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Legislative Council

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Panels on Constitutional Affairs and Home Affairs

Joint meeting on 4 October 2001

Background paper prepared by the Legislative Council Secretariat

Roles and functions of District Councils

Purpose

This paper gives an account of past discussions on the roles and functions of District Councils (DC) held by the Panel on Constitutional Affairs and Panel on Home Affairs since the first term of the Legislative Council (LegCo).

1999-2000 legislative session

Meeting of the Panel on Home Affairs on 14 November 2000

2. The Administration briefed the Panel on the measures taken by the Government to enhance the role and functions of DCs, and on the Government's support and assistance to DC members.
3. Members expressed dissatisfaction that the Administration's undertaking to transfer part of the functions and powers of the former Municipal Councils (MCs) to DCs had not been discharged. They considered that the Government's measures taken so far had demonstrated that the Administration was not sincere to vest DCs with real powers in district administration. Members were disappointed that the Administration only attached importance to the advisory functions of DCs as defined in the District Councils Ordinance. They were of the view that subject to Article 97 of the Basic Law, DCs should replace the former MCs as the district organisations responsible for providing services in culture, recreation and environmental sanitation.
4. The Administration responded that members' views would be considered in the overall review of the roles and functions of DCs. If there was a wider consensus among the community that the powers and responsibilities of DCs should be enhanced, the Administration would consider amending the relevant legislation to entrust DCs with the appropriate powers and responsibilities in district administration.

5. An extract from the relevant minutes of the meeting is in **Appendix I**.

2000-2001 legislative session

Motion debate at Council meeting on 22 November 2000

6. A motion urging the Administration to increase the support to DC members was moved by Hon IP Kwok-him for debate at the Council meeting on 22 November 2000. During the debate, Members expressed views on the functions of DCs and their expectations for the impending review of the roles and functions of DCs. The motion and the proposed amendments to the motion were negated by the Council.

Meeting of the Panel on Home Affairs on 9 January 2001

7. The Administration briefed the Panel on a revised mechanism for adjusting the honorarium and accountable allowance for DC members at its meeting.

8. Members considered that the current rates of honorarium and accountable allowance for DC members were inadequate to cover the expenses incurred in performing their day-to-day duties. The Administration undertook to examine all issues relating to the provision of financial support and other assistance to DC members in the context of the overall review of the roles and functions of DCs.

9. An extract from the relevant minutes of the meeting is in **Appendix II**.

Meeting of the Panel on Constitutional Affairs on 15 January 2001

10. Some members considered that DCs should be given decision-making powers on local and district affairs and asked whether this proposal would be considered in the review of the roles and functions of DCs. The Administration had made the following comments -

- (a) one of the objectives of the review was to study how the functions of DCs would be enhanced so that they could play a part in promoting culture, recreation and environmental affairs and in providing such services, which were areas of responsibilities of the former MCs;
- (b) the scope of the review should not exceed the parameter of Article 97 of the Basic Law; and
- (c) the review would be carried out in a liberal and open-minded manner.

The Administration undertook to complete the review within 2001.

11. An extract from the relevant minutes of meeting is in **Appendix III**.

Meeting of the Panel on Home Affairs on 16 July 2001

12. The Administration briefed the Panel on the Report of the Working Group on Review of the Roles and Functions of DCs.

13. Some members expressed dissatisfaction that the Administration had released the report for consultation when the current LegCo session was drawing to an end and had not consulted LegCo in advance before the release. They considered the arrangement disrespectful to LegCo. Some members also considered it necessary for the Administration to define the role of DCs in the entire constitutional framework before reviewing other aspects of DCs, such as their functions and responsibilities. It was therefore inappropriate for the Home Affairs Bureau to head the Working Group. The Administration maintained the view that the review did not involve the role of DCs in the entire constitutional framework and therefore it was appropriate for the Home Affairs Bureau to take the lead in the review.

14. As regards the recommendations put forward by the Working Group to enhance the roles and functions of DCs, members expressed disappointment that these recommendations had failed to delegate real powers in district administration to DCs. Some of these members even considered that the recommendation to set up consultative committees with DC members appointed as members in each of the 18 districts would undermine the roles and functions of DCs. Members pointed out that as DCs were district organisations covered by Article 97 of the Basic Law, DCs should be made responsible for providing services in culture, recreation and environmental sanitation after the dissolution of MCs. Some members were of the view that 18 (or a small number) DCs with district administrative powers should be set up.

15. The Administration explained that it was concerned that adopting the operational mode of MCs for DCs would have adverse effects on the administrative framework of various departments, the utilisation of public resources, and might even cause confusion to the administration of the 18 DCs. The Administration took the view that implementation of the recommendations put forward by the Working Group would render DCs a direct influence on district administration and increase the participation of DC members in the management of local municipal facilities.

16. An extract from the relevant draft minutes of the meeting is in **Appendix IV**.

17. In response to members' request for the legal advice on the interpretation of Article 97 of the Basic Law, the Administration's reply is in **Appendix V**.

Meeting of the Panel on Constitutional Affairs on 27 August 2001

18. As a follow up to the meeting of the Panel on Home Affairs on 16 July 2001, a motion to set up a select committee to review and make recommendations on the roles and functions of DCs was discussed by the Panel and put to vote. The motion was

negatived. The Panel agreed to hold a joint meeting with the Panel on Home Affairs on 4 October 2001 to discuss the roles and functions of DCs.

Council Business Division 2
Legislative Council Secretariat
27 September 2001

**Extract from minutes of meeting of
LegCo Panel on Home Affairs on 14 November 2000**

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VI. Functions of District Councils and honorarium and allowance for District Council members

[LC Paper Nos. CB(2)48/00-01(01), Appendices I to VI to CB(2)167/00-01 and CB(2)207/00-01(04)]

16. At the invitation of the Chairman, Deputy Secretary for Home Affairs (2) (DS(HA)2) briefed members on the paper provided by the Administration which outlined the Government's measures to enhance the role and functions of the District Councils (DCs) and its support and assistance to DC members. She emphasized that the Administration would adopt a liberal approach in listening to the views of LegCo Members and DC members on how the Government should devolve more powers and strengthen its support to DCs.

Functions of DCs

17. Mr IP Kwok-him pointed out that the Administration's undertaking to transfer part of the functions and powers of the former Municipal Councils (MCs) to DCs when proposing not retaining the former MCs had so far not been discharged. As a matter of fact, most DC members had expressed their hope for more direct involvement in district administration in order to assist the Government to manage district affairs and resolve local problems. Mr IP welcomed the Administration's impending review of the role and functions of DCs. In this regard, he sought the views of the Administration on ways to enhance the functions of DCs. Mr IP further asked about the arrangements for inviting DC members to advise on the management of other district facilities as mentioned in paragraph 3(a) of the paper.

18. DS(HA)2 responded that the Administration had implemented a package of measures to enhance the advisory functions of DCs over the years. Such measures included appointing the chairmen and deputy chairmen of DCs to respective District Management Committees (DMCs), as well as inviting DC members to sit on the Market Management Consultative Committees under the Food and Environmental Hygiene Department (FEHD) to advise on market management matters. Since the latter arrangement had proved to be very successful, the Home Affairs Bureau (HAB) was exploring with the FEHD and the Leisure and Cultural Services Department the possibility of inviting DC members to advise on the management of other district facilities where appropriate. The HAB hoped to complete the review of the role of DCs by the following year and implement a series of recommendations and measures such as establishing more committees at the district level to enable DC members to

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participate in the management of district affairs directly instead of through their respective DCs.

19. Mr Andrew WONG considered that as reflected from the contents of its paper, the Administration only attached importance to the advisory functions of DCs and lacked sincerity in vesting in DCs the real management power in respect of district administration. Mr WONG enquired when the Administration last organized a District Administration Seminar (DAS) and whether it had followed up the views and suggestions put forward by DCs during the seminar. Mr WONG emphasized that he had all along supported that DCs should be conferred with real executive powers in district administration and had expressed such a view during the last DAS.

20. DS(HA)2 responded that the Administration had held a DAS in 1996 inviting the then District Board (DB) members to attend the seminar to put forward proposals on matters relating to district administration. Most of the proposals received were implemented in the years followed. She pointed out that as the former MCs were still in operation, the main purpose of that DAS was to heighten the respect of the Government and the public for DBs. The focus of the discussion during the seminar was the ways to enhance the advisory role of DBs instead of their participation in and management of municipal affairs. She added that the Home Affairs Department (HAD) had subsequently coordinated the establishment of an inter-departmental working group in 1999. Under the leadership of the Director of Home Affairs, the working group made a package of recommendations on the involvement of DC members in district administration and the management of municipal affairs. The proposals were progressively implemented afterwards (see paragraphs 3 to 4 of the Administration's paper).

21. Mr Andrew WONG expressed disappointment at the Administration's refusal to consider changing the advisory role of DCs after the dissolution of the Municipal Councils. Mr WONG said that as the Chairman of the Panel on Constitutional Affairs (CA Panel), he would follow up at meetings of that Panel matters such as the reform of DCs' powers and their role in the constitutional framework.

22. The Chairman agreed that the CA Panel should follow up matters relating to the functions and role of DCs from the perspective of the district-level constitutional framework. He pointed out that the Panel on Home Affairs would also continue to follow up within its terms of reference matters relating to the functions of DCs as well as the honorarium and accountable allowance for DC members.

23. Mr Albert CHAN agreed that the Panel should continue to follow up matters relating to the functions of DCs and the support provided to them by the Administration. He strongly urged the Administration to enhance the functions of DCs and be more responsive to views and proposals put forward by DC members on matters relating to district administration. He pointed out that it

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was inadequate to merely invite chairmen and vice-chairmen of DCs to attend meetings of respective DACs as full members. The Administration should further entrust responsibilities in respect of district management, improvement of environmental hygiene, as well as community and rural minor environmental improvement projects to the relevant committees formed under DCs. He was of the view that as DC members were most familiar with district affairs, the Administration should gradually transfer more executive duties and powers in respect of district management to DCs. In fact, in lobbying DC members to support its proposal for not retaining the former MCs, the Administration had undertaken to enhance the role of DCs in advising on and monitoring the delivery of municipal services should the proposal be passed by the LegCo. Unfortunately, such undertaking had not been discharged and as a result, DC meetings often became forums for empty talks and DCs were not able to serve their functions in respect of district administration. He added that while DBs/DCs had been in operation for over a decade, the Administration was attaching less and less importance to them. Government officials even refused to attend DC meetings and papers provided by the Administration were far from comprehensive.

24. Referring to the dissatisfaction expressed by Mr Albert CHAN that DCs lacked real powers in district administration, the Chairman enquired whether the Administration could undertake to seriously consider enhancing the functions and powers of DCs in respect of district administration in reviewing their role. Otherwise, the review would just end up as empty talks which could not bring any substantial improvement to district administration.

25. DS(HA)2 responded that the Administration would carefully consider members' views expressed at the meeting and give explanations on views which were considered unacceptable. She pointed out that delegating specific executive functions to DCs would run the risk of fragmenting responsibilities with each DC operating in its own way. As regards the attendance of government officials at DC meetings, the Chief Secretary for Administration had recently issued internal guidelines asking departments to strengthen communication with DCs and respect opinions of DC members. Therefore, each Department had to delegate officers of suitable ranking to attend DC meetings. DS(HA)2 added that she understood that some departments might have difficulties in observing the guidelines and undertook to follow up the matter.

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26. Mr James TO referred to Article 97 of the Basic Law (BL) which stated that "*District organizations which are not organs of political power may be established in the Hong Kong Special Administrative Region, to be consulted by the government of the Region on district administration and other affairs, or to be responsible for providing services in such fields as culture, recreation and environmental sanitation.*" According to his understanding, the district organizations "to be consulted by the government of the Region on district administration and other affairs" referred to DCs whereas the district

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organizations “responsible for providing services in such fields as culture, recreation and environmental sanitation” referred to the former MCs. In this connection, Mr TO asked whether DCs, as organs of non-political power and subject to BL 97, could replace the former MCs as the district organizations responsible for providing services in such fields as culture, recreation and environmental sanitation.

27. DS(HA)2 responded that BL 97 had indeed laid down the scope of powers of district organizations. However, within that scope, there still remained many powers which could be transferred to DCs. Reference would be made to BL 97 when reviewing the role and functions of DCs. Since the review had not started, the Administration had yet to consider the circumstances under which powers vested in DCs would go beyond the scope as laid down in that Article. She added that while the HAB would not disagree with Mr TO’s interpretation of BL 97, it had to seek legal advice from the Department of Justice. Mr Andrew WONG was of the view that the Administration should give its clear interpretation of BL 97.

28. The Chairman and Miss Cyd HO considered that the Administration should transfer the executive powers in respect of district administration to DCs in a practicable manner. The establishment of the Provisional MCs after 1997 implied that the existence and functions of the former MCs did not contravene the BL. Therefore, they urged the Administration to seriously consider transferring the executive powers of the former MCs in respect of district administration to DCs. Miss HO emphasized that in conducting a comprehensive review of the role of DCs, the Administration should change its basic conception of DCs as advisory bodies as defined under the District Councils Ordinance. She further asked whether the comprehensive review would consider the views expressed by various organizations during the consultation on the proposal to dissolve the former MCs.

29. SHA responded that the comprehensive review of the role of DCs would commence following the “District Councils Day” to be held on 18 November 2000. The HAB had no pre-determined views on the scope of powers of DCs. Since assuming office, he himself had called at 16 DCs to listen to the views of DC members directly. Apart from carefully considering the views of DC members, the Administration would also conduct extensive public consultations. As regards the proposal of transferring the functions and powers of the former MCs in respect of district administration to DCs, SHA pointed out that it was inappropriate to transfer certain executive powers such as the vetting and approving of applications for liquor licence to the 18 DCs. In order to ensure that the views of DC members could be fully reflected in the review, the HAB and HAD would continue to gauge DCs’ views. Given that the new DCs had been in operation for more than 10 months, the Administration would welcome further submissions from organizations which had previously expressed their opinions on how the functions of DCs could be enhanced. He added that as the BL was the constitutional document of Hong Kong, the review of the role and

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functions of DCs should be conducted within the scope as laid down therein. SHA pointed out that the District Councils Ordinance was only one of the statute laws of Hong Kong. If there was a wider consensus among the community that the powers and responsibilities of DCs should be enhanced, the Administration would consider amending the relevant legislation to entrust DCs with the appropriate powers and responsibilities in respect of district administration.

30. Mr TANG Siu-tong said that as the Chairman of the Yuen Long District Council, he had never felt that DCs had any real power in the provision of cultural, recreational, environmental hygiene services, etc.

31. SHA responded that he appreciated Mr TANG Siu-tong's feeling. He pointed out that the views of DCs had always had much bearing on the Government's policy on district administration. Therefore, it was not entirely true to say that DCs merely played an advisory role.

32. The Chairman pointed out that many DC members expected the Administration to transfer the powers vested in the former MCs to DCs as undertaken in dissolving the former. He urged the Administration not to lose sight of DC members' dissatisfaction at their lack of real powers.

33. Mr Albert CHAN and Miss Cyd HO asked whether the Administration could state the responsibilities and powers of the former MCs that could and could not be transferred to DCs. Mr Andrew WONG considered that while he agreed it might not necessarily be appropriate to transfer all the powers of the former MCs to DCs, the Administration should transfer to DCs those responsibilities and powers requiring no central coordination. It was only when DCs became district organizations having real powers and responsibility that improvements could be made to district administration. Mr WONG said that if the outcome of the review indicated that the role of DCs should remain at the advisory level, there should be no need to maintain the operation of DCs.

34. SHA responded that it was inappropriate for the Administration to comment on the powers that could or could not be transferred to DCs when the review was under way for fear of having any undue influence on it. He did not agree with the remarks that DCs should be abolished if they did not have any real executive powers and responsibilities. He pointed out that DBs/DCs had been in operation for over a decade and it was beyond doubt that their advisory role had a bearing on Government policies and people's livelihood. In fact, many people would turn to DC members for assistance whenever they met problems in their daily lives. As most of these problems were related to the living environment and transport arrangements in individual districts, it would be, theoretically speaking, difficult to resolve such problems through other channels such as the LegCo. He cited the attendance of the chairmen and deputy chairmen of DCs in respective DMCs, as well as the allocation of funds for DCs to implement or sponsor community building activities and minor environmental

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improvement projects, to illustrate the increasingly important role of DCs in district administration.

35. Miss Cyd HO expressed concern about the scope of the comprehensive review on the role of DCs. She was of the view that the Administration should prepare a consultation document to allow sufficient time for the public to understand the scope and key issues of the review. The Chairman also enquired whether the Administration had set a timeframe for completing the review and submitting a report on the review.

36. SHA responded that the Administration would take into account the views expressed by all parties including the LegCo, the academics and representatives of other sectors of the community. The Administration had yet to work out a timetable for the comprehensive review on the role of DCs. Mr Albert CHAN suggested that the Administration should conduct the consultation in two stages. The Administration should first gauge the opinions received and after analysis, propose a number of options for people to discuss in greater detail. The Chairman requested the Administration to consider Mr CHAN's views.

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Honorarium and allowance for DC members

37. The Chairman declared interest as incumbent DC members for himself as well as the following members attending the meeting: Mr James TO, Mr Andrew WONG, Mr LAU Wong-fat, Mr TANG Siu-tong, Mr Albert CHAN and Mr IP Kwok-him.

38. Mr IP Kwok-him expressed concern about DC members' honorarium and accountable allowance as well as the revision mechanism. He pointed out that DC members were currently granted an accountable allowance of up to \$10,000 per month which was hardly enough to cover the costs for hiring sufficient staff to discharge DC duties. Mr IP also expressed concern about the current practice of revising the rates of DC members' honorarium and accountable allowance annually with reference to the movement of the Consumer Price Index (CPI). Given the downward adjustment in the CPI this year, he was concerned that the Administration would reduce the already insufficient honorarium and accountable allowance from January 2001. Such reductions would put DC members into greater financial difficulties and was contrary to the Administration's undertaking to strengthen support for DC members.

39. Mr Albert CHAN considered that the current arrangement of reducing the honorarium for DC members with multiple membership in different tiers of the representative government was definitely unreasonable. He pointed out that each existing LegCo geographical constituencies (GC) covered an extensive area. For example, the New Territories West GC encompassed a total of five DC districts and a population of about 2 million. The honorarium and allowance for LegCo Members basically were insufficient for them to hire enough staff and run their offices. Therefore, he was of the view that the Administration should not

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deduct one-third from the DC members' honorarium simply because they were holding multiple membership.

40. In response, DS(HA)2 explained that the levels of DC members' honorarium and accountable allowance as well as the revision mechanism were examined and approved by the Finance Committee in 1992. As a result, revisions to the remuneration package for DC members were pegged to those for LegCo Members and Members of the Executive Council. Given the downward adjustment of CPI due to deflation this year, there might be a reduction in the levels of the remuneration for DC members, LegCo Members and Members of the Executive Council. As such, the Administration was reviewing the operation of the revision mechanism and had yet to establish its stance and formulate a policy in this respect. She pointed out that if LegCo Members had reached a consensus on changing the current revision mechanism, the Administration would surely take into consideration the views of LegCo Members. She added that as proposed in the paper submitted to the Finance Committee by the Administration on 2 July 1999, the Secretary for the Treasury could only revise the levels of DC members' honorarium and allowance with reference to the movement of the CPI (C) and the Administration could not initiate changes to the revision mechanism unilaterally.

41. Mr IP Kwok-him pointed out that to help LegCo Members to consider whether the existing mechanism was reasonable, the Administration should provide statistics explaining how the levels of DC members' honorarium and accountable allowance were computed. He was also of the view that the Administration should consult LegCo Members and DC members on revision of honorarium and accountable allowance and put forward proposals for improving the computation and revision mechanism.

42. DS(HA)2 explained that the Administration had yet to work out a formula for calculating the honorarium and the maximum accountable allowance for DC members. However, the annual adjustment according to the movement of CPI(C) was based on preset formulae. She informed members that whether the levels of DC members' honorarium and accountable allowance were reasonable would be examined within the scope of the review of DCs' role and functions.

43. Mr Andrew WONG suggested that to avoid reduction in DC members' honorarium as a result of deflation, the mechanism for revising the honorarium and accountable allowance for DC members should be in line with that for revising the remuneration for civil servants. He pointed out that a reduction in DC members' honorarium and accountable allowance would lead to salary reductions of DC members' assistants, which would adversely affect the good employment relations between DC members and their assistants. He also suggested that the Administration should consider providing permanent offices for DC members to help reduce their expenses in rents. The Chairman added that the Administration should consider providing DC members with well-

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equipped offices to facilitate their discharge of duties with reference to the mode of operation of LegCo Members' offices.

44. SHA responded that if it was concluded upon the completion of the review of DCs' role and functions that there was considerable room for revising the honorarium and allowance for DC members, the Administration would readily consider relevant proposals in detail. He pointed out that as the nature of work of DC members and civil servants were basically differed, he personally did not agree to the suggestion of pegging the revision of the honorarium and accountable allowance for DC members to that of the remuneration for civil servants.

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Legislative Council Secretariat
8 December 2000

**Extract from minutes of meeting of
LegCo Panel on Home Affairs on 9 January 2001**

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V. Review of annual adjustment mechanism for honorarium and accountable allowance (AA) for DC members

[LC Paper No. CB(2)613/00-01(04)]

20. At the invitation of the Chairman, Deputy Secretary for Home Affairs (2) briefly introduced the Administration's paper.

21. The Chairman declared interest as a DC member for himself as well as the following members attending the meeting: Miss CHOY So-yuk, Mr IP Kwok-him, Mr Albert CHAN and Mr WONG Sing-chi.

Proposed revised mechanism

22. Mr IP Kwok-him was disappointed to know that there had been suggestions in the community for a downward adjustment of the rates of DC members' honorarium and allowance in line with the movement of the Consumer Price Index (CPI). He pointed out that the rates concerned were in fact inadequate to meet the expenses incurred by DC members in discharging their duties. Mr IP said that he was supportive of the Administration's proposed revised mechanism which would :

- (a) replace the current CPI(C) with CPI(A) as the basis for adjusting DC members' honorarium and AA; and
- (b) defer the downward adjustment of the ceiling of AA at times of deflation and effect the deduction only when there was an upward adjustment of its ceiling in an inflation year.

He also supported the Administration to appoint an independent commission to carry out periodic reviews of the remuneration package for DC members. However, Mr IP expressed disappointment that DC members' monthly honorarium still had to be reduced from \$18,190 to \$17,950. He pointed out that although a reduction of \$240 on DC members' honorarium would not cause financial problem to them, it had reflected the Administration's view that the role and functions of DC members was not important.

23. In response, Secretary for Home Affairs (SHA) pointed out that the current mechanism for revising DC members' honorarium and AA had been examined and approved by the Finance Committee (FC) of the Legislative Council (LegCo) in 1992 and 1999 respectively, and was in line with the current

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arrangements for revision of LegCo Members' remuneration and operating expenses reimbursement. In view of the House Committee's concern about the issue, the Administration had conducted a special review of the annual adjustment mechanism for DC members' honorarium and allowance before the completion of the overall review on the roles and functions of DC. He emphasised that based on the principle of not deviating from the current mechanism, the findings and recommendations of the special review had offered a short-term solution to the problems faced by DC members who were bound by the terms of the rental and staff contracts they had entered into. He added that HAB would examine the suggestions put forward by LegCo Members and DC members regarding the adequacy of the honorarium and AA in the context of the overall review of DC's roles and functions.

24. Mr Albert CHAN considered that HAB's proposal not only could offer a short-term solution to the problems faced by the Administration and DC members, but was also in line with the principle of the established revision mechanism. Miss CHOY So-yuk also expressed support for the proposals set out in the paper.

25. Mr WONG Sing-chi asked why the Administration did not consider deferring the adjustment of DC members' honorarium as applied in the case of the ceiling of their AA. The Chairman also pointed out that most of the DC members attending the activities of the "District Councils Day" had expressed concern over issues relating to the adjustment of their honorarium and AA. He asked whether the Administration had considered deferring the adjustment of DC members' honorarium under the present economic environment.

26. SHA pointed out that the Administration did not share the view that there could only be upward, but not downward adjustment of the levels of DC members' honorarium and AA. However, it agreed that DC members were bound by their contractual obligations in terms of rental charges and staff salaries which could not be adjusted at will or in accordance with the movement of CPI. Therefore, the Administration suggested that the downward adjustment of the ceiling of DC members' AA should be deferred and the deduction should be effected when there was a need for its upward adjustment at times of inflation. He explained that the same principle did not apply to DC members' honorarium which was to cover the expenses arising from DC business and compensate them to some extent for their time spent on DC business. Therefore, the Administration considered that DC members' honorarium should continue to be adjusted with reference to the movement of CPI. He added that the downward adjustment of LegCo Members' remuneration earlier had set a precedent. He hoped that DC members would take into consideration the different views in the community, including some LegCo members, on this issue.

27. Mr IP Kwok-him emphasised that as pointed out by the Chairman, most DC members participating in the discussions on "District Councils Day" had indicated that the current rates of honorarium and AA were inadequate to cover

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the expenses incurred in performing their day-to-day duties. He hoped the Administration could complete the overall review of DC members' functions and roles as soon as possible. He urged members to support the revised mechanism proposed by the Administration. Otherwise, the ceiling of AA would be reduced by 2.7% from the current level of \$10,000 to \$9,730 with effect from 1 January 2001.

28. The Chairman said that the revised mechanism proposed by the Administration was not the best solution. He pointed out that as employers, DC members did not want to cut back the remuneration for their assistants. Moreover, other expenses of DC members' ward offices, such as rental charges, might not necessarily be adjusted in line with inflation or deflation. In his opinion, AA should be reimbursed to DC members on production of receipts at times of deflation. Such a practice could increase the flexibility in policy implementation and reduce administrative expenses while catering for the varied financial needs of DC members.

Honorarium and AA for DC members

29. Mr Albert CHAN, Miss CHOY So-yuk and Mr WONG Sing-chi considered that the current monthly AA of up to \$10,000 was insufficient to meet the expenses incurred by DC members in discharging their duties. They pointed out that the monthly rental of DC members' ward office would be in the range of \$3,000 to \$5,000 if they were set up within the precincts of housing estates under the management of the Housing Department (HD). However, the monthly rental would be at least \$9,000 if DC members had to rent commercial premises or private properties for setting up their ward offices. Mr CHAN added that even during the economic downturn in 1999, HD had attempted to increase the rental of his ward office located in a housing estate. Given Mr CHAN's strong opposition, the rental was subsequently frozen. Mr CHAN and Miss CHOY urged the Administration to actively consider providing offices at fixed locations for DC members with a view to reducing their expenses on rental charges and helping them perform their duties. Miss CHOY So-yuk opined that DC members should be granted an entertainment allowance. She pointed out that in order to better understand grass-roots views and needs, DC members very often had to attend functions organised by non-governmental organisations and hence had to send baskets of flowers as a token of their compliments or respect. She suggested that those expenses should be reimbursable under AA.

30. Mr Albert CHAN pointed out that the honorarium for full-time and part-time DC members should be different. He pointed out that full-time DC members might have to spend more than ten hours per day on DC business while part-time DC members might just attend several regular meetings per month. He was of the view that the Administration should not adopt a uniform rate for DC members' honorarium to avoid causing any unfairness. He also pointed out that in their day-to-day work, DC members helped the Administration solve many problems relating to people's livelihood at the district level as well as

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placate the pent-up grievances of people in their daily life. He hoped that the Administration would attach importance to the functions of DCs in district administration as well as the role played by DC members in district affairs.

31. In response, SHA pointed out that at present, DC members' honorarium and AA were not calculated in accordance with the time they devoted to council business as this would arouse much controversy. He agreed that in discharging their duties, DC members directly and indirectly helped relevant government departments to co-ordinate and solve many problems in district management. He pointed out that he had called at 18 DCs and obtained a clear picture of the views expressed by DC members on the levels of honorarium and AA as well as the revision mechanism. He informed members that the Administration would examine all issues relating to the provision of financial support and other assistance to DC members in the context of the overall review of DCs' roles and functions.

32. Miss CHOY So-yuk and Mr IP Kwok-him pointed out that the levels of DC members' honorarium and AA were not reasonable. Miss CHOY considered that should the findings of the overall review show that the levels of DC members' honorarium and AA had been on the low side, the Administration should consider paying back the amount of honorarium and AA that DC members should have received.

33. The Chairman and Mr IP Kwok-him hoped that the Administration could complete the review of DC members' roles and functions within six months. SHA responded that the Administration planned to complete the overall review of DCs' roles and functions by the end of 2001.

34. The Chairman informed members that the Administration would seek the approval of FC of LegCo on 12 January 2001 for the relevant financial proposal.

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Legislative Council Secretariat
17 April 2001

Extract of minutes of meeting on Constitutional Affairs Panel on 15.1.2001

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V. Enhancing the role and functions of the District Councils

(LC Paper Nos. CB(2)207/00-01(04), 270/00-01(03), 535/00-01(03) and 651/00-01(06))

23. Acting Secretary for Constitutional Affairs (SCA(Ag)) said that during the resumption of the Second Reading debate on the Provision of Municipal Services (Reorganization) Bill, the Administration advised Members that after the new District Councils (DCs) had commenced operation, it would consider how to enhance the role of the DCs in district affairs and strengthen their functions. Since the establishment of the DCs on 1 January 2000, progressive steps had been taken by the Administration towards that direction. On 14 November 2000, the Home Affairs Bureau (HAB) briefed the Panel on Home Affairs about the measures that had been taken to enhance the role and functions of the DCs and the support provided to DC members. A District Administration Seminar was organized on 18 November 2000 to solicit views of DC members on the operation of the DCs and areas for improvement. Members had also expressed views by way of a motion debate on "Increasing the support to DC members" held at the Council meeting on 22 November 2000.

24. Deputy Secretary for Home Affairs (DS/HA) supplemented that since the DCs had operated for more than a year, it was the right time to conduct a review. An inter-departmental working group, headed by the HAB and comprised representatives of the relevant bureaux and departments including the Constitutional Affairs Bureau, had been formed to review how to further enhance the role and functions of the DCs and strengthen the support for DC members. The Administration had previously provided a paper (LC Paper No. CB(2)207/00-01(04)) setting out the measures that had been taken so far. The Administration welcomed views from members of the Panel.

Revamp of the DC structure

25. Dr YEUNG Sum said that he had read from a news report that there were plans to re-delineate the boundaries of the 18 DCs into five or six DCs. He asked the Administration whether the review was working in that direction and if so, he suggested that the matter should be considered from a macroscopic and constitutional perspective. He opined that giving the DCs more powers and responsibilities would attract more people to participate in the work of the DCs.

26. Deputy Secretary for Constitutional Affairs (DS/CA) said that prior to the drafting of the District Councils Bill in 1999, the Administration had

conducted public consultation in 1998 to gather views on, among others, the functions and structure of the municipal councils and the District Boards. The majority of the responses received was that the number and structure of the District Boards should be retained. Since the DCs had been in operation for just more than a year, it was considered inopportune to make any fundamental and major changes to the structure of the DCs at this stage. A more pragmatic approach was to review the role and functions of the DCs on the basis of the existing structure.

27. In response to the Chairman, DS/HA clarified that the delineation of the DC boundaries was outside the scope of the current review. So far, no DC had suggested that it would like to be amalgamated with another DC.

Motions passed by DCs

28. In the light of his experience as a DC member, Mr James TIEN said that the DCs passed a lot of motions. He asked about the procedure in handling motions passed by the DCs and the level of government officials responsible for following up the motions. He had the feeling that only officials at junior level would handle such motions. Mr TIEN also commented that although the DCs were consulted on proposals relating to district affairs beforehand, the views of DC members were often ignored and inadequately reflected in papers submitted to LegCo. The Chairman said that it would appear that while the Administration was prepared to listen to the views of DC members, no regard was paid to their views in formulation of policies.

29. Assistant Director for Home Affairs (AD/HA), who was a former District Officer of the Eastern District, advised members that after a motion was carried at a DC meeting, the DC secretariat would convey the motion to the relevant policy bureau or department in writing. Any reply received would be passed on to the DC. If members of the DC were dissatisfied with the reply, they could pursue the matter further with the Administration. As regards consultation with the DCs, AD/HA said that views of a DC on a particular issue would be reflected in the relevant paper submitted to the relevant committee/council.

30. As regards the level of officials responsible for handling motions passed by the DCs, AD/HA said that the referral of the DC secretariat would be addressed to the relevant policy secretary or head of department. While he did not have any information in hand as to the level of officials who would be handling DC motions in respective policy bureaux and departments, he pointed out that the reply given to the DC secretariat was signed on behalf of the relevant policy secretary/head of department. Mr TIEN asked whether the officer signing off the letter was the one responsible for handling the motion. AD/HA replied that this was not necessarily the case as the motion might have

been dealt with or considered by other officers at more senior level.

31. DS/HA supplemented that the level of officials assigned to follow up on DC motions would depend on the nature of the motions and their implications. She said that she had recently handled a motion passed by the Eastern DC. The motion proposed that the DCs should be consulted on policies affecting the livelihood of the people such as increase in government fees and charges. Given the implications of the motion, she had personally taken up the matter with the Finance Bureau.

Scope of the review

32. Mr IP Kwok-him said that some DC members were not satisfied with the advisory role of the DCs. They considered that some of the functions of the former municipal councils should be handed over to the DCs. They also wanted to have an enhanced role in district affairs management and policy formulation. Mr IP asked the Administration whether the review being conducted was working towards that direction.

33. DS/HA said that the review was meant to see how the role and functions of the DCs could be enhanced. In this regard, the Administration welcomed concrete suggestions from Members, the DCs and the public on what powers or functions should be devolved to the DCs. In response to Ms Emily LAU's question on timing, DS/HA said that the Administration had undertaken to complete the review within 2001.

34. Ms Emily LAU said that the morale of some DC members was low because they felt that their views were not respected by the Administration and they were not provided with adequate resources to discharge their duties. If the Administration was prepared to give substantive powers to the DCs, it should make clear its intention so that the public and DC members would be more ready to give concrete proposals in this respect for the consideration of the Administration.

35. Miss Margaret NG said that the Administration must have some preliminary views on how further powers could be devolved to the DCs when it proposed to abolish the municipal councils in 1998. Given that the DCs had already operated for a year and to facilitate discussion by all interested parties, the Administration should make known its preliminary views or proposals on the issue.

36. SCA(Ag) said that the Secretary for Constitutional Affairs (SCA) had made the following comments when speaking during the Third Reading of the Provision of Municipal Services (Reorganization) Bill -

"...During the Second Reading debate, some Members expressed support for the streamlining of the three-tier system of representative government into a two-tier structure. At the same time, they hope that the Government can strengthen the functions and representativeness of District Councils. After the commencement of the first term of District Councils of the Hong Kong Special Administrative Region next year, we will work in this direction to promote the development of district organizations, and consider ways to enhance the role of District Councils in district affairs and to strengthen their functions."

SCA(Ag) added that the Administration had now followed up the matter by conducting a comprehensive review of the functions of the DCs. He reiterated that the Administration was open-minded about the review. In response to Ms Emily LAU, DS/CA reiterated that the review would be conducted on the basis that the existing structure of the DCs would remain unchanged.

37. DS/HA said that the Administration was working in partnership with the DCs on the review. The Administration would consider the views of the DCs and consult them on the proposals made before implementation. However, the Administration was not in a position to put forward any preliminary views on the issue at this stage. As the District Administration Seminar and the motion debate of the Council were only held in November 2000, the Administration would need some time to study the views expressed and to discuss the feasibility of certain proposals with the relevant departments before it could come up with any preliminary views.

38. The Chairman asked whether the proposal to give more decision-making powers to the DCs would be considered in the review.

39. DS/HA said that under section 61 of the District Councils Ordinance, the DCs were advisory bodies. One of the objectives of the review was to study how the functions of the DCs could be enhanced so that they could play a part in promoting culture, recreation and environmental affairs and in providing such services, which were areas of responsibility of the former municipal councils.

40. DS/CA supplemented that the DCs were advisory bodies by virtue of Article 97 of the Basic Law which stated that "District organizations which are not organs of political power may be established in the Hong Kong Special Administrative Region, to be consulted by the government of the Region on district administration and other affairs, or to be responsible for providing services in such fields as culture, recreation and environmental sanitation". Hence, the scope of the review should follow the principles laid down in Article 97.

41. Ms Emily LAU said that an advisory body did not have any substantive powers. In the circumstances, she could not see how the role and functions of the DCs could be enhanced after the review. Miss Margaret NG asked whether it was the intention of the Administration to review whether the “advisory” role and functions of the DCs could be enhanced.

42. Mr SZETO Wah pointed out that the term “district organizations” stipulated in Article 97 referred to both the municipal councils and DCs. Following the abolition of the two councils, their functions should be transferred to the remaining district organizations, the DCs. He held the view that failure to do so would contravene Article 97.

43. Mr CHEUNG Man-kwong held the view that given that district organizations were empowered under Article 97 to provide services in such fields as culture, recreation and environmental sanitation, they should also have the powers to decide on the policies and budget, etc for providing such services.

44. Dr YEUNG Sum said that the DCs should be given decision-making powers on local and district affairs. He was dissatisfied that the Administration was equivocal about the issue.

45. Miss Cyd HO recalled that at a meeting of the Panel on Home Affairs, members had raised the question of whether the role of DCs could go beyond the scope of an advisory body. Mr LAM Woon-kwong, the Secretary for Home Affairs had said that all issues could be discussed in the review, including any amendments to the Districts Council Ordinance. It would appear that the Administration had adopted two different positions on the matter.

46. Miss Margaret NG advised members that on a previous occasion, Members had raised the question as to whether the abolition of the municipal councils amounted to reducing the powers of the district organizations. The Administration's response was that under Article 97, district organizations could be established for two purposes, i.e. either to be consulted on district administration or to be responsible for providing services in such fields as culture, recreation and environmental sanitation, and that given the DCs were consultative bodies on district administration, there was no question of their powers being reduced.

47. The Chairman said that the Administration had on one hand advised the Panel that it would listen to the views of the DCs and Members before finalizing the review, but on the other hand had already held a position on certain issues. He asked the Administration to provide a paper to the Panel to

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clarify the scope and direction of the review and how the Administration proposed to proceed with the review. In particular, he would like the Administration to clarify whether proposals such as empowering the DCs to become a decision-making body with financial autonomy in district affairs could be covered in the review.

48. DS/HA said that the Administration was not in a position to advise members of any concrete proposals at this stage as the review had just commenced. On the scope of the review, the Administration was of the view that it should not exceed the parameter of Article 97. The Administration believed that the term “district organizations” in Article 97 referred to the former municipal councils and District Boards. While the functions of the municipal councils could be transferred to the DCs in principle, the Administration would need to study what functions in respect of district affairs should be transferred, and if so, how. These issues would be addressed in the review. SCA(Ag) reiterated that the Administration would carry out the review in a liberal and open-minded manner.

49. Miss Margaret NG suggested that members should discuss among themselves how the matter should be taken forward, and that LegCo should consider exchanging views with the DCs on this issue. Members agreed that an internal discussion on the subject should be held at the next meeting.

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**Extract from draft minutes of meeting of
LegCo Panel on Home Affairs on 16 July 2001**

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I. Review of the roles and functions of District Councils

[Legislative Council Brief (File Ref: S/F(6) in HAB/CR 3/21/7 Pt.5) issued by the Home Affairs Bureau and LC Papers No. CB(2)2063/00-01(01) to (06)]

The Chairman welcomed the Administration's representatives to the meeting. Members noted the Legislative Council (LegCo) Brief and the relevant report of the Working Group on Review of the Roles and Functions of the District Councils (the Report) provided by the Home Affairs Bureau (HAB).

Consultative procedure for the Review of the Roles and Functions of the District Councils

2. Mr Andrew WONG considered that the Administration should consult LegCo in advance when dealing with significant issues such as the review of the roles and functions of the District Councils (the Review) in order to improve the relationship between the executive and the legislature. He pointed out that LegCo Members were elected representatives to monitor the government on behalf of the public, and the roles and functions of District Councils (DCs) were significant issues raised by Members. Moreover, the Administration had undertaken to consider enhancing the roles and functions of DCs during the Third Reading of the Provision of Municipal Services (Reorganization) Bill. Hence he considered it very inappropriate for the

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Administration to have released the Report for consultation before reporting the matter to LegCo. In this connection, he expressed his grave dissatisfaction.

3. Mr Andrew WONG pointed out that while the LegCo Panel on Home Affairs (HA Panel) was the corresponding panel to the Home Affairs Bureau, the LegCo Panel on Constitutional Affairs (CA Panel) had already expressed concern over the relevant issue to the Constitutional Affairs Bureau (CAB) and had included it as an agenda item for a number of CA Panel meetings. Since no progress had been made during the many discussions with CAB, the CA Panel had decided to hold an internal discussion on the issue, which had been deferred a number of times pending the availability of the Report. The Administration, however, had all along delayed submitting the Report to LegCo until the recess was imminent. Such approach was indeed disrespectful to LegCo.

4. Secretary for Home Affairs (SHA) responded that the Administration had followed the usual practice in handling the consultation on the Review. He agreed that the ideal approach was to consult LegCo in advance. However, as the LegCo session was drawing to an end, and in order to meet the date of the Panel meeting, the matter was reported to LegCo a few days late. Yet he undertook that the Administration not only would set aside sufficient time to listen to the views of LegCo Members and the public, but would also be more discreet in handling relevant arrangements in the future.

5. Mr Andrew WONG maintained the view that the Review was very controversial, and therefore once the Administration had finalised the proposals, it should at least make its stance known in advance at a Council meeting, even if the Report was not yet published.

6. The Chairman pointed out that while he recognised that the timing in handling this matter had left much to be desired on the part of the

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Administration, he was obliged to accept the arrangement since after all it was up to HAB to decide when the Report should be released. However, he shared Mr Andrew Wong's view. The Chairman pointed out that in the same manner as the Report, the Gambling Review - A Consultation Paper had been made public before LegCo was consulted. Such practice would inevitably give the impression that the Administration attached more importance to consultation with DC chairmen and announcement to the public than to consultation with relevant LegCo Panels. The Chairman urged SHA to look into the matter and make improvements so as to avoid damaging the relationship between the executive and the legislature.

7. Ms Emily LAU was of the view that before releasing an important consultation paper to the public, the Administration should make its best effort to announce the paper at a Council meeting in order to show its respect to LegCo. Ms LAU also pointed out that CAB should have understood the concern of CA Panel over the issue. She asked whether CAB had reflected the concern of CA Panel members in the review process.

8. In response, Deputy Secretary for Constitutional Affairs (2) (DS(CA)2) confirmed that CAB was involved in the Review and he was a member of the Working Group of the Review. The Administration well understood that apart from HA Panel, CA Panel had grave concern over the Review too.

9. Ms Emily LAU queried whether it was appropriate for HAB to head the relevant Working Group since the Review involved the subject of constitutional framework. SHA responded that the Review focused on DCs and did not involve the role of DCs in the entire constitutional framework. Therefore, the Administration considered it appropriate for HAB to take the lead in the Review. Ms Emily LAU disagreed with the SHA's explanation. She considered it necessary for the Administration to define the role of DCs in

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the entire constitutional framework before reviewing other aspects of DCs, such as their functions and responsibilities.

10. Mr Andrew WONG pointed out that it was inappropriate for HA Panel to follow up the Review alone. He considered that the review on the roles and functions of DCs should be discussed at a joint meeting of HA and CA Panels, or at a House Committee meeting.

11. Mr James TO said that Members could propose urgent agenda item to the House Committee Chairman if they wished to discuss an important subject at a House Committee meeting. He, however, also considered that the Administration should not have consulted LegCo and set the deadline of the consultation at 10 September 2001 when the current LegCo session was drawing to an end. Mr TO pointed out that with this deadline, it would not be possible for Members to move a motion debate even if they wished to do so. Given the strong views expressed by Members, Mr Tommy CHEUNG suggested that the Administration should consider deferring the deadline of the consultation for a month or two so that Members would have adequate time to hold discussions on the subject when the new session began.

12. Mr IP Kwok-him said that he had reservations about deferring the consultation deadline because part of the measures proposed by the Working Group should be implemented as soon as possible. He had always held that the Administration should announce the result of the Review Report as soon as practicable. He did not believe that it was the Administration's deliberate act to make the Report public just before the end of the current LegCo session. After the Review Report had been released, the Administration could still listen to the opinions of LegCo members, DC members and the public. He had no strong view regarding whether the issue should be taken up by HA Panel or CA Panel. However, since HA Panel had invited members of CA Panel and all other Members to participate in the discussion on the present occasion, he

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considered that it was in order to discuss the Review at this meeting. If the discussion could not be completed during the meeting, CA Panel could discuss it again later.

13. The Chairman requested SHA to respond to Members' proposals of holding a joint Panel meeting and deferment of the consultation deadline. SHA said that the Administration was willing to participate in the joint Panel meeting to be held later. He pointed out that as LegCo was one of the Government's essential targets in soliciting views, it would not pose any problem to the Administration, if Members considered it necessary to wait until October 2001 to express their views even though the deadline for public consultation was set at 10 September 2001.

Discussion on specific contents of the Review

14. Ms Emily LAU remarked that she had learnt from the Working Group's Report that the Administration had only recommended that chairmanship of certain district committees be taken up by DC chairmen/members and DC chairmen/members be invited to take part in more working groups at district level. The Report also recommended that suitable DC members be appointed in their personal capacity to advisory and statutory boards. She opined that selective appointments of this nature failed to serve the overall purpose of enhancing the role of each DC member in monitoring the planning and implementation of district-based services and facilities. She asked why the Administration could not delegate concrete powers to DC members within the framework of the Basic Law with a view to enhancing their accountability.

15. SHA explained that the purpose of the entire review exercise was to promote greater participation of DCs and their members in district affairs. Various measures proposed by the Working Group would further enhance the management of district services jointly implemented by DC members and

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district officials. It was true that the Administration had not proposed to adopt the operational modes of the former Municipal Councils (MCs) and to delegate district administrative powers to DCs. The Administration was concerned that adopting the operational mode of MCs would have adverse effects on the administrative framework of various departments, the utilisation of public resources, and might even cause confusion in the administration of the 18 DCs in the future. In the light of the above concern, the Administration had opted for a progressive approach and decided against taking the precipitate course of delegating district administrative powers.

16. Ms Emily LAU said that the Administration had only proposed to invite the chairmen and vice-chairmen of DC committees to attend District Management Committee (DMC) meetings. She asked whether the Administration could allow more DC members to participate in the work of DMCs.

17. Director of Home Affairs (D of HA) responded that the Administration was concerned that the large number of participants might have adverse effects on efficiency should all DC members be invited to the meetings of DMCs. Hence the Working Group proposed to invite the chairmen of the relevant DC committees to DMC meetings only when items related to the DC committees concerned were discussed. She further pointed out that as DC chairmen and vice-chairmen would report to their respective DCs on a regular basis, she did not consider it necessary to transform the role of DCs into that of DMCs. She reiterated that DCs were still advisory bodies at present.

18. Mr James TO shared Ms Emily LAU's view, Mr TO opined that apart from the chairmen and vice-chairmen of DCs, more DC members should be allowed to attend DMC meetings so that different political parties and groups could have sufficient opportunities to express their views. He queried why the Administration had taken prompt actions to centralise the powers after the

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dissolution of MCs, while adopting a completely different attitude towards delegation of powers now.

19. The Chairman supported the views of Ms Emily LAU and Mr James TO. He pointed out that when MCs were dissolved, the Administration had undertaken to increase the powers of DCs when the overall review was conducted. Contrary to this commitment, the Administration now had adopted a progressive approach in the delegation of powers. As there were already a number of committees under the existing framework of DCs, he asked why the Administration considered it necessary to set up district consultative committees in the 18 districts instead of directly authorising the relevant committees under DCs to handle district affairs. The Chairman was of the view that the recommendations proposed was in effect a duplication of effort and structure.

20. Referring to the Official Record of Proceedings of the Council meeting on 2 December 1999, DS(CA)2 said that that the Secretary for Constitutional Affairs (SCA) had made the following remarks when speaking during the Third Reading of the Provision of the Municipal Services (Reorganization) Bill -

“...during the Second Reading debate, some Members expressed support for the streamlining of the three-tier system of representative government into a two-tier structure. At the same time, they hope that the Government can strengthen the functions and representativeness of District Councils. After the commencement of the first term of District Councils of the Hong Kong Special Administrative Region next year, we will work in this direction to promote the development of district organisations, and consider ways to enhance the role of District Councils in district affairs and to strengthen their functions.”

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DS(CA)2 was of the opinion that the current recommendations proposed by the Administration were in line with the undertaking given by the SCA at that time.

21. Mr James TO asked whether the role referred to by the Administration included the aspect of management. In response, D of HA stressed that the Administration was currently adopting a progressive approach in conducting the review with a view to increasing the involvement of DCs in district affairs. She further remarked that DCs played a unique advisory role. As the existing operational mode of DCs was already well-established, the recommendations proposed in the Review would be able to further enhance the roles and functions of DCs.

22. DS(CA)2 further said that Article 97 of the Basic Law (BL 97) provided that “District organisations which are not organs of political power may be established in the Hong Kong Administrative Region, to be consulted by the government of the Region on district administration and other affairs,...”. It was clear that DCs could be consulted on district administration and other affairs as advisory bodies, but they were not organs of political power.

23. Mr James TO reminded the Administration that it had also been stipulated in the latter part of BL 97 that the relevant district organisations were “responsible for providing services in such fields as culture, recreation and environmental sanitation”. DS(CA)2 explained that as stated in paragraph 2.7 of the Report, given the small size of Hong Kong, delegating specific executive functions to 18 DCs would run the risk of fragmenting responsibilities and diminishing efficiency. Taking this into account, the Administration had not proposed any delegation of specific executive functions to the 18 DCs.

24. Mr Andrew WONG remarked that this was the first time the Administration had openly admitted that DCs were only playing an advisory role. To ensure a clear understanding of the meaning of BL 97, he requested

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the Administration to provide legal advice on the authoritative interpretation of the Article. Otherwise, the Administration should seek an interpretation from the Standing Committee of the National People's Congress. Moreover, he opined that if the Administration arranged the public to select through elections a group of members who could only offer views but would not be responsible for their work, the Administration was only promoting a political culture of irresponsibility. In fact, the measures proposed by the Administration would perpetuate such culture. While admitting that setting up 18 DCs with executive functions might run the risk of fragmenting responsibilities and leading to confusion, he pointed out that the number of DCs could be reduced according to circumstances.

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25. DS(CA)2 responded that regarding the provision of legal advice on BL 97, the Administration would submit a written reply to the Panel in due course. Mr Andrew WONG also requested the Administration to provide the original text of legal advice given by the Department of Justice. If it was unable to do so, the Administration should specify in its written reply whether the view stated was legal advice or the position of the Administration based on legal advice. DS(CA)2 replied that he had a clear understanding of Mr WONG's request. However, as he had yet to discuss the matter with the Department of Justice, he could not accede to the request of Mr WONG at the moment. However, he undertook to provide relevant information to members as far as practicable.

26. Mr IP Kwok-him pointed out that MCs and DCs were already in operation before the enactment of BL 97. According to his understanding, the duties of DCs were described in the first part of BL 97, whereby district organisations were "to be consulted by the government of the Region on district administration and other affairs". The duties of the then MCs were described in the latter part of the Article, whereby district organisations were "to be responsible for providing services in such fields as culture, recreation and environmental sanitation". Since it was stated in paragraph 2.4 of the

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report that “the 18 DCs are district organisations covered by BL 97”, he opined that DCs had already been defined as the district organisations referred to in BL 97. In this connection, apart from preserving its advisory role as stated in the first part of BL 97, DCs should also be made responsible for providing services in such areas as culture, recreation and environmental sanitation as stated in the latter part of the Article. However, the Report demonstrated that the Administration had no intention to delegate such powers to DCs.

27. SHA responded that since CAB had undertaken to seek legal advice on BL 97, he opined that discussion relating to the interpretation of the Article should be deferred until the legal advice was available. However, he drew members’ attention to the fact that measures proposed by the Working Group aimed at enhancing DCs’ participation in the management of those services. There was a marked difference between participation in the management and provision of services. Therefore, reference to the operational modes of the previous MCs would be necessary if DCs were made responsible for the provision of the services. However, the Administration did not consider it opportune to do so at the present stage.

28. Miss Cyd HO queried why the Administration considered that 18 DMCs would not bring about administrative confusion while 18 DCs would result in chaos. She admitted that different rules adopted by the respective MCs in the past had inevitably caused administrative confusion. As the respective rules of the 18 DCs had been brought in line with one another, she believed that setting up 18 DCs with administrative powers would not cause any confusion. She further asked whether the Administration would truly agree to delegate the powers of DMCs to DCs, 75% of which were elected members so that DCs would have a real role to play in the management of district affairs.

29. SHA remarked that in practice, the execution of all councils, regardless of whether they took up actual executive functions or participated only in

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management, was not implemented by the respective council members. In the event of the Government delegating the administrative powers to DCs, they should be given the decision-making powers including those on financial matters. In view of the small size and dense population of Hong Kong, discrepancies in the provision of services in respect of culture, recreation, municipal and environmental sanitation among the 18 different districts would inevitably bring about inconvenience and complaints. The past experience of MCs showed that inconvenience and complaints had actually been caused. Based on this observation, the Administration considered it inappropriate to delegate administrative powers to the 18 DCs at the present stage. Enhancing the involvement of DCs and DC members in the implementation of district administrative work would be a better approach for the time being.

30. Disagreeing with the explanation of the Administration, Miss Cyd HO pointed out that the 18 DMCs should already have a mechanism to avoid confusion caused by different practices in different districts. If the current practice was feasible, the Administration should replace DMCs with DCs which comprised largely elected members, instead of allowing only the chairmen and vice-chairmen of DCs to attend DMC meetings.

31. Mr Andrew WONG opined that the Report of the Review had not enhanced the roles and functions of DCs. On the contrary, the proposal of setting up consultative committees with DC members appointed as members in each of the 18 districts had in fact undermined the roles and functions of DCs. While admitting that setting up 18 DCs with district administrative powers might, to a certain extent, cause administrative confusion, he remarked that the Administration could allow different DCs to establish different practices with a view to developing the most appropriate operational mode.

32. In response, SHA disagreed that the recommendations of the report had undermined the roles and functions of the DCs. He cited an example in which

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the Administration had proposed that DC chairmen/members be appointed as the chairmen of the two Steering Committees on Rural Public Works and Urban Minor Works Programmes as well as the 18 District Working Groups in order to increase DCs' involvement in the implementation of local minor works projects. He pointed out that the above recommendation had rendered DCs a direct influence on these works. By setting up district consultative committees, the Administration aimed at increasing DC members' participation in the management of local municipal facilities. If members considered this recommendation a duplication of effort and structure, the Administration was willing to reconsider the proposed arrangement.

33. Due to time constraint, the Chairman suggested that members should continue to discuss the item at the joint meeting of HA and CA Panels to be scheduled when the new LegCo session began in October 2001. He also requested HAB to defer the consultation period to the end of October, thus allowing LegCo Members sufficient time to discuss the subject.

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Legislative Council Secretariat
24 August 2001

Article 97 of the Basic Law

BL97

BL97 provides that “[d]istrict organizations which are not organs of political power may be established in the Hong Kong Special Administrative Region, to be consulted by the government of the Region on district administration and other affairs, or to be responsible for providing services in such fields as culture, recreation and environmental sanitation.”

Analysis of BL97

2. BL97 is an empowering provision. It is permissive in the sense that it permits the HKSAR to establish district organizations. But it does not impose any constitutional obligation on the HKSAR to establish district organizations. It is prescriptive in that district organizations shall not be organs of political power.

BL98

3. BL98 provides that “[t]he powers and functions of the district organizations and the method for their formation shall be prescribed by law.”

Powers and functions of district organizations

4. BL97, when read together with BL98, provides flexibility for the HKSAR to determine whether or not to establish district organizations, and if so, whether they should perform both or either one of the two functions set out in BL97. Provided that they operate within the framework laid down in BL97, the powers and functions of the district organizations are matters for policy decision, and according to BL98 such policy decisions must be prescribed by law.

Relevant court case

5. It is relevant to take note of the ruling handed down by the Court of First Instance in *Chan Shu Ying v The Chief Executive of the HKSAR*¹ (a case in which the constitutionality of the *Provision of Municipal Services (Reorganisation) Ordinance (Cap. 552)* was upheld). Hartmann J held that -

“Clearly, Article 97 is no more than an empowering provision. It is permissive in the sense that it permits the establishment of district organizations but does not create a constitutional obligation to establish them.

But the matter goes further. For in my view, it is equally plain that if Government and the Legislature do decide to establish district organizations, they may do so either to act as consultative bodies on matters of district administration and related affairs or to be responsible for providing local services. No obligation exists therefore to create district organizations which possess executive or administrative powers.”²

Constitutional Affairs Bureau
August 2001

¹ [2001]1 HKLRD 405.

² Ibid, at 424 B – D.