Finance Committee

Minutes of the 10th meeting
held in Conference Room 1 of Legislative Council Complex
on Monday, 10 April 2017, at 9:00 am

Members present:

Hon Alvin YEUNG (Deputy Chairman)
Hon Abraham SHEK Lai-him, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon WU Chi-wai, MH
Hon YIU Si-wing, BBS
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon KWOK Wai-keung
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Hon Martin LIAO Cheung-kong, SBS, JP
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Hon HO Kai-ming
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai
Hon Wilson OR Chong-shing, MH
Hon YUNG Hoi-yan

Hon CHAN Chun-ying
Hon Tanya CHAN
Hon LUK Chung-hung
Hon LAU Kwok-fan, MH
Hon KWONG Chun-yu
Hon Jeremy TAM Man-ho
Hon Nathan LAW Kwun-chung
Dr Hon YIU Chung-yim

Members absent:

Hon Mrs Regina IP LAU Suk-yee, GBS, JP (Chairman)
Hon James TO Kun-sun
Hon WONG Kwok-kin, SBS, JP
Hon Steven HO Chun-yin, BBS
Dr Hon KWOK Ka-ki
Hon IP Kin-yuen
Hon CHUNG Kwok-pan
Hon LAM Cheuk-ting
Hon SHIU Ka-chun

Public Officers attending:

Ms Carol YUEN Siu-wai, JP	Deputy Secretary for Financial Services and the Treasury (Treasury) 1
Ms Amy WONG Pui-man	Acting Deputy Secretary for the Civil Service 1
Mr Godfrey LEUNG, JP	Under Secretary for Commerce and Economic Development
Miss Fabia TAM	Principal Assistant Secretary for Commerce and Economic Development (Commerce and Industry)3
Ms Ada LEUNG, JP	Director of Intellectual Property
Mr Derek LAU	Senior Solicitor (Patents)2, Intellectual Property Department
Mr Eugene FUNG, JP	Deputy Secretary for Food and Health (Food)2
Mr Kenneth CHAN	Principal Assistant Secretary for Food and Health (Food)1
Ms Winnie LAU	Senior Principal Executive Officer, Food and Environmental Hygiene Department

Dr Sarah CHOI, JP

Assistant Director (Food Surveillance and Control), Food and Environmental Hygiene Department

Clerk in attendance:

Ms Connie SZETO

Chief Council Secretary (1)4

Staff in attendance:

Mr Keith WONG

Council Secretary (1)4

Ms Alice CHEUNG

Senior Legislative Assistant (1)1

Miss Yannes HO

Legislative Assistant (1)6

Ms Haley CHEUNG

Legislative Assistant (1)9

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The Deputy Chairman drew members' attention to the information paper ECI(2016-17)13, which set out the latest changes in the directorate establishment approved since 2002 and the changes to the directorate establishment in relation to the six items on the agenda. He 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 funding proposal under discussion at the meeting before they spoke on the item. He also drew members' attention to RoP 84 on voting in case of direct pecuniary interest.

EC(2016-17)24 Proposed making permanent of one supernumerary post of Assistant Director of Intellectual Property (DL2) in the Intellectual Property Department with effect from 1 April 2017, or upon approval of the Finance Committee, whichever is later to provide dedicated staffing support at the directorate level to continue with the duties and responsibilities pertinent to the patent portfolio on a permanent basis

2. The Deputy Chairman remarked that the staffing proposal was to make permanent one supernumerary post of Assistant Director of Intellectual Property ("ADIP") (DL2) in the Intellectual Property Department ("IPD") with effect from 1 April 2017, or upon approval of the

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Finance Committee ("FC"), to provide dedicated staffing support at the directorate level to continue with the duties and responsibilities pertinent to the patent portfolio on a permanent basis.

3. The Deputy Chairman said that the Administration had consulted the Panel on Commerce and Industry on the proposal on 20 December 2016. The Panel supported the proposal in principle. Some members were concerned whether the creation of the permanent ADIP post would help expedite the implementation of the new Original Grant Patent ("OGP") system, and whether the Government would formulate any relevant manpower resources development plans in nurturing local talents to support the development of the new patent system. Some members were of the view that the Administration should step up publicity and education efforts on the new patent system to enhance the awareness of small and medium enterprises on the protection of intellectual property ("IP"), including registered trade marks. Moreover, some members pointed out that patented drugs and medical devices were of high costs, so the poor were very often deprived of the treatments concerned. They were concerned whether the current patent law would have any contradiction with the Government's policy direction on supporting the disadvantaged, and urged the Administration to consider introducing into the local patent law the "Bolar exemption", which allowed manufacturers of generic drugs to conduct studies, tests or trials of a patented pharmaceutical invention to obtain marketing approval without the patent owner's permission and before the patent protection expired, thereby facilitating the generic drug merchants to obtain approval for marketing their generic drugs, thus lowering the cost of drugs dedicated to treatment of specific diseases and relieving the burden of medical expenses relating to the use of patented drugs by the needy and in public hospitals.

The work of the proposed post

4. Mr CHAN Chun-ying noted from Enclosure 5 of the Government's paper that there was an establishment of 1.5 Solicitors in the Patents Team headed by the permanent ADIP, and among them 0.5 Solicitor had been redeployed from the Registration Team of IPD to take up the duties of both the Registration Team and the Patents Team concurrently. He enquired about the reasons for such arrangement. He was worried that the manpower resources were not sufficient to support the work of the permanent ADIP, as there were only 3.5 Solicitors (including two Senior Solicitors and 1.5 Solicitors) and two clerical grade staff in the Patents Team.

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5. Under Secretary for Commerce and Economic Development ("USCED") advised that IPD's manpower had all along been prudently deployed to make the best use of talents. Director of Intellectual Property ("DIP") added that the two Senior Solicitors under the Patents Team were permanent posts (one of them had been converted from a supernumerary post into a permanent one from 1 April 2017). As it was not possible to deploy one additional Solicitor dedicated to the duties of the Patents Team on a full-time basis under the current departmental manpower, it was necessary to redeploy one Solicitor from the Registration Team to take up the work of both the Patents Team and the Registration Team. If the manpower in respect of Solicitor was not sufficient to support the future work of the Patents Team, IPD would consider applying for additional resources to increase manpower in the future. In addition, there were Examiner grade staff (including Chief Examiners, Senior Examiners and Examiners I) in the Patents Team to support the team in implementing the new OGP system.

6. Mr POON Siu-ping expressed support for the staffing proposal. Noting that the supernumerary ADIP post had expired on 1 April 2017, he enquired how the Administration would deal with the situation if it could not be converted into a permanent post.

7. USCED replied that to reduce the impact on the implementation of the new OGP system, IPD had made a transitional arrangement to handle the work of the Patents Team through internal manpower deployment. Given the acute manpower shortage of the Department at the moment, he called on members to support this proposal. DIP supplemented that should there be a delay in the approval of the staffing proposal, the implementation of the new OGP system would be affected.

8. Dr YIU Chung-yim requested the Administration to provide information on the effectiveness of the tasks accomplished by the supernumerary ADIP post in the past three years; a list of regular tasks of ADIP upon conversion into a permanent post; and the criteria for measuring the work effectiveness of the permanent post, so as to facilitate members' consideration on this staffing proposal.

9. USCED replied that the most notable task accomplished by the supernumerary ADIP post in the past was assisting the Legislative Council ("LegCo") in the enactment of the Patents (Amendment) Ordinance 2016 in June 2016 and taking forward other preparatory work in relation to the new OGP system. As regards the effectiveness of the tasks accomplished by the proposed post, there were established procedures within the Government to assess the work performance of the post holder. DIP

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added that after the establishment of the new OGP system, the proposed post was required to monitor the daily operation of the new system, including leading the new Patents Registry, dealing with the examination of patent applications as well as hearings related to patent registration. As these were regular tasks, there was a need for the Government to convert the post into a permanent one and fill it by a person with professional legal background.

[*Post-meeting note:* The supplementary information provided by the Administration was circulated to members on 21 April 2017 vide LC Paper No. ESC89/16-17(01).]

The conduct of substantive examination under the Original Grant Patent system in Hong Kong

10. Ir Dr LO Wai-kwok expressed support for the staffing proposal. He pointed out that the enactment of the Patents (Amendment) Ordinance 2016 had proactively boosted the establishment of the new OGP system, and there was a need for the Administration to convert the supernumerary ADIP post into a permanent one in order to cope with the relevant tasks in the future. He advised that the examination of patent applications was very complex involving techniques of different fields. He enquired whether the Administration would consider hiring experts outside the Government to assist in the examination of patent applications.

11. USCED replied that the Government had signed a Cooperation Agreement with the State Intellectual Property Office of the Mainland ("SIPO") under which SIPO would provide technical support until the Patents Registry had built up its capability in conducting substantive examination on its own. Local examiners would receive training in SIPO and it was the Government's long-term goal to develop the Patents Registry into a unit with substantive examination capability.

12. Mr Martin LIAO said that the current re-registration system would be retained during the initial stage of the implementation of the new OGP system in Hong Kong. He was concerned that such arrangement would affect the implementation of the OGP system. He enquired about the timing for the Administration to abolish the re-registration system, whether it would set a time limit for the transitional arrangement, and the expected time for the Patents Registry to possess substantive examination capability.

13. Mr Holden CHOW pointed out that after Singapore had developed an OGP system in 1995, it took 18 years for it to successfully establish its unit for substantive examination. He enquired how the Government

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would make reference to the experience of Singapore to expedite the building up of IPD's substantive examination capability.

14. USCED replied that the Government decided to retain the re-registration system after considering the views collected in the public consultation, and there was no timetable for abolishing the system at present. The Government would review the effectiveness of the new OGP system and areas for improvements after the system had come into operation for a while. Making reference to the experience of Singapore, he estimated that a lead time would be needed for Hong Kong to develop an OGP system with substantive examination capability. The Government expected that the relevant work could be expedited with the assistance of SIPO. DIP added that Macao had all along adopted a dual-track approach comprising both re-registration and OGP systems upon the establishment of its OGP system. She pointed out that the pace of development of Hong Kong's OGP system depended on the progress in training talents for handling examination work and the number of OGP applications in the local market. The Government had not set any timetable on fully building up the substantive examination capability in Hong Kong. To expedite the pace of development, IPD had started recruiting patent examiners. Should the recruitment process go smoothly, the earliest batch of patent examiners engaged were expected to take office in the second half of 2017. IPD would make arrangement for them to receive a four-month training in SIPO as soon as possible. She supplemented that Singapore was one of the few areas where a re-registration system had been converted into an OGP system, and IPD had exchanged views with the patent authorities of Singapore on the development of an OGP system so as to learn from its experience.

15. Mr Nathan LAW pointed out that the current number of patent re-registration applications in Hong Kong was on the low side, and enquired how the Administration would assess the economic benefits to be brought to Hong Kong through the implementation of the new OGP system.

16. USCED said that the Government had not quantified the economic benefits to be brought to Hong Kong through the implementation of the new OGP system. He stressed that developing the new system was a strategic decision, which could enhance Hong Kong's IP protection infrastructure with a view to attracting international IP trading and management activities to Hong Kong, thereby enabling Hong Kong to build a firmer foothold as an innovation and IP trading hub. Moreover, the new system was expected to encourage local OGP application and promote an innovation atmosphere, which entailed Hong Kong's economic

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benefits in the long run.

17. Mr Nathan LAW pointed out that there was general concern in the community about the Mainland's patent and copyright protection, and enquired why the Administration chose to seek technical assistance and training for examination talents from SIPO. Considering that the approach adopted by Hong Kong in developing a new OGP system was similar to that by Singapore, Mr LEUNG Kwok-hung enquired why the Administration did not work with relevant authorities of Singapore for training Hong Kong's own examiners.

18. USCED advised that SIPO was one of the top five patent offices in the world, with the numbers of patents applied and granted being far exceeding those of the Intellectual Property Office of Singapore. Currently, there were nearly 10 000 examiners in SIPO with a good command of English and rich experience in substantive examination. DIP added that among the top five patent offices in the world, SIPO was the only one which possessed both Chinese and English patent examination capabilities, and therefore it was a suitable partner for Hong Kong. Moreover, although the common law was not applied in the Mainland, its OGP registration system could still align with its counterparts in international societies as it had been involved in several international conventions on patent registration, and the experience in this respect was appropriate to Hong Kong as reference.

International convention principles on patents, copyrights and trade marks

19. Mr WU Chi-wai was concerned whether the Administration would commence work in updating the copyright and trade mark registration regime after creating the permanent ADIP post to handle the new patent system. He also enquired how the Administration would take forward the work to introduce into Hong Kong various international convention principles related to the registration of patents, copyrights and trade marks, including the "Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled" ("Marrakesh Treaty"), the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks ("Madrid Protocol") and the "Bolar exemption".

20. DIP advised that while the Assistant Director of Intellectual Property (Registration) was responsible for the implementation of the "Madrid Protocol", the Assistant Director of Intellectual Property (Copyright) was responsible for the work related to the "Marrakesh Treaty". Before the creation of the permanent ADIP post, different colleagues

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within IPD were also required to share the work related to the new patent system. The Government was currently studying how to implement the "Marrakesh Treaty", and was expected to report the work progress to the Panel on Commerce and Industry by mid-2017. The Government did not have a timetable for implementing the proposal and enacting relevant legislation for the time being. As for the implementation of the "Madrid Protocol", the Government had conducted a public consultation in 2014 and a public briefing in early 2017, and given an account of the work direction for implementing the "Madrid Protocol" to the Panel on Commerce and Industry. The Government could submit the relevant legislative proposal to LegCo as early as late 2017 or early 2018. Should the legislative work be in good progress, the trade mark registration regime under the "Madrid Protocol" was expected to commence in 2019. DIP supplemented that upon the implementation of the new OGP system, the proposed post would continue with the research on how to enhance the system, including how to introduce the "Bolar exemption" and the relevant legislative work. The Government did not have a timetable for introducing such principles at present. She advised that the Government would keep reviewing and enhancing the new OGP system (including the introduction of other international standards), rather than considering the issues related to the "Bolar exemption" only after substantive examination capabilities had been built up. She agreed to provide the Subcommittee with the Government's preliminary research findings on the "Bolar exemption".

[Post-meeting note: The supplementary information provided by the Administration was circulated to members on 21 April 2017 vide LC Paper No. ESC89/16-17(01).]

21. Dr Fernando CHEUNG enquired about the implementation of the "Marrakesh Treaty" in the Mainland. He considered that the Government's work in updating the copyright legislation should include the implementation of the "Marrakesh Treaty" in Hong Kong.

22. DIP replied that while the Mainland government had signed the "Marrakesh Treaty", the treaty was still not implemented in the Mainland. She added that whether the "Marrakesh Treaty" would be implemented in the Mainland would not affect the effort to take forward the work of updating the copyright legislation in Hong Kong in order to meet the requirements of the treaty.

Voting on the item

23. The Deputy Chairman put the item to vote. He considered that the majority of the members voting were in favour of the item, and declared

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that members of the Subcommittee agreed to recommend the item to FC for approval. No member requested the item to be voted separately at the relevant FC meeting.

EC(2016-17)25 Proposed creation of two supernumerary posts of one Senior Principal Executive Officer (D2) in the Food and Health Bureau (Food Branch) to strengthen the directorate support to carry out various new policy and legislative initiatives on food safety for two and a half years; and one Senior Principal Executive Officer (D2) in the Food and Environmental Hygiene Department to head a new Corporate and System Management Division for about seven years up to 31 March 2024 with immediate effect upon approval of the Finance Committee

24. The Deputy Chairman remarked that the staffing proposal was to create one Senior Principal Executive Officer ("SPEO") (D2) in the Food and Health Bureau (Food Branch) ("Food Branch of FHB") (to be designated as Principal Assistant Secretary (Food) Special Duties ("PAS(F)SD")) to strengthen the directorate support to carry out various new policy and legislative initiatives on food safety for two and a half years; and one SPEO (D2) in the Food and Environmental Hygiene Department ("FEHD") (to be designated as SPEO (Corporate and System Management) ("SPEO(CSM)")) to head a new Corporate and System Management Division for about seven years up to 31 March 2024. He advised that the Administration had already consulted the Panel on Food Safety and Environmental Hygiene on the proposal on 13 December 2016.

25. Dr Helena WONG, Chairman of the Panel on Food Safety and Environmental Hygiene, reported on the discussion by the Panel. She pointed out that members did not object to the proposal in general, but some members were concerned that the Administration had already created one permanent post of Administrative Officer Staff Grade B in the Food Branch of FHB since 2013, and so sought the Administration's explanation on the rationale for adding a supernumerary SPEO post in the branch. In addition, some members commented that under the "Single Window" ("SW") initiative, the Administration should request the trade to submit import/export declarations and cargo reports pre-shipment to facilitate the testing of imported food by the Centre for Food Safety ("CFS"). Members were also concerned about how the proposed post under CFS would support the overhaul of information technology ("IT") systems to

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ensure smooth migration of the systems to SW.

The proposed post of Principal Assistant Secretary (Food) Special Duties

26. Dr Helena WONG advised that the Democratic Party supported the creation of the proposed post in the Food Branch of FHB. She was of the view that the Administration should make permanent the proposed post to continuously study and monitor the development of food safety regulation around the world for the timely updates of Hong Kong's food safety legislation. She enquired whether the proposed post would be responsible for reviewing the safety standards for veterinary drug residues in foods.

27. Dr CHIANG Lai-wan expressed support for the creation of the proposed post. Pointing out that the proposed post would carry out various new policy and legislative initiatives on food safety, she enquired about the details concerned. She also asked whether open recruitment would be conducted for the proposed post.

28. Deputy Secretary for Food and Health (Food) 2 ("DSFH") advised that major work of the Food Branch of FHB in the future included carrying out a public consultation on proposals to update the maximum permitted concentrations of various metallic contaminants as set out in the Food Adulteration (Metallic Contamination) Regulations (Cap. 132V) and following up on the relevant legislative exercise upon completion of the consultation, with a view to keeping Hong Kong's regulatory standards for heavy metallic contamination in food up to date. Food Branch of FHB would also focus on the review of regulation on veterinary drug residues in food animals and foods, regulation of genetically modified food, and regulation on online trading of foods. After the creation of the proposed post, the current Principal Assistant Secretary for Food and Health (Food) 1 ("PASFH1") would focus on handling the work in relation to the Food Adulteration (Metallic Contamination) Regulations, and the proposed post would share the various aforesaid aspects of work on food safety policy review. He added that the proposed post would be filled through manpower deployment within the Government instead of open recruitment.

29. Pointing out the various aspects of work of the proposed post as set out in the Government's paper, Mr CHAN Chi-chuen expressed worries that a duration of two and a half years was insufficient to complete all the work, and enquired about the Administration's rationale for setting the duration of the proposed post at two and a half years.

30. DSFH replied that while PASFH1 conducted the public consultation on metallic contamination in foods and worked on the

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subsequent legislative exercise, PAS(F)SD would be able to focus on carrying out other studies, so it was an appropriate arrangement to set the duration of the proposed post at two and a half years.

The proposed post of Senior Principal Executive Officer (Corporate and System Management)

31. Dr Helena WONG enquired about the work objectives of the proposed post. Pointing out that a supernumerary post would generally not be created for a long period of time, Dr WONG and Mr CHAN Chi-chuen considered that the Administration should explain in detail the rationale for creating the proposed post for seven years, as well as the reason why it did not consider creating the post in two stages coupled with an interim review.

32. SPEO, FEHD advised that there were currently 17 IT systems in CFS to support its operation. As the systems were developed at different times, the design was rather out-dated, the systems had very limited interface with one another and the data structure was out-dated, thus affecting the work efficiency of CFS. The proposed post would support the redevelopment project for new IT systems and introduce high-technology and automation equipment to support the work of frontline colleagues for better work efficiency. In addition, the proposed post would also review and reengineer CFS's business process to enable more effective application of IT systems for the enhancement of food safety management. As the system altering project was large in scale and it took time to review the workflow, the Government estimated that it would take seven years to complete all the work, and therefore the duration of the proposed post was set at seven years. The Government was prepared to submit progress reports to the LegCo in due course following the creation of the post to give an account of the work effectiveness of the proposed post.

33. Dr CHIANG Lai-wan enquired whether the Administration would conduct open recruitment for the proposed post and whether it would consider engaging consultancies to study ways to enhance CFS's IT systems.

34. DSFH replied that the proposed post would be filled through manpower deployment within the Government rather than open recruitment. He supplemented that prior to the redevelopment of new systems, SPEO(CSM) would have to understand the various aspects of workflow in CFS and assume leadership of different teams of technical and non-technical colleagues, apart from being computer literate. Therefore, it

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was more appropriate for an SPEO to take up the work of coordination.

35. Dr Helena WONG pointed out that the past incidents of hairy crab samples detected with dioxins and dioxin-like polychlorinated biphenyls as well as the recent ones concerning the quality of frozen and chilled meat and poultry meat from Brazil had demonstrated the inadequacy in Administration's ability to track the source and movement of food. She enquired how CFS tracked foods through the existing IT systems.

36. DSFH replied that CFS's existing systems were equipped with the function of tracking the source and movement of food, but given the out-dated design of the systems, the operational efficiency of the systems was unsatisfactory. He agreed to provide supplementary information to the Subcommittee to explain how the existing systems facilitate the work of food tracking.

[Post-meeting note: The supplementary information provided by the Administration was circulated to members on 21 April 2017 vide LC Paper No. ESC89/16-17.]

37. Deputy Chairman advised that the Subcommittee would continue to discuss this item at the meeting on 24 April 2017.

38. The meeting ended at 10:32 am.