

立法會
Legislative Council

LC Paper No. CB(2)385/01-02

(These minutes have been
seen by the Administration)

Ref : CB2/PL/CA

Legislative Council
Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 27 August 2001 at 2:30 pm
in the Conference Room A of the Legislative Council Building

- Members Present** : Hon Andrew WONG Wang-fat, JP (Chairman)
Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon HUI Cheung-ching, JP
Hon Howard YOUNG, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung, BBS
Hon SZETO Wah
Hon Audrey EU Yuet-mee, SC, JP
- Members Absent** : Hon Margaret NG
Hon CHEUNG Man-kwong
Hon Jasper TSANG Yok-sing, JP
- Members Attending** : Hon NG Leung-sing, JP
Hon CHOI So-yuk
Hon IP Kwok-him, JP
- Public Officers Attending** : Items II and III
Mr Clement MAK
Acting Secretary for Constitutional Affairs
Mr Bassanio SO
Acting Deputy Secretary for Constitutional Affairs (1)

Mrs Philomena LEUNG
Principal Assistant Secretary for Constitutional Affairs

Item V

Mr W K LAM, JP
Secretary for Home Affairs

Mrs Betty FUNG
Deputy Secretary for Home Affairs

Mr Bassanio SO
Acting Deputy Secretary for Constitutional Affairs (1)

Ms Doris HO
Principal Assistant Secretary for Constitutional Affairs

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in Attendance : Mr Jimmy MA, JP
Legal Adviser

Ms Elyssa WONG
Research Officer 4

Mr Paul WOO
Senior Assistant Secretary (2)3

Miss Yvonne YU
Senior Assistant Secretary (2)7

Action
Column

I. Confirmation of minutes of meeting
(LC Paper Nos. CB(2)2208 & 2209 /00-01)

The minutes of the meetings on 21 May and 12 June 2001 were confirmed.

II. Report of the delegation of the Panel on Constitutional Affairs on duty visit to study the systems of executive accountability in the United Kingdom, France and Germany

2. The Chairman said that the delegation of the Panel had prepared a report on the duty visit to study the systems of executive accountability in the United Kingdom (UK), France and Germany. Given their different political development and government structure, UK, France and Germany had their own unique ministerial and civil service systems. He pointed out that Chapter 6 of the Report outlined the summary of findings and observations of the delegation.

3. The Chairman further said that he hoped that the Report prepared by the delegation would serve as a useful reference for Members to further consider the proposed system of accountability for principal officials. Mr HUI Cheung-ching, member of the delegation, shared the Chairman's view.

4. Ms Emily LAU said that the Report provided useful information on the executive accountability systems. Referring to the Report, she pointed out that UK had adopted the Ministerial Code which set out codes of conduct and guidance on procedures for Ministers. In Germany, executive accountability was manifested in the provision of a constructive vote of confidence to bring down a Chancellor who lost the support of the Bundestag. When the Chancellor lost office, so did the Ministers. Ms LAU considered that these were aspects which Hong Kong Special Administrative Region (HKSAR) could make reference to. She believed that the Legislative Council (LegCo) should have a role to play in the appointment of principal officials.

5. Dr YEUNG Sum was of the view the Ministerial Code in the UK could enable the public to monitor the performance of Ministers. The Administration should make reference to this arrangement when examining ways to enhance the accountability of principal officials. Dr YEUNG said that when meeting with the delegation, Professor Rudiger WOLFRUM, Director of Max Planck Institute for Foreign Public Law and International Law, opined that if a system of political appointment was to be implemented in HKSAR, political appointees should be detached from the Civil Service. There should be a distinction between the two as regards accountability. Dr YEUNG shared the view of Professor WOLFRUM.

6. The Chairman pointed out that under Article 64 of the Basic Law (BL), the Government of HKSAR must abide by the law and be accountable to LegCo. In addition, according to BL 73(6), LegCo should exercise powers and functions to debate any issue concerning public interests. He considered that the moving of a motion of no confidence against a principal official in LegCo fell within ambit of BL.

7. Mr Howard YOUNG sought clarification as to how the system of accountability of Ministers was implemented in Scotland. The Chairman responded that in Scotland, ministerial responsibility took the forms of collective responsibility for government policy and individual responsibility for their own department's work. The arrangement was similar to that in the UK. He added that in Scotland, Ministers were required under the Scotland Act 1998 to resign if the Parliament resolved that the Scottish Executive no longer enjoyed the confidence of the Parliament.

8. Mr James TIEN expressed concern about the working relationship between civil servants and political appointees if an accountability system was implemented in HKSAR. He said that a contract system of employment should be introduced for political appointees and the relationship between the appointees and the civil servants should be set out clearly. He stressed that the Administration should conduct a comprehensive study on the matter before adopting the blueprint for HKSAR on the system of accountability for principal officials.

9. Ms Emily LAU and Dr YEUNG Sum asked whether the delegation had exchanged views with the personalities met on the feasibility of implementing an executive accountability system in HKSAR, having regard to the fact that CE was neither elected by universal suffrage, nor a member of a political party.

10. The Chairman responded that the issue was not raised during the visit. It was the objective of the delegation to obtain first-hand information on the executive accountability systems in UK, France and Germany, not to discuss the executive accountability system in HKSAR. In his view, the executive accountability system would be the first step to enhance the accountability of the executive authorities to the legislature.

III. System of accountability for Principal Officials

(LC Paper Nos. CB(2)2207/00-01 and CB(2)2211/00-01(01))

11. Acting Secretary for Constitutional Affairs (Ag SCA) briefed members on the progress of the study of the proposed system of accountability for principal officials. He said that in his 2000 Policy Address, CE had undertaken to examine how, under the leadership of the CE, the accountability of principal officials for their respective policy portfolios could be enhanced. The Government would, among other things, need to consider devising a compatible system of appointment for these principal officials, setting out their powers and responsibilities and defining clearly their role in formulating and implementing government policies under the new system. Since the Policy Address, CE had personally led a Steering Group to conduct the review. The Steering Group comprised the Chief Secretary for Administration, the Financial Secretary, the Secretary for Justice, SCA, the Secretary for the Civil Service,

Head of the Central Policy Unit and Information Coordinator.

12. Ag SCA said that the Steering Group had thoroughly considered the views expressed by different sectors of the community, including the "Report on the Development of the Political System of Hong Kong Special Administrative Region" submitted by the Panel to LegCo and the subsequent debate on the Report in the Council in June 2000. The Steering Group had also noted the views expressed by academics during the Panel's public consultation in February and the discussion at the Panel's meetings in March and May 2001. The Steering Group had also noted media reports, and views of academics and commentators. He further said that the Steering Group noted that these views generally supported the Government's endeavour to improve the system. There was broad consensus on the need to rejig the top echelon of senior officials and for a new system of appointment, but views on the detailed arrangements differed. The Administration would continue to keep in view discussions in the society.

13. Ag SCA advised that the main areas of the Steering Group's review included -

- (a) problems arising from the existing system and the existing arrangements in the face of fast changing circumstances;
- (b) public expectation and LegCo's expectation for enhanced accountability on the part of officials;
- (c) whether the Government machinery since the establishment of HKSAR had been able to meet the expectations arising from Hong Kong people running Hong Kong, and whether there needed to be any adjustment to the system;
- (d) the implications in terms of the operation of the Government if new arrangements were introduced, and the adjustments and changes that had to be made; and
- (e) how to tackle public expectation that senior officials should shoulder responsibility for the outcome of policy and the effectiveness of implementation.

14. Ag SCA stressed that as the exercise involved important and complex issues, the Administration needed to consider the issue carefully and thoroughly. It had formed certain preliminary views but the framework had yet to be completed. He said that the Administration was grateful to the Panel for the report on its duty visit. It would study the report and would be happy to take note of any concrete proposals from the Panel.

15. Ag SCA added that depending on the progress made prior to October 2001, CE would give an account in his Policy Address. As the exercise involved many facets and complex issues and had far-reaching implications, the Administration would continue to study the matter and examine the different aspects after October 2001.

16. The Chairman requested and Ag SCA agreed to provide members with a copy of his speaking note for reference.

(Post-meeting note : The speaking note of Ag SCA was circulated to members vide LC Paper No. CB(2)2261/00-01(01) on 10 September 2001.)

Proposed system of accountability for principal officials

17. Ms Emily LAU was of the view that the Administration should conduct a comprehensive review of the political system of HKSAR. Hence, she expressed reservations with the piecemeal study on the system of accountability of principal officials. While she agreed that the system of accountability of principal officials was a complex and important issue, she considered that the Administration should put forward concrete proposals for the consideration of LegCo and conduct an extensive public consultation before taking a decision on the matter. In the absence of concrete options put forward by the Administration, she said that only general views on the subject matter could be offered by LegCo as well as the public. She was aware that empowering LegCo to appoint or remove principal officials would contravene BL. However, she remained of the view that LegCo should have a role to play in the appointment process by requesting a nominee to appear before LegCo to answer questions prior to appointment. She believed that there should be no question of this arrangement contravening the BL. Ms LAU stressed that the Administration should assure members that it would consult LegCo on its recommendations before making a decision.

18. Mr SZETO Wah said that he would not make any proposals on the system of accountability for principal officials at this stage. A comprehensive study should be conducted to examine the political system in Hong Kong, without confining to the system of accountability of principal officials. He was concerned that any study on one of the many facets in the political system, which were inter-related, could not provide any meaningful options. In his view, it was unlikely for the Administration to put forward concrete proposals until 2002.

19. Ag SCA assured members that the Administration had only formed some preliminary views at this stage and that it would exchange views with members on the framework of the proposal system. Any views from members would be taken into account.

20. The Chairman said that to enhance the partner relationship between the executive authorities and legislature, the Administration should brief the Panel on the progress of its study on the proposed system of accountability of principal officials at each stage of its review. To facilitate an exchange of preliminary views on the matter, he said that consideration could be given for the Panel to hold meetings in camera. He pointed out that such an arrangement was not uncommon in other Parliaments. Mr SZETO Wah did not support the idea of discussing the matter in closed meetings. Mr James TIEN preferred to discuss the subject matter in open forum.

21. Dr YEUNG Sum said that in its "Report on the Development of the Political System of HKSAR", the Panel recommended, among others, that a more flexible contract system should be implemented so that principal officials might be held politically accountable for their decisions. Hence, principal officials should be political appointees and be detached from the Civil Service. On the proposed system, he said that a public consultation exercise should be conducted by the Administration, to be followed by a motion debate held in LegCo. He stressed that Members belonging to the Democratic Party maintained the view that principal officials should be held accountable to the public, and not CE. LegCo should have a role to play in the appointment of political appointees. In addition, LegCo should play a monitoring role so that when a motion of no-confidence was passed by LegCo on a principal official, he should resign.

22. The Chairman said that one of the observations made by the delegation was that the Parliaments in the UK, France and Germany had no role to play in the appointment of Ministers.

23. Mr James TIEN said that the Administration needed to address the role of civil servants, particular senior government officials, in the proposed accountability system. He considered that the arrangement to appoint civil servants on permanent terms should be retained after the introduction of the system of accountability for principal officials. While civil servants should remain to be apolitical, they should provide impartial support to political appointees in the formulation of policy proposals. Mr TIEN further said that it was considered inappropriate for LegCo to question political appointees prior to appointment. However, when a motion of no-confidence was passed by LegCo on a political appointee, CE should take necessary action, e.g. to remove or transfer him.

24. Ag SCA said that he did not wish to re-open discussion on the issue of the political neutrality of civil servants. It was the obligation of civil servants to implement approved policies. He further said that the Steering Group would consider how to address the problem of conflicting roles of senior government officials who were involved in formulation of policies.

25. The Chairman said that the problem would be resolved if senior government officials were made political appointees. They were the ones to shoulder political responsibilities, not civil servants.

26. Mr IP Kwok-him said that as the proposed system of accountability for principal officials had attracted wide public concern, the Administration should put forward concrete proposals for public consultation as early as possible. Mr IP said that he had reservation about the proposal for LegCo to have a role to play in the appointment of principal officials. This would have implications on the appointment system of other public bodies. He further said that overseas experience and practices had indicated that the Parliament normally had no role to play in the appointment of Ministers.

Lawfulness of members' proposals in the context of the BL

27. Ag SCA said that the appointment and removal of principal officials was governed by BL. As a matter of principle, the Administration would give due consideration to any proposals which conformed with the BL.

28. Dr YEUNG Sum said that under BL 64, the Government of HKSAR should be accountable to LegCo. As such, he urged the Administration to keep LegCo abreast of the full details of any proposals relating to the system of accountability for principal officials.

29. Ag SCA responded that apart from BL 64, there were other relevant provisions in BL on accountability, e.g, CE should be accountable to HKSAR under BL 43 and public servants must be responsible to the Government of HKSAR under BL 99.

30. The Chairman was of the view that "in conformity with BL" was different from "not in contravention of BL". He requested the Administration to provide legal advice on whether the proper approach for considering the lawfulness of any proposal made for devising a system of accountability for principal officials in the context of BL should be whether the proposal contravened BL and not whether it conformed with BL. The Administration agreed to seek legal advice.

Adm

Way forward

31. Members agreed to continue discussion on the item after the Administration had come up with its proposals for consultation with LegCo. The meeting originally scheduled to be held on 3 September 2001 would be cancelled.

IV. Restrictions on activities undertaken by a former Chief Executive
(LC Paper No. CB(2)2211/00-01(02))

32. The Chairman said that members agreed at the Panel meeting on 17 July 2001 that an independent research on "Restrictions on Activities of Former Heads of Government and Former Senior Members of Government" should be conducted by the LegCo Secretariat.

33. Research Officer 4 said that taking into account members' views on the scope of the research, the Research and Library Services Division had prepared a draft research outline for members' consideration. She then took members through the proposed research outline. The research was expected to be completed by end of 2001. Members endorsed the proposed outline of research.

V. Proposal to form a Select Committee to review the roles and functions of the District Councils
(LC Paper Nos. CB(2)2213/00-01(01); 2220/00-01; 2213/00-01(02); 2211/00-01(03) and 2221/00-01(01))

34. The Chairman said that the Report of the Working Group on District Councils (DCs) Review (the Report) was discussed by the Panel on Home Affairs (HA Panel) on 16 July 2001 and the Panel on Constitutional Affairs (CA Panel) on 17 July 2001. Members attending the meetings were dissatisfied that LegCo had not been consulted before the Administration released the Report. He further said that while some members had proposed to discuss the matter by holding a number of joint Panel meetings, he had proposed at the HA Panel meeting to form a select committee to review the roles and functions of the DCs under the present constitutional system, having regard to the importance of the issue. Members agreed at the last CA Panel meeting that the proposal of establishing a select committee to review the roles and functions of DCs be discussed at this meeting. He added that should members consider that no select committee should be formed, a joint meeting with HA Panel would be held on 4 October 2001.

35. Secretary for Home Affairs (SHA) said that as explained at the HA Panel meeting, the Administration undertook to consider the scope for strengthening the roles and functions of DCs during the resumption of the Second Reading debate on the Provision of Municipal Services (Reorganisation) Bill in 1999. He pointed out that in view of the small size of Hong Kong, delegating executive functions to the 18 DCs would run the risk of fragmenting responsibilities and diminishing efficiency. Hence, the Administration was adopting a progressive approach to ensure that the proposed measures to enhance the roles of DCs would not lead to the proliferation of executive authorities at district level. As the new DCs had been in operation for less than two years, the Administration had no intention of reviewing the

constitutional role of DCs at this stage. He said that the Administration was of the view that Panel meetings would be a suitable forum for exchanging views on the matter. There was no need to set up a select committee to review and make recommendations on the roles and functions of DCs.

36. Ms Emily LAU said that she supported the proposal to set up a select committee to review and make recommendations on the roles and functions of DCs. The Administration should consider vesting in DCs executive powers in respect of district administration, instead of strengthening the advisory functions of DCs. She commented that it was necessary for the Administration to define the role of DCs in the entire constitutional framework. Ms LAU pointed out that according to the Administration's legal advice (LC Paper No. CB(2)2221/00-01(01)), BL 97 did not impose any constitutional obligation on HKSAR to establish district organisations. In her view, the principles laid down in BL 97 did not prohibit the Administration from giving executive powers to DCs. She further said that a Select Committee on Legislative Council Elections was formed in 1992 to review and make recommendations on the arrangements for LegCo elections.

37. Mr IP Kwok-him said that he had tried to attend meetings of DCs scheduled for discussion of the Report as far as practicable. Views from DCs could broadly be grouped into two categories, viz. whether DCs were organs of political powers or otherwise under BL 97, and recommendations of the Report. He pointed out that matters relating to the functions and roles of DCs in the constitutional framework could be followed up by CA Panel, whereas matters relating to district administration could be discussed by the HA Panel. Hence, it would be desirable for the Report and related matters to be discussed by CA and HA Panels jointly as early as possible. Mr IP further said that Members belonging to Democratic Alliance for the Betterment of Hong Kong did not support the proposal to set up a select committee. The consultation on the Report was in line with the Administration's usual practice in handling consultation exercises.

38. Mr James TIEN said that Members belonging to the Liberal Party agreed with the need to review the roles and functions of DCs, with a view to their enhancement in district administration. However, he considered it more appropriate to follow up the matter by holding joint meetings of the Panels for the time being. The proposal of setting up a select committee to review the roles and functions of DCs could be re-opened for discussion if no progress was made after holding the joint meetings.

39. The Chairman said that as pointed out by Ms Emily LAU, the function of a select committee was not necessarily confined to conducting investigation into a particular incident. There was precedence for setting up a select committee to study a particular subject matter. In his view, reviewing the roles and functions of DCs was a very important issue.

40. Dr YEUNG Sum concurred with the Chairman. Dr YEUNG said that as the Administration had no intention of reviewing the role of DCs in the constitutional framework, he considered it worthwhile to set up a select committee to pursue the matter.

41. The Chairman put the proposal of setting up a select committee to review the roles and functions of DCs to vote. Three members voted in favour of the proposal and four members voted against the proposal. The Chairman declared that the proposal was negatived. He said that a joint meeting with the HA Panel would be held on 4 October 2001 to continue discussion on the matter.

42. The meeting ended at 4:30 pm.

Legislative Council Secretariat
19 November 2001