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Panel on Constitutional Affairs

Background Paper prepared by Legislative Council Secretariat

System of Accountability for Principal Officials

INTRODUCTION

Purpose

This paper summarises the main issues considered by the Legislative Council (LegCo) Panel on Constitutional Affairs relating to a system of accountability for principal officials.

Background

Panel report on "the Development of the Political System of the Hong Kong Special Administrative Region" and motion debate on 14 June 2000

2. In the last legislative session, the Panel conducted a public consultation on the development of political system of the Hong Kong Special Administrative Region (HKSAR). The Panel also considered the research reports prepared by the LegCo Secretariat on systems of government in France, Germany, Japan, New Zealand, Singapore, the United Kingdom (UK) and United States.

3. Having considered all the views received and deliberated in detail the relevant issues, the Panel presented a report entitled "the Development of the Political System of the Hong Kong Special Administrative Region" to the Council. The Panel recommended, inter alia, that the Government should -

"Explore the feasibility of developing constitutional conventions under which principal officials shall voluntarily resign as a result of having committed serious mistakes in the formulation or implementation of government policies; and

Study the proposal of implementing a more flexible contract system so that principal officials may be held politically accountable for their decisions".

4. A debate on a motion calling upon the Government to consider the views of Members of the Council on the Panel report was held at the Council meeting on 14 June 2000. The motion was carried by the Council.

Chief Executive's Policy Address in October 2000

5. In his Policy Address delivered in October 2000, the Chief Executive (CE) said that he had noted that the previous LegCo and the community had expressed the view that as senior officials were involved in policy making and played a leading role in public affairs, they should be held accountable for the outcome of their policies. CE also said that the principal officials of the SAR Government at Secretaries and Director of Bureaux rank assumed an important role in policy formulation and implementation which was different from that of other civil servants.

6. CE announced that the Government would need to examine how the accountability of principal officials for their respective policy portfolios could be enhanced. The Government would need to consider devising a compatible system of appointment for these principal officials, setting out their powers and responsibilities and at the same time defining clearly their role in formulating and implementing government policies under the new system. In future, regardless of the system to be adopted in respect of the appointment of principal officials, the Government should maintain the stability of the civil service structure, preserve the principles of permanence and the neutrality of the civil service, and maintain a highly efficient, professional and clean government.

7. The Panel is of the view that CE's announcement of a new accountability system is a positive step responding to the Panel's recommendations on the development of the political system of the HKSAR. The Panel considers that it should deliberate the issues relating to a system of accountability for principal officials and make its recommendations to the Administration.

Public consultation

8. To gauge public views on a system of accountability for principal officials, the Panel earlier conducted a public consultation exercise. An advertisement was placed on 16 January 2001 in one Chinese and one English local newspapers to invite written submissions. The Panel also invited academics, the legal professional bodies and the Hong Kong Human Rights Monitor to give views to the Panel.

9. The Panel received seven written submissions and also met with the following academics to discuss their views at a meeting on 3 March 2001 -

Dr Anthony B L CHEUNG, JP
Associate Professor
Department of Public and Social Administration
City University of Hong Kong

Dr Michael E DEGOLYER
Associate Professor
Government and International Studies Department
Hong Kong Baptist University

Dr MA Ngok
Assistant Professor
Division of Social Science
Hong Kong University of Science and Technology

A summary of the written submissions received is at **Appendix I**.

Overseas visit

10. The Panel also decided to send a delegation to visit UK, France and Germany to study their systems of executive accountability. A delegation comprising Hon Andrew WONG, the Panel Chairman, Hon HUI Cheung-ching and Hon YEUNG Yiu-chung subsequently visited Edinburgh, Glasgow, London, Paris, Berlin, and Heidelberg from 13 June to 24 June 2001. The delegation has separately presented a report to the Panel.

ISSUES CONSIDERED

Who are the principal officials?

Should all principal officials be political appointees ?

Relevant provisions in Basic Law

11. Article 48 of Basic Law states that principal officials include Secretaries and Deputy Secretaries of Departments, Directors of Bureaux, Commissioner Against Corruption, Director of Audit, Commissioner of Police, Director of Immigration and Commissioner of Customs and Excise. A list of principal officials and the corresponding rank and pay point of their posts is at **Appendix II**.

Summary of views raised by members/deputations at the Panel meeting on 3 March 2001

12. Hon Margaret NG expressed concern that the proposed accountability system would affect the independence of organisations such as the Independent Commission Against Corruption (ICAC).

13. The Chairman was of the view that persons such as the Commissioner of ICAC, Director of Audit and Chief Executive of the Hong Kong Monetary Authority should not be politically appointed.

14. Dr Anthony CHEUNG opined that political appointment should only apply to the top making policy layer while all heads of government departments and other executive agencies should continue to be appointed on career civil service terms. Reference could be made to the permanent secretary system of some other countries such as the United Kingdom.

15. Dr MA Ngok considered that the proposed accountability system should only apply to the secretaries at policy bureau level. Principal officials such as the Commissioner of ICAC and Director of Audit should be exempt from the proposed system.

Overseas experience and practices

16. In *UK*, Ministers are political appointees. The ministerial head of a department may be called a Secretary of State. Departmental Ministers or Secretaries of State (about 20 in number) are usually in the Cabinet. The deputy of a Department Minister or Secretary of State is a Minister of State. At the bottom of the ministerial hierarchy are the Parliamentary Under-Secretaries of State or simply Parliamentary Secretaries. The number of Ministers outside the Cabinet was some 85 in 1999.

17. The Comptroller and Auditor General (C&AG) is an officer of the House of Commons who is appointed by the Monarch on an address presented by the House of Commons. The removal of the C&AG is by the Monarch on a resolution of both Houses of Parliament.

18. In *Scotland*, there are the First Minister, the Scottish Ministers and the Junior Scottish Ministers. The Auditor General for Scotland is not a Minister. He is appointed by the Monarch following a recommendation from the Scottish Parliament.

19. In *France*, Ministers are heads of departments and they jointly participate in the determination and management of government policy. The Court of Accounts or Cour des comptes is presided over by a Premier *president* who is appointed by a decree of the Council of Ministers (i.e. the Cabinet) and enjoys security of tenure.

20. In France, there are posts "at the discretion of the Government" filled by political appointees who are not tenured. Many political appointees are those who share party-political sympathy with the Government, and appointments are decided by decree taken in the Council of Ministers. The system offers to senior officials a path to a political career, and reinforces a higher degree of commitment and accountability on the part of the appointed officials.

21. In *Germany*, Federal Ministers are Cabinet Ministers. The size of Cabinets has varied from 15 to 26 members. The Chancellor determines the number of Ministers and their responsibilities. A Cabinet Minister is aided by at least two Secretaries of State. One is a Parliamentary Secretary of State who assists in the political aspects of the Minister's duties. The other Secretary of State is a career civil servant who is responsible for the administration of the ministry.

22. As regards the audit institution, the Bundestag and the Bundesrat elect the President and Vice-President of the Bundesrechnungshof without debate, upon the proposal of the Federal Government. The Federal President shall appoint those chosen. They are appointed as temporary civil servants for official terms of 12 years and shall retire after their tenure of office. They must not be re-elected.

23. About 400 of the 130 000 civil servants in the Federal Administration are political civil servants. They include the higher ranks of the Federal ministerial bureaucracy such as the Secretaries and Under-Secretaries of State in the ministries, senior civil servants in the Foreign Office and in the security services and the President of the Federal Criminal Police Office.

Proposed system of accountability;

Whether the proposed system of accountability will be different if CE is returned by universal suffrage

Relevant provisions in Basic Law

24. Under Article 64, the Government of the Hong Kong Special Administrative Region is accountable to the Legislative Council (LegCo).

25. According to Article 45, the ultimate aim is the selection of CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

Summary of views raised by members/deputations at the Panel meeting on 3 March 2001

26. Hon Emily LAU raised the question of whether the introduction of a political appointment system for principal officials should be supported by Members in the absence of a democratically elected CE.

27. Hon Margaret NG said that the purpose of establishing a system of accountability was to enhance the accountability of principal officials to the public, not to CE. Principal officials could be offered political appointments on contract. In addition, constitutional conventions should be established such that when a motion of no-confidence was passed by LegCo on a political appointee, he should resign or CE should request him to resign. This mechanism required political appointees to be accountable to LegCo, to CE and to themselves. She opined that the greatest problem of the existing constitutional system was its lack of check and balance on the executive authorities. While CE in Council represented the highest executive power in the HKSAR, it was not answerable to the public.

28. Hon Margaret NG was also of the view that if the legislature could not play a meaningful role in the proposed accountability system, such a system might in effect provide an opportunity for concentration of powers of CE. She would be prepared to support a new system which was underpinned by legislation and supplemented by constitutional conventions. Quoting the case of Mr Andrew LO Cheung-on, she was concerned that under the proposed system CE could continue to employ a principal official who had committed policy mistakes and came under pressure to resign.

29. Dr YEUNG Sum considered that the principal officials under the new system should be accountable to LegCo. When LegCo passed a motion of no-confidence on a politically appointed official, he should voluntarily resign as a convention. CE must respect the LegCo in the circumstances. Dr YEUNG was of the view that although the proposed system was only a small step towards the ultimate constitutional goal of universal suffrage for LegCo and popular election of CE, he agreed that it should be taken.

30. Dr YEUNG added that while constitutional conventions had no binding effect, they were important in the context of political accountability. Constitutional conventions could bring about reforms and could eventually be incorporated as law, as demonstrated in other political systems.

31. Dr Anthony CHEUNG was of the view that constitutional conventions should be established whereby LegCo could move a motion of no-confidence on a politically appointed principal official who had failed in his duties and CE should remove the official upon passage of the motion. Constitutional conventions could be adopted as a transitional arrangement, pending enactment of the required legislation to provide legal backing to the proposed system in Hong Kong.

32. Dr CHEUNG also opined that although accountability had to come together with the mandate of the people, the two issues need not be dealt with at the same time. The proposed accountability system, even though was not a perfect system, should be implemented as a first step.

33. Dr MA Ngok pointed out that under a parliamentary system or presidential system in western countries, the ruling party or the head of the government would not sacrifice the interests of the party or jeopardize the chance of seeking re-

election for the sake of protecting a Minister who had committed serious mistakes. However, such external accountability system did not exist in Hong Kong.

Overseas experience and practices

34. In *UK*, ministerial responsibility is largely regulated through constitutional conventions. One of the major constitutional conventions in UK is that Ministers are accountable to Parliament and through Parliament to the public. Ministerial responsibility takes two forms - Ministers' collective responsibility for government policy and Ministers' individual responsibility for their own department's work. A Government is obliged to resign following a defeat on a confidence motion. The ultimate sanction in the case of individual responsibility is the resignation of the Minister concerned.

35. Under the Scotland Act 1998, a Minister shall resign if the Parliament resolves that the Scottish Executive no longer enjoys the confidence of the Parliament. Under the Standing Orders of the Scottish Parliament, any Member may give notice of a motion that the Scottish Executive or a member of the Scottish Executive or a Junior Minister no longer enjoys the confidence of the Parliament. The Scotland Act 1998 can be regarded as the formulation of recognised parliamentary conventions and practices.

36. The UK Ministerial Code and the Scottish Ministerial Code also set out codes of conduct and guidance on procedures for Ministers.

37. In *France*, the President is elected by universal suffrage. Article 68 of the Constitution provides that the President shall not be accountable for official acts performed in the exercise of his official functions, except in the case of high treason, for which he may be indicted and tried.

38. The Government of France is headed by the Prime Minister and, under the Constitution, is responsible to the Parliament. Article 50 of the Constitution provides that "where the National Assembly carries a motion of censure, or where it fails to endorse the programme or a statement of its general policy of the Government, the Prime Minister must tender the resignation of the Government to the President of the Republic". Distinct procedures are also available in the Constitution for ousting a Government.

39. In *Germany*, the Federal President is not directly elected but by a Federal Convention comprising the Bundestag and an equal number of Members elected by the State Parliaments. Both the Bundestag and the Bundersrat have the power to impeach the Federal President for wilful violation of the Basic Law (i.e. the Constitution) or any Federal law. The President may dissolve the Bundestag under certain circumstances.

40. The Chancellor is nominated by the President and elected without debate by the Bundestag. The Chancellor alone is accountable to it. The Bundestag may express its lack of confidence in the Chancellor by electing a successor with a

majority vote of its Members i.e. a "constructive vote of confidence". A mere vote of no confidence in the Chancellor cannot be moved in the Bundestag. When the Chancellor loses office, so do Ministers. However, the Basic Law does not provide for motions of no confidence to be moved in respect of individual Ministers.

41. The notion of collective responsibility is not well developed in Germany. In a formal sense, Federal Ministers are only accountable to the Chancellor. Very often, Ministers have openly expressed dissenting views.

Role of Legislature in appointment and removal of principal officials

Relevant provisions in Basic Law

42. Under Article 48(5), the power of appointment and removal of principal officials rests with the Central People's Government (CPG).

Summary of views raised by members/deputations at the Panel meeting on 3 March 2001

43. Dr YEUNG Sum was of the view that although LegCo had no authority to endorse the appointment, the appointment should be vetted by LegCo. LegCo should play a role in the appointment process by requesting a nominee to appear before LegCo to answer questions prior to appointment by CPG.

44. Dr Anthony CHEUNG pointed out that LegCo's endorsement was required for the appointment of the judges of the Court of Final Appeal and the Chief Judge of the High Court under the Basic Law. The same procedure should apply to the nomination process of principal officials under the proposed accountability system.

45. Hon Howard YOUNG was of the view that the process for LegCo to endorse the appointment of judges was drastically different from the practice in the US where congressional hearings were held on major presidential appointments.

46. Dr Anthony CHEUNG said that in order to institutionalise political accountability, special legislation should be introduced to govern the appointment, transfer and removal, etc of political appointees. Dr CHEUNG believed that enactment of legislation empowering LegCo to appoint or remove principal officials would not be possible under the existing constitutional system. However, there was nothing to prevent the establishment of constitutional conventions for LegCo to vet these appointments. Constitutional conventions could be adopted as a transitional arrangement, pending enactment of the required legislation to provide legal backing to the proposed system in the longer term.

47. Dr MA Ngok was of the view that to propose any legislation to empower

LegCo to appoint or remove principal officials would definitely contravene the BL. However, if LegCo was simply given the power of "vetting" the nomination of political appointees, there should be no question of contravention of the BL. However, the success of such a constitutional convention would hinge on the cooperation of the Administration.

48. Dr Michael DEGOLYER agreed that it was reasonable for nominees to answer questions from LegCo before appointment as they had to bring forth policy proposals to LegCo for endorsement in future. This would only improve the relationship between the executive authorities and the legislature.

49. The Chairman said that it might be possible to enact legislation to the effect that the appointment by CPG was subject to the endorsement of LegCo. However, he personally did not consider it necessary for the proposed accountability system to be underpinned by legislation.

Overseas experience and practices

50. In *UK*, Ministers are appointed by the Monarch on the recommendation of the Prime Minister. The Parliament has no role to play in the appointment of Ministers. Ministers are, however, Members of Parliament. The Prime Minister's unique position of authority derives from majority support in the House of Commons and the power to make recommendations to the Monarch to appoint or dismiss Ministers.

51. The First Minister of Scotland, under the Scotland Act 1998, is nominated by the Scottish Parliament from among Members of Parliament and appointed by the Monarch. The First Minister may, with the approval of the Monarch, appoint Scottish Ministers and Junior Scottish Ministers from Members of the Parliament. His choice of Ministers, under the Act, must be approved by its Parliament. Under the Standing Orders of the Scottish Parliament, the First Minister shall by motion seek the agreement of the Parliament for such appointments. The Standing Orders, however, do not provide for the holding of hearings on individual ministerial appointments to allow the Parliament scrutiny of the ministerial team.

52. In *France*, the President appoints the Prime Minister and, on the recommendation of the Prime Minister, the Ministers. The Parliament has no role to play. However, the Prime Minister is usually a person who has been a Member of the National Assembly. He is usually chosen on the basis that he has the support of the majority of the body. If a Member of Parliament becomes a Minister, he or she shall resign as Member of Parliament. The Constitution provides for the President, on the proposal of the Prime Minister, to dismiss Ministers.

53. In *Germany*, the Federal Chancellor is nominated by the President and elected by the Bundestag without debate. Cabinet or Federal Ministers are appointed and dismissed by the President upon the proposal of the Chancellor.

The Parliament has no role to play. Ministers are not required to be Members of Parliament. However, they are usually Members of the Bundestag.

**Compatible system of employment of principal officials;
Recruitment of principal officials from outside the civil service and issue of
conflict of interest**

Relevant provisions in Basic Law

54. Under Article 101, only Chinese citizens among permanent residents of the HKSAR with no right of abode in any foreign country may fill the posts of the Secretaries and Deputy Secretaries of Departments, Directors of Bureaux, Commissioner Against Corruption, Director of Audit, Commissioner of Police, Director of Immigration and Commissioner of Customs and Excise.

55. Under Article 103, the appointment and promotion of public servants shall be on the basis of their qualifications, experience and ability. Hong Kong's previous system of recruitment, employment, assessment, discipline, training and management for the public service, including special bodies for their appointment, pay and conditions of service, shall be maintained.

Summary of views raised by members/deputations at the Panel meeting on
3 March 2001

56. Dr Anthony CHEUNG suggested that political appointees could be offered a new form of contract, i.e. the "political contract". The term of office of the political appointees should be the same as that of CE. Political appointments should adopt a different mode of remuneration and conditions of service from that of Civil Service, with provisions for retirement benefits and suitable compensation for pre-mature termination of office.

57. Dr Anthony CHEUNG further suggested that suitable senior civil servants could be offered political appointment on condition that they would leave the Civil Service (under some form of voluntary retirement scheme if they were already on permanent and pensionable terms).

58. Dr CHEUNG also suggested that special legislation should be introduced to govern the appointment, transfer and removal of political appointees. The question of conflict of interest could be addressed by having better mechanisms for declaration of interest, greater transparency in policymaking and more importantly, stronger political scrutiny and policy audits. As regards restrictions on post-service employment, reference could be made to other governments which have clear guidelines on sanitisation period or restrictions on taking up post-service employment in the private sector.

59. Dr MA Ngok was of the view that a feasible way of implementing a system of political accountability was to offer "political contracts" to policy secretaries.

However, this would enhance "bureaucratic accountability" rather than "political accountability" as principal officials were nominated by and accountable to CE. Dr MA suggested that political contracts should be of a duration of two to three years; either party could terminate the contract by giving two months' notice; and the length of all these contracts should preferably be the same.

60. Dr MA further suggested that a compensation scheme should be established for existing policy secretaries who are considered unsuitable for or who are unwilling to accept political appointment under the new system. The amount of compensation should be equivalent to the amount of salary plus other benefits as if he would have accrued upon retirement or completion of agreement. These officers should also be eligible for pension.

61. Dr MA Ngok opined that subject to Article 79(4) of the Basic Law, LegCo Members could be appointed as policy secretaries. However, in order not to cause confusion to electors, appointment of LegCo Members as policy secretaries under the proposed system of accountability was not recommended.

Overseas experience and practice

62. In *UK*, the rule is that the Prime Minister must select his Ministers from the two Houses of Parliament. Detailed guidance to Ministers on dealing with their party and private interests is set out in the UK Ministerial Code and Scottish Ministerial Code. Ministers must generally resign directorships in private and public companies. Ministers who are Members of Parliament have to file returns with the Register of Members' Interests as Members of Parliament.

63. Normally a former Minister must wait three months and can be required to wait two years before taking up certain employment.

64. Ministerial salaries in UK are prescribed by Order in Council under the Ministerial and Other Salaries Act 1975. The Act provides for maximum salaries, and less may be paid. Ministers also receive the full parliamentary salary.

65. In *France*, Ministers have usually been chosen both on the basis of party representation in the National Assembly and circumstances surrounding the presidential campaign. A growing number of Ministers have civil service background. Some Ministers have come from the Senate. As mentioned in paragraph 52 above, the executive and legislative roles are incompatible. In the event that a Member of Parliament becomes a Minister, he or she shall resign as Member of Parliament.

66. In *France*, detachment in the form of a temporary leave enables a civil servant to be elected to Parliament, hold a political office, join a public body or work in the private sector. The civil servant is entitled to be re-integrated into the Civil Service, without loss of civil servants' benefits, after the temporary detachment.

67. Members of the French Government are required to make declaration of personal assets and submit it to the Commission for Financial Transparency in Politics.

68. In *Germany*, Ministers are not required to be Members of the Parliament. However, they are usually Members of the Bundestag, as discussed in paragraph 53 above. When the Chancellor leaves office, so do Ministers.

69. Members of the Cabinet are by the Constitution not allowed to hold any other salaried position. Simultaneous engagement in a trade or occupation or practice of a profession is strictly prohibited.

Composition of the Executive Council (ExCo); Relationship of political appointees with ExCo and the Civil Service

Relevant provisions in Basic Law

70. Article 55 states that members of the ExCo shall be appointed by CE from among the principal officials of the executive authorities, LegCo Members and public figures.

Summary of views expressed by members/deputations at the Panel meeting on 3 March 2001

71. Hon Margaret NG considered that the Civil Service exercised the necessary check on CE. If ExCo proposed any unrealistic policies, there would be opposition from the Civil Service. As a result such proposals could not be implemented or required some modifications. She was concerned that the political appointees would only be accountable to CE; hence undermining the check and balance power of the Civil Service.

72. The Chairman pointed out that there were situations where a Minister could not instruct a civil servant to do what he wanted. For example, in UK, a Minister could not instruct an accounting officer (equivalent to a controlling officer in Hong Kong) to spend in excess of the budgeted amount.

73. Dr Anthony CHEUNG expressed concern about exertion of excessive political intervention in the Civil Service in the event that all principal official posts were filled by political appointees. He called for mechanisms to be established to safeguard the neutrality of the civil service. He said that the Civil Service Code in UK set out the constitutional framework within which all civil servants worked and the values they were expected to uphold.

74. Dr Anthony CHEUNG suggested that the Public Service Commission should be upgraded and empowered to become the main protector of civil service merits in order to safeguard the institutional system. If the post of the Chief Secretary for Administration (CS) was eventually turned into a political

appointment, consideration should be given to re-designate a top civil servant to be the principal advocate of civil service concerns and interests.

75. Dr Anthony CHEUNG said that appropriate arrangements should be in place to ensure that mutual respect and good cooperation between the political appointees and career civil servants.

76. Hon Margaret NG also considered that the role and composition of ExCo should be given careful consideration.

77. Dr MA Ngok was of the view that politically appointed principal officials should be members of ExCo, somewhat similar to the cabinet system in UK. This would also address Hon Margaret NG's concern that ExCo might formulate unreasonable policies that were unacceptable to the civil service.

78. Dr Anthony CHEUNG was of the view that the membership of ExCo should be confined to politically appointed officials. He considered that there is no express provision in the BL that this could not be done.

79. The Chairman was of the view that any recommendation on the role and composition of ExCo must also have regard to the fact that the CE in Council was an entity exercising a lot of powers.

Overseas experience and practice

80. In *UK*, the Cabinet may include both departmental and non-departmental Ministers. Cabinet Committees, including Cabinet and non-Cabinet ministers and civil servants, are created to assist the Cabinet.

81. Responsibility for central coordination and management of the Civil Service lies with the Prime Minister as Minister for the Civil Service, supported by the Cabinet Office led by the Head of the Home Civil Service who is the Chairman of the Civil Service Management Board.

82. The Prime Minister is responsible for appointments to the two most senior grades in the Home Civil Service, Permanent Secretary and Deputy Secretary. The Civil Service Commissioners, who are independent of Government, produce mandatory recruitment code and are responsible for approving appointments through external recruitment to the Senior Civil Service.

83. Ministers in UK have a duty to uphold the impartiality of the Civil Service and not ask the civil servants to act in any way which would conflict with the Civil Service Code. The Civil Service Code sets out the constitutional framework within which civil servants work and the values they are expected to uphold.

84. Permanent heads of departments and the chief executive of executive agencies are appointed as Accounting Officers (AO). They answer personally to the Committee on Public Accounts. If a Minister in charge of a department is

contemplating a course of action which the AO considers would breach the requirements of propriety or regularity, the AO will set out the objection to the proposal, the reasons for the objection and that it is his duty to inform the Comptroller and Auditor General should the advice be overruled. If the Minister decides nonetheless to proceed, the AO will seek a written instruction to take the action in question and send the relevant documents to the Comptroller and Auditor General.

85. In *France*, the Council of Ministers (i.e. the Cabinet) consists of the Prime Minister, the Ministers and a few Secretaries of State under the chairmanship of the Head of State, the President. The Council of Ministers has about 40 members.

86. The Prime Minister is the head of Government and the Administration. There is a Ministry of the Civil Service, Administrative Reform and Decentralisation headed by a Minister. The President is seldom involved in matters relating to the Civil Service.

87. Senior civil servants are not expected to be completely non-partisan. They may join political parties, express their ideological preferences, and stand for election. Civil servants in France can launch a political career without jeopardising their position in the Civil Service. As mentioned in paragraph 66 above, detachment in the form of a temporary leave enables a civil servant to be elected to Parliament, hold a political office, join a public body or work in the private sector. The civil servant is entitled to be re-integrated into the Civil Service, without loss of civil servants' benefits, after the temporary detachment.

88. One special feature of the French Civil Service system is the distinction between the grade and the post, which allows political appointments for specific senior positions. As discussed in paragraph 20 above, there are posts "at the discretion of the Government" filled by political appointees who are not tenured. Many political appointees are those who share party-political sympathy with the Government, and appointments are decided by decree taken in the Council of Ministers. The system offers to senior officials a path to a political career, and reinforces a higher degree of commitment and accountability on the part of the appointed officials.

89. In *Germany*, the Cabinet is made up of the Chancellor and the Federal Ministers. The size of the Cabinet has varied from 15 to 26 members. The German Cabinet is not an institution where government policy is openly discussed, debated and finally determined. Usually, the Cabinet approves, rather than takes decisions collectively. Most government policies are hammered out in bilateral negotiations between individual Ministers and the Chancellor.

90. The Federal Ministry of the Interior is responsible for general policy concerning the Civil Service. However, there is no national Civil Service. The majority of civil servants are employed by individual Federal states and local government rather than by the Federal Government. There is no central

recruitment arrangement. Each Federal Ministry takes its own responsibility for staffing and recruitment practice.

91. As discussed in paragraph 23 above, about 400 of the 130 000 civil servants in the Federal Administration are political civil servants. They can be removed, transferred or retired by a corresponding Minister. If they are not retained by a Minister, they must by law be transferred to another position of a comparable status.

Council Business Division 2
Legislative Council Secretariat
22 August 2001

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LegCo Panel on Constitutional Affairs

**Summary of Written Submissions Received on the
System of Accountability of Principal Officials**

| Person/Organization LC Paper No. CB(2) | System of Accountability | Role of LegCo/ExCo |
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| <p>*(1) Dr Anthony B L CHEUNG, JP Associate Professor, Department of Public and Social Administration, The City University of Hong Kong</p> <p>972/00-01(02)</p> | <ul style="list-style-type: none"> - The existing system has two major defects - politicizes the senior civil servants and blurs political and policy accountability. - To delineate political and policy accountability clearly, bureau secretaries should be made political appointees and separated from the career civil servants. A "permanent secretary" at D8 level should be designated to head the Civil Service team in each bureau and as the main adviser to the politically appointed secretary. - Under the proposed system, political appointees could come from both the Civil Service and the private sector. Senior civil servants can be offered political appointment on condition that they would leave the service. - Political appointees could be offered a new form of contract of two-three years, i.e. the "political contract". A mode of remuneration and conditions of service different from those of the Civil Service should be adopted, with provisions for retirement benefits and suitable compensation for premature termination of office. - While accountability has to come together with the mandate of people, the two issues need not be dealt with at the same time as prolonging the anomaly of the existing system would only increase the risk of further politicizing the Civil Service. However, constitutional reforms (reviewing the method of election of CE and LegCo) have to be pursued immediately so as to address the larger issue of political accountability. | <ul style="list-style-type: none"> - With the consent of CPG, legislation could provide for LegCo to endorse the appointment of principal officials, similar to the endorsement of certain categories of judges provided for under BL. - CE and the political appointees should form the Cabinet of the Government. ExCo should become the advisory council of CE. Membership of ExCo should remain part-time and be appointed from a wide spectrum of the society. |

| Person/Organization LC Paper No. CB(2) | System of Accountability | Role of LegCo/ExCo |
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| | <ul style="list-style-type: none">- In order to institutionalize political accountability, special legislation should be introduced to govern the appointment, transfer and removal, etc of political appointees.- Constitutional conventions should be established whereby LegCo could move a motion of no-confidence on a politically appointed principal official who fails in his duties, and CE should remove the official upon passage of the motion.- Appropriate arrangements should be in place to ensure mutual respect and good co-operation between political appointees and career civil servants. The present Public Service Commission needs to be upgraded and empowered to become the main protector of Civil Service merit. A top career civil servant should be designated as the "Head of Civil Service" and to be the principal advocate of Civil Service concerns and interests. | |

| Person/Organization LC Paper No. CB(2) | System of Accountability | Role of LegCo/ExCo |
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| <p>*(2) Dr Michael DEGOLYER, Associate Professor, Government and International Studies Department, Hong Kong Baptist University</p> <p>972/00-01(03)</p> | <ul style="list-style-type: none">- Random sample surveys conducted by the Hong Kong Transition Project indicate the following -<ul style="list-style-type: none">• a steady rise in support of replacing functional constituency election with direct election;• a strong support for direct election of CE; and• a need to improve the public accountability in ExCo.- ExCo needs an enhanced, politically effective composition and role. Principal officials who now sit on ExCo should be made political appointees. Other members of ExCo should come from political parties which are supportive of CE's policies.- Further development of the electoral system for LegCo and CE, as envisaged in BL, is one of the most important means to enhance the accountability of principal officials. | |

| Person/Organization LC Paper No. CB(2) | System of Accountability | Role of LegCo/ExCo |
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| <p>* (3) Dr MA Ngok, Assistant Professor, Division of Social Science, The Hong Kong University of Science and Technology</p> <p>972/00-01(04)</p> | <ul style="list-style-type: none"> - A feasible way of implementing a system of political accountability is to offer "political contracts" to policy secretaries. However, this would enhance "bureaucratic accountability" rather than "political accountability" as principal officials are nominated by and accountable to CE. - A compensation scheme should be established for existing policy secretaries who are considered unsuitable for or who are unwilling to accept political appointment under the new system. - Has reservation about the effectiveness of the proposed accountability system given that CE is not returned by universal suffrage. However, given the constraints of the BL, the introduction of a political appointment system for principal officials is better than maintaining the status quo. | <ul style="list-style-type: none"> - The suggestion that the appointment of principal officials should be subject to the endorsement of LegCo would contravene BL. - If all policy secretaries are politically appointed in future, ExCo should be restructured. Politically appointed principal officials should be members of ExCo, somewhat similar to the cabinet system in UK. |
| <p>(4) 基督徒團體關注 選舉聯席</p> <p>972/00-01(05)</p> | <ul style="list-style-type: none"> - Executive authorities should be accountable to the legislature. - Impeachment, appointment or removal of principal officials should have the majority support of LegCo Members before CE and LegCo Members are directly elected. - A system of accountability will only be effective if CE and LegCo are both returned by universal suffrage. | |

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|--|--|---------------------------|
| <p>(5) Professor Frank H FU, Dean and Chair Professor, Faculty of Social Sciences, Hong Kong Baptist University</p> <p>972/00-01(06)</p> | <ul style="list-style-type: none"> - Principal officials should be held accountable for their effectiveness and leadership as heads of their respective bureaux in general, and in the formulation and implementation of approved policies in particular. They report to CE and are accountable to him. - In policy matter, ExCo and other statutory committees/boards should be held accountable for failure in approved policies. The number of existing committees/boards should be reduced to improve their working relationship with ExCo. | |
| <p>(6) Hong Kong Human Rights Monitor</p> <p>972/00-01(07)</p> | <ul style="list-style-type: none"> - If principal officials are made political appointees under the present constitutional system, they will be more accountable to CE but not necessarily more accountable to the people. - Nomination of principal officials by CE to the Central People's Government should only be made after consultation with and consent by a simple majority of LegCo Members. This would make the executive accountable to the people. - Hong Kong needs to develop a constitutional convention whereby CE removes principal officials when the public has lost confidence in them. - CE should be elected by universal and equal suffrage, or by a legislature that is elected by universal and equal suffrage. - Only when CE is made accountable to the people will the principal officials and the executive branch be also accountable. | |

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|---|--|---------------------------|
| (7) Dr LO Shiu-hing Associate Professor, Department of Politics and Public Administration, The University of Hong Kong 973/00-01(01) | - The Government and the Panel on Constitutional Affairs should study how to develop constitutional conventions which would enhance the accountability of the executive to the legislature. - All politically appointed principal officials should undergo training and receive education on constitutional conventions and political accountability. | |

* These persons appeared before the Panel at the meeting on 3 March 2001.

Note : BL - the Basic Law
CE - the Chief Executive
ExCo - the Executive Council
LegCo - the Legislative Council

List of Principal Officials

| Post | Rank | Pay Point |
|--|------------------------------------|---|
| Chief Secretary for Administration | Administrative Secretary | D10 |
| Financial Secretary | Financial Secretary | D9 |
| Secretary for Justice | Secretary for Justice | DL7 (equivalent to between D8 & D9) |
| Secretary for the Civil Service | Director of Bureau | D8 |
| Secretary for Commerce and Industry | Director of Bureau | D8 |
| Secretary for Constitutional Affairs | Director of Bureau | D8 |
| Secretary for Economic Services | Director of Bureau | D8 |
| Secretary for Education and Manpower | Director of Bureau | D8 |
| Secretary for the Environment and Food | Director of Bureau | D8 |
| Secretary for Financial Services | Director of Bureau | D8 |
| Secretary for Health and Welfare | Director of Bureau | D8 |
| Secretary for Home Affairs | Director of Bureau | D8 |
| Secretary for Housing | Director of Bureau | D8 |
| Secretary for Information Technology and Broadcasting | Director of Bureau | D8 |
| Secretary for Planning and Lands | Director of Bureau | D8 |
| Secretary for Security | Director of Bureau | D8 |
| Secretary for Transport | Director of Bureau | D8 |
| Secretary for the Treasury | Director of Bureau | D8 |
| Secretary for Works | Director of Bureau | D8 |
| Commissioner of Police | Commissioner of Police | PPS 59 (equivalent to D8) |
| Director of Immigration | Director of Immigration | GDS(C)4 (equivalent to D6) |
| Commissioner of Customs and Excise | Commissioner of Customs and Excise | GDS(C)4 (equivalent to D6) |
| Commissioner, Independent Commission Against Corruption | - | pegged to D8 |
| Director of Audit | - | pegged between D6 & D7 |

Abbreviations

D: Directorate Pay Scale

DL: Directorate (Legal) Pay Scale

PPS: Police Pay Scale

GDS(C): General Disciplined Services (Commander) Pay Scale