APPENDIX VI

16 June 1988

His Excellency Sir David Wilson, K.C.M.G.,
Governor of Hong Kong.

Your Excellency,

Consultative Machinery in the Civil Service - Establishment of a Council at the Central Level for the Disciplined Services

We last reviewed the consultative machinery for the civil service in 1980 and presented our recommendations in our Report on Consultative Machinery in the Civil Service (Report No. 4), published in September 1980. These recommendations were accepted and implemented by the Government in accordance with a phased programme which was completed in 1982.

2. In our Report, we indicated that we would monitor developments and would further review the matter in the light of experience. As the recommendations in Report No. 4 had been implemented more than four years earlier, and as requests had been received from both the Administration and staff associations for a comprehensive review of the existing system to see how it could be further improved, we began to examine this subject again towards the end of 1986.

3. In order to gather as broad a range of views as possible, and to give staff an opportunity to express their views on the subject, we issued, in early 1987, a consultative document on civil service consultative machinery to departmental management and civil service staff associations for circulation to all concerned, inviting comments on the existing system and suggestions as to how it could be improved.

4. By 30 June 1987, the end of the consultation period, we had received a total of 107 written submissions from staff unions, departmental management, and individual staff members. Subsequently, we also sought the views of the Civil Service Branch in its capacity as employer.

5. One of the major issues raised by respondents was the need for the establishment of a council at the central level to reflect the views of the disciplined services, other than, and in addition to, those of the Royal Hong Kong Police Force.

6. In March 1988 we commissioned an independent review of the pay and conditions of service of all the disciplined services. We therefore feel it appropriate that our recommendations regarding consultative machinery for the disciplined services be made early and that this issue should be dealt with separately.

7. As regards the other areas of the existing consultative system which were raised in the submissions, we shall be examining each of these issues in the coming months, and we shall be writing to Your Excellency again in due course with our recommendations.

8. There are a total of ten staff associations representing divisions within the non-Police disciplined services. Unlike the Police however, whose four staff associations constitute the Police Force Council for the purpose of consultation with the Administration at the central level, there is no equivalent mechanism for these associations to engage in formal consultation.

9. In the absence of a dedicated body at the central level for the non-Police disciplined services, individual staff members can only join, on a personal basis, those bodies which currently constitute the Senior Civil Service Council. (We are informed that approximately 22% of the members of the disciplined services have taken up this option.) Because membership is purely individual, the non-Police staff associations are not able to represent the specific concerns and interests, as may arise from time to time, of these disciplined services as a unified group.

10. As noted in paragraph 5 above, this inadequacy in the present system was one of the major themes which emerged in the responses to the consultative document, both from departmental management as employers, and from staff associations and individuals.

11. Within the responses from departmental management, the issue was raised by the following departments : Customs and Excise, Immigration, Fire Services, and Correctional Services.

12. With regard to the responses from staff associations and Departmental Consultative Committees (Staff Side), nine addressed the subject. Many of these were joint

submissions representing various staff groups, and others were from bodies such as the Hong Kong Civil Servants General Union and the Federation of Civil Service Unions, the membership of which includes a wide range of associations, staff groups, and affiliated parties. It is estimated that in all some 35 organisations of greater or lesser size were represented in those submissions dealing with the subject of representation for the disciplined services in the consultative process.

13. All respondents who commented on the subject expressed the view that the existing system of consultative machinery failed to reflect adequately the views of the non-Police disciplined services.

14. Two distinct views emerged as to how this situation might be rectified. The majority of respondents suggested the establishment of a Disciplined Services Council which would represent all the disciplined services including the Police. In effect this would amount to the expansion of the current Police Force Council to include the other disciplined services. A second view suggested the establishment of a new Disciplined Services Council which would exclude the Police and operate as a separate entity from the Police Force Council.

15. This latter view accords with the strongly expressed opinion of the Police that a joint council for all the disciplined services is unacceptable, on the grounds that these other services are not subject to the same legal constraints regarding unionisation as the Police.

16. We have considered this matter carefully and, from responses to the consultative document, we are of the view that there are good grounds for establishing some form of consultative body to reflect the views of the non-Police disciplined services. We also note that support for this view has come, not only from the disciplined services themselves, but also from organisations not connected with the disciplined services. In addition to their response to the consultative document, the non-Police disciplined services have made known their views on the matter through other channels and these representations, too, make clear the strength of feeling which exists.

17. We have noted the high degree of support from both the disciplined services and others, and we endorse the extension of the consultative system in order that all the disciplined services are fully represented. In reaching this decision, we have also had regard to the following : -

(a) The conditions of service of the (non-Police) disciplined services are sufficiently different from those of the rest of the civil service to render the existing structures inadequate in representing their specific views.

(b) The independent review of the pay and conditions of service of the disciplined services, which we have recently commissioned, creates a need for the non-Police disciplined services to be able to express directly to the Administration their views on the findings of the review.

18. In formulating our advice, we have borne in mind the possibility that any increase in the number of consultative bodies which is brought about on behalf of the disciplined services may well lead to pressure from other sections of the civil service for yet more bodies to accommodate further sectional interests. Whilst ideally therefore the establishment of a Disciplined Services Council incorporating all the disciplined services (including the Police) is to be preferred, the most important factor that has persuaded us to recommend the creation of a body that would be in addition to, and separate from, the Police Force Council is the special position of the Police with regard to participation in union activities.

19. Section 8 of the Police Force Ordinance (Cap 232) precludes any police officer from being a member of a trade union as defined in the Trade Unions Ordinance (Cap 332). We consider that it would be inadvisable therefore for the Police to participate in any council in which they were joined by associations which, unlike the Police, were free to engage in all forms of trade union activity.

20. Furthermore, if the four police staff associations which currently sit on the Police Force Council were to be made members of a joint disciplined services council, we are advised by the Attorney General that there would be some doubt as to their legal status. At the Attorney General's suggestion we also sought the advice of the Registrar of Trade Unions. Whilst the Registrar of Trade Unions was of the view that a joint disciplined services council would be legally possible, the Attorney General, having considered the opinion of the Registrar of Trade Unions, remains doubtful that a joint disciplined services council would be within both the letter and the spirit of the law.

21. Having regard to the special constraints placed upon the Police regarding unionisation, the uncertain legal position of their participation in a joint council and the

objections of the Police themselves to such a council, we recommend therefore the establishment of a new consultative council to be composed of representatives of all the disciplined services, other than the Police. We further recommend that for reasons of clarity, the new council be known as the Non-Police Disciplined Services Council.

22. The Civil Service Branch, in its capacity as employer, has said that it has no objection to a Non-Police Disciplined Services Council.

23. If our recommendations are accepted we propose that they should be implemented as soon as possible.

24. We shall submit our further recommendations on the consultative machinery for the civil service when we have completed our deliberations.

We have the honour to be
Your Excellency's obedient servants,

(S.Y. Chung)
Chairman

Kim Y.S. Cham

Therese H.C. Chan

Stanley G. Elliott

Vincent H.C. Ko

Alice Lam

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David A. Morris

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