

**Submission to the LegCo Panel on Constitutional Affairs on  
the proposed "System of Accountability for Principal Officials"**

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17 February 2001

**1. Present problems of accountability**

*Politics-administration separation*

In a developed political system, the population elects the 'political executive', either through the popular election of the head of government (as in a presidential system) or indirectly through a popularly elected parliament where the majority party or coalition forms the government (parliamentary system). With the mandate of the people, the political executive makes policies which are implemented by a politically neutral civil service which pledges loyalty to the 'government of the day'. This is the so-called 'separation of politics and administration'. Under such a system, the political executive (the ministers) takes political accountability while the civil service (the administration) takes administrative and managerial accountability.

In practice, senior civil servants are able to have considerable influence on policy formulation through policy advice given to ministers (as vividly illustrated in the BBC television series '*Yes, minister*') and policy implementation. With the rise of new public management (NPM), civil servants heading executive agencies tend to be given more autonomy in the running of their agency. On the other hand, the NPM culture also expects ministers to get beyond the strict sphere of policy and to be ultimately responsible for the efficient and effective use of resources in their ministry and subordinate agencies. 'Policy management' and 'political management' are the new catchwords. Strict politics-administration dichotomy is therefore purely an academic notion.

*Hong Kong's unique civil service 'ministerial' system*

In Hong Kong, we have a system inherited from British colonial rule before July

1997 whereby career civil servants, mostly of the Administrative Class, take up the role of ‘ministers’ (i.e. Secretaries). Quasi-ministerialization of the top echelons of the civil service began with the 1973 McKinsey Review which introduced the new level of ‘policy secretaries’ on top of heads of departments. Public sector reform since the 1990s has given the secretaries greater control in policy and resource allocation over departments, agencies and non-departmental public bodies under their purview. This is the so-called ‘ministerial system’ with Hong Kong characteristics.

### *Anomalies in accountability*

Such a system, while having the benefits of continuity and of ensuring the availability of policy talent groomed from within the civil service, has two major defects. **First, it unnecessarily ‘politicizes’ the senior civil service.** Instead of focusing their attention and time on running the administration and managing resources, secretaries and their assistants have now to devote more and more energy to political lobbying and negotiation with legislators, political parties and sectoral interest groups. They operate more like politicians than civil servants. This is not conducive to maintaining civil service neutrality. Another kind of politicization of the civil service is observed in the post-1997 situation where given a non-democratically elected Chief Executive being in power, there is considerable public expectations of top servants (such as the Chief Secretary) to ‘check and balance’ the Chief Executive.

**Second, it blurs political and policy accountability.** Although secretaries have a policymaking role, they are still strictly speaking career civil servants appointed on typical civil service terms. They can hide behind the principle of civil service neutrality and merit protection, in order to evade from political accountability even when there are serious policy blunders. What is worse is that even when a few non-civil servants are now brought into the government as secretaries and assistants of the Chief Executive after 1997, clearly as political appointment rather than civil service competitive appointment, such appointees are still nominally civil servants not required to bear political responsibility.

## **2. Need for political appointment of secretaries**

### *Arguments in favour of political appointment*

To delineate political and policy accountability clearly, it would be better if

secretaries are made political appointees so that they can be separated from the career civil service. The Chief Executive should be allowed to pick his own policy team and not to have his choice of secretaries constrained by a civil service ‘ministerial’ system governed by civil service rules of promotion and transfer. He and his secretaries should then be all held politically accountable for the overall performance of the government and to take responsibility for policy failure (such as removal of secretaries). They cannot shift such responsibility to their civil servants whose role is to provide advice (which may or may not be fully taken by the secretaries) and to implement approved government policies.

### *Reservation*

There is suggestion from some quarters in society that the introduction of a political ‘ministerial’ system should only be contemplated if and when the Chief Executive is elected by universal franchise. There is some merit in this consideration. Indeed without a democratic election of the Chief Executive, one cannot really speak of political accountability by the government to the people. Accountability has to come together with mandate. Unless the Chief Executive, rather than just his secretaries, takes the final responsibility for government policies and performance, the introduction of political appointment of secretaries may turn out to only strengthen his control over the principal officials rather than accountability to the people.

### *Two separate issues*

However, the question of popular mandate and that of the formation of the political executive can still be considered as rather separate issues. Prolonging the existing anomalies without having a definite timetable for constitutional reform will only increase the risk of further ‘politicizing’ senior civil servants and compounding problems of diffused political accountability at the centre of government. The lack of a coherent leadership team is also not conducive to effective policymaking.

Having said that, constitutional reforms (reviewing the method of election of the Chief Executive and the Legislative Council and the balance of powers between the executive and the legislature) have to be pursued immediately and vigorously so as to address the larger issue of political accountability.

### **3. Ways and problems of implementing a political accountability system for secretaries**

Under the Basic Law, secretaries are nominated by the Chief Executive and appointed by the Central People's Government (CPG). Unless the Chief Executive and CPG both respect the need to introduce political accountability at the level of secretaries, such accountability will not be realized.

#### *Constitutional convention for legislative scrutiny*

We should establish a constitutional convention whereby the Legislative Council, as the representative institution charged with the constitutional role of scrutinizing and monitoring government performance, can move a motion of no-confidence on a secretary who fails his/her task. Though such a motion is not legally binding on the government, the Chief Executive and CPG should take it most seriously. In addition the Chief Executive should also exercise leadership and remove those secretaries he appointed who prove to be less competent than expected.

To further institutionalize political accountability, the government can introduce special legislation to govern the appointment, transfer, removal as well as the avoidance of conflict of interest of political appointees. With CPG's consent, such legislation can provide for endorsement by the Legislative Council in the case of nomination of secretaries, similar to what is required by the Basic Law for the appointment of the judges of the Court of Final Appeal and the Chief Judge of the High Court, or indeed as practised in the US system of congressional hearings on major presidential appointments, so that there is ample opportunity for legislators' and the public's views to be expressed over the nomination.

#### *Potential conflicts of interest*

In any system of political appointment, potential conflicts of interest are bound to emerge as people move from the private sector into government and vice versa. But unlike in the United States, where thousands of federal senior officials must be replaced every time a new president is elected, we are talking about not more than two dozen top posts, even if all secretaries are to be replaced by political appointees. Our problem is thus more confined and can be dealt with by better mechanisms for declaration and avoidance of interest, greater transparency in policymaking, and more

important, stronger political scrutiny and policy audits.

#### *Ministers-officers relationship*

Once a political appointment system is put in place, both the new-style secretaries and their civil servants (i.e. officers) need to learn to respect each side's institutional role in the overall system of government. They need to learn how to work well with each other despite coming from different traditions and organizational cultures. Some tension in their relationship is unavoidable, but may be a healthy one so as to ensure mutual inputs. Overseas political jurisdictions practising such system can provide useful experience and lessons for us to draw from.

#### **4. Recruitment and appointment of secretaries**

##### *A new style 'political contract'*

Strictly speaking, political appointees serve at the pleasure of the Chief Executive. Hence their term of office should not exceed that of the latter. In practice, in order to reduce uncertainty, a new form of fixed-term (say 2-3 years) 'political contract' can be instituted which sets out the responsibilities and rights of the appointee. Given the non-permanence feature of the job, political appointments should adopt a different mode of remuneration and conditions of service from those of the civil service, with provisions for retirement benefits and suitable compensation for pre-mature termination of office.

##### *Source of recruitment*

A political appointment system does not need to imply recruiting all secretaries from the private sector. Indeed the experience and expertise of senior civil servants should be treasured. Suitable senior civil servants can be offered political appointment on condition that they leave the civil service (under some form of voluntary retirement scheme if they are already on permanent and pensionable terms) to take up the new appointment. A more likely scenario under a system of political appointment of secretaries is for the new line-up to comprise both ex-civil servants (both administrative officers and professional officers) and private sector talent who can come from various sectors, including business, academia, think tanks, political parties, trade unions and non-government organizations.

### *Availability of political talent*

A major problem with a political appointment system is whether there exists an adequate pool of potential appointees. A politically-appointed secretary has to possess not only relevant policy knowledge and expertise in the portfolio he/she is to be appointed to, but must have sufficient political acumen and related skills to handle parties and legislators as well as popular politics. Once it is decided to go along the road of political appointment, our political system has to be readjusted to facilitate the grooming of political talent who can aspire to political office as a rewarding career whether as elected legislators or as political appointees in government posts. Indeed, as overseas practice shows, the legislature is often a good source of talent for ministerial appointments.

## **5. What happens to existing civil-service heads**

### *Need for 'permanent secretaries'*

Political appointment applies only to the top policymaking layer while all heads of departments and other executive agencies should continue to be appointed on career civil service terms whether in permanent tenure or on fixed-term contract. At the Bureau level, the Secretary should be on political appointment terms while his deputies can remain to be civil servants.

It is also possible to adopt a kind of 'permanent secretary' system as in the UK and some other countries, whereby a top civil servant is designated to head the civil service team in each Bureau and to be the main adviser to the politically-appointed secretary. Given such a stature, that 'permanent secretary' can continue to be appointed at D8 salary level and be regarded as a venue of career advancement for senior civil servants, particularly administrative officers. Such a system also has the advantage of accommodating those existing secretary-rank civil servants who may not aspire to become political appointees but are otherwise entirely competent to be retained at the top level.

### *Institutional safeguards for civil service values and integrity*

Once we move into a 2-tier system (of politically appointed secretaries/'ministers' and career civil servants) it is necessary to ensure that the civil service will not be

unduly manipulated by the political executive. Although civil servants are expected to be loyal to the government of the day, this by no means implies them having to compromise on essential public service values – such as impartiality, fairness, justice, rule of law, professionalism, respect for human and civil rights, respect for privacy etc. – in order to please their ‘political masters’.

As institutional safeguards, the present Public Service Commission needs to be upgraded and be empowered to become the main protector of civil service merit. In addition, a top official within government should be designated ‘Head of the Civil Service’ to be the principal advocate of civil service concerns and interests. By tradition, the Chief Secretary performs this role in Hong Kong, but if the post is eventually turned into a political appointment, consideration needs to be given to re-designate a top career civil servant to take up such role, who could double as the permanent secretary of the Chief Secretary’s or Chief Executive’s Office.

## **6. The Executive Council**

*Executive Council to remain advisory*

After introduction of a political ‘ministerial’ system, the existing arrangements for policy secretaries to defend government policies before the public and to lobby legislative support for them can continue. These secretaries, together with the Chief Executive, form the real political executive or ‘cabinet’ of the government. As for the Executive Council, it should become the advisory council of the Chief Executive. Members of the Executive Council should remain part-time and be appointed from a wide spectrum of society.

*Executive Councillors not to become ‘policy super-boss’*

Executive Councillors can, as at present, be tasked by the Chief Executive to head major policy advisory commissions or statutory bodies. Even so, however, to avoid creating constitutional confusion and unnecessary power conflicts, it has to be made clear that policy secretaries remain ultimately in charge of their respective policy portfolios and should not be placed in a subservient role to some Executive Councillors acting as a ‘policy super-boss’.