

立法會  
*Legislative Council*

LC Paper No. CB(2) 1825/01-02  
(Items I and II of these minutes have  
been seen by the Administration)

Ref : CB2/H/5

**House Committee of the Legislative Council**

**Minutes of the special meeting  
held in the Legislative Council Chamber  
at 2:30 pm on Friday, 19 April 2002**

**Members present** : Hon Mrs Selina CHOW LIANG Shuk-ye, JP (Chairman)  
Hon Fred LI Wah-ming, JP (Deputy Chairman)  
Hon Kenneth TING Woo-shou, JP  
Hon James TIEN Pei-chun, GBS, JP  
Dr Hon David CHU Yu-lin, JP  
Hon Cyd HO Sau-lan  
Hon Albert HO Chun-yan  
Ir Dr Hon Raymond HO Chung-tai, JP  
Hon LEE Cheuk-yan  
Hon Eric LI Ka-cheung, JP  
Dr Hon David LI Kwok-po, GBS, JP  
Dr Hon LUI Ming-wah, JP  
Hon NG Leung-sing, JP  
Hon Margaret NG  
Hon James TO Kun-sun  
Hon CHEUNG Man-kwong  
Hon HUI Cheung-ching, JP  
Hon CHAN Kwok-keung  
Hon CHAN Yuen-han, JP  
Hon Bernard CHAN  
Hon CHAN Kam-lam  
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP  
Hon LEUNG Yiu-chung  
Dr Hon Philip WONG Yu-hong  
Hon Jasper TSANG Yok-sing, JP  
Hon Howard YOUNG, JP  
Dr Hon YEUNG Sum  
Hon YEUNG Yiu-chung, BBS  
Hon LAU Wong-fat, GBS, JP  
Hon Miriam LAU Kin-ye, JP

Hon Ambrose LAU Hon-chuen, GBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon CHOY So-yuk  
Hon Andrew CHENG Kar-foo  
Hon SZETO Wah  
Hon Timothy FOK Tsun-ting, SBS, JP  
Hon LAW Chi-kwong, JP  
Hon TAM Yiu-chung, GBS, JP  
Dr Hon TANG Siu-tong, JP  
Hon Abraham SHEK Lai-him, JP  
Hon LI Fung-ying, JP  
Hon Henry WU King-cheong, BBS  
Hon Tommy CHEUNG Yu-yan, JP  
Hon Michael MAK Kwok-fung  
Hon LEUNG Fu-wah, MH, JP  
Dr Hon LO Wing-lok  
Hon WONG Sing-chi  
Hon Frederick FUNG Kin-kee  
Hon IP Kwok-him, JP  
Hon LAU Ping-cheung  
Hon MA Fung-kwok

**Members  
absent** : Hon Martin LEE Chu-ming, SC, JP  
Hon SIN Chung-kai  
Hon Andrew WONG Wang-fat, JP  
Hon WONG Yung-kan  
Hon LAU Chin-shek, JP  
Hon LAU Kong-wah  
Hon Albert CHAN Wai-yip  
Hon Audrey EU Yuet-mee, SC, JP

**Public Officer  
Attending** : Items I and II  
  
The Hon Donald TSANG Yam-kuen, JP  
Chief Secretary for Administration  
  
Mr Andrew WONG  
Director of Administration  
  
Ms Kitty CHOI  
Head, Hong Kong Guangdong Cooperation Coordination Unit  
  
Mr K S SO  
Administrative Assistant to Chief Secretary for Administration

**Clerk in Attendance** : Mrs Justina LAM  
Assistant Secretary General 2

**Staff in Attendance** : Items I to III

Mr Jimmy MA, JP  
Legal Adviser

Mrs Constance LI  
Chief Assistant Secretary (2)5

Miss Mary SO  
Senior Assistant Secretary (2)8

Item III

Mr Ricky C C FUNG, JP  
Secretary General

Mr LAW Kam-sang, JP  
Deputy Secretary General

Ms Pauline NG  
Assistant Secretary General 1

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The Chairman welcomed the Chief Secretary for Administration (CS) and the other government representatives to the meeting.

**I. Chief Secretary for Administration's visits to Beijing and cooperation between Guangdong and Hong Kong**

2. The speaking note of CS on the subject is in Appendix I.

3. Mr IP Kwok-him said that some people had expressed reservations about the cost-effectiveness of the construction of a magnetically levitated transportation system (Maglev) between Hong Kong and Shenzhen, given the short distance. He asked whether the Administration would reconsider the proposal.

4. CS responded that the Administration was studying the feasibility and cost-effectiveness, including the possible route and technical issues, of an

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express rail link between Hong Kong and Guangzhou enroute Shenzhen. CS said that Maglev was only one of the technical options being considered, and he also had reservations as to whether Maglev would be economically beneficial. He pointed out that Germany and Japan were the most advanced countries in developing the Maglev technology, and the first Maglev train to be put to commercial use would be in Shanghai, from Long Yang Road to the Pudong International Airport.

5. CS further said that Hong Kong would need to work with the Guangdong authorities and the Ministry of Railways, as construction of the express rail link was not a decision to be made unilaterally by Hong Kong. CS informed Members that in-depth studies would be carried out, and he expected that more information would be available later to enable a decision to be made on whether Maglev would be used. CS added that the railway project required the funding approval of the Finance Committee, and that the Administration would revert to the Legislative Council (LegCo) in due course.

6. Ms Miriam LAU said that the transport industries had waited for a long time to seek areas of cooperation with the Mainland, particularly in the development of the logistics industry. Ms LAU asked CS whether any such areas of cooperation or business opportunities had been identified and agreed on during his recent visits to the Mainland. Ms LAU also asked whether there were other communication channels, outside the framework of the Hong Kong/Guangdong Cooperation Joint Conference, to follow up the implementation of the agreed projects.

7. CS responded that the Joint Conference was not the only communication channel to discuss areas of cooperation between Hong Kong and the Mainland. CS informed Members that the government officials concerned, in particular, those in the Hong Kong Guangdong Cooperation Coordination Unit were in close liaison with the Mainland officials to follow up the cross boundary development projects. CS pointed out that to enhance the competitiveness of the logistics industry in Hong Kong, the immediate task was to improve the operation of the boundary control points so as to reduce the waiting time for vehicular and passenger clearance. These improvement measures included co-location of the immigration and customs facilities at the control points, extension of the operation hours, and provision of more lanes at Lok Ma Chau for vehicle clearance.

8. CS further said that the second task was to strive for early implementation of the Shenzhen Western Corridor project to enable faster and greater volume of vehicular traffic flow between Hong Kong and Shenzhen. As regards cooperation in the development of the logistics industry, CS said that discussions had been going on with the Mainland on the setting up of a logistics service network. CS added that he welcomed views and suggestions from the industries, and also undertook to let them know of any information he had obtained regarding cooperation opportunities with the Mainland.

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9. Mr LAU Ping-cheung enquired about the opportunities for the industries and professions in Hong Kong to participate in the development of infrastructural projects in the Mainland.

10. CS responded that other than himself, the Financial Secretary (FS) was also involved in exploring opportunities for the industries and professions in Hong Kong to participate in Mainland's infrastructural projects under the framework of the World Trade Organisation. CS pointed out that Hong Kong and the Mainland should explore areas of cooperation in the development of infrastructural projects, and should not duplicate resources in the planning of and investment in such projects. CS cited the Nansha development zone and Yantian container terminal as examples. He further said that there were exchanges of views and information on the development of infrastructural projects under the framework of the Hong Kong/Guangdong Cooperation Joint Conference. CS stressed that such information would be disseminated to the industries and professions in Hong Kong.

11. As regards cooperation between the Hong Kong International Airport (HKIA) and other airports in the Pearl River Delta region, Mr NG Leung-sing asked what would be the most suitable arrangements, i.e. arrangements which would be beneficial to Hong Kong and acceptable to the Mainland.

12. CS responded that it was important that any such cooperation would bring benefits to both sides. He said that there was much room for cooperation in improving the multi-modal connections to facilitate passenger and cargo transport, and logistics operations. He pointed out that the airports in Hong Kong and the Pearl River Delta could play a complementary role to each other. For example, HKIA and the Shenzhen Airport were only 37 kilometres apart, and they provided different types of services. HKIA had scheduled flights to more than 130 destinations, about 90 of which were in overseas countries. The Shenzhen Airport, on the other hand, had scheduled flights to 56 destinations, 55 of which were Mainland cities. It was possible to increase the passenger and cargo traffic of the two places by providing sea/land/helicopter transport connections between the two airports.

13. CS said that the mode of cooperation between the Hong Kong Airport Authority (AA) and other airport authorities in the Pearl River Delta region could include entering into alliance or other arrangements. It would be a decision for the airport authorities concerned to make. The present proposal of the Administration was to extend the scope of activities of AA to enable any airport-related activity in trade, commerce or industry to be carried out on or from the land leased to AA. CS stressed that strengthening the connectivity between HKIA and the Shenzhen Airport was necessary to enhance Hong Kong's position as a leading international and regional air transportation hub. He hoped that Members would support the relevant legislative proposal to enable AA to undertake such activities as early as possible.

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14. Miss CHOY So-yuk asked whether CS had discussed, and also reached consensus, with the Guangdong authorities on any proposal on constructing a new land boundary crossing, such as the Lingdingyang Bridge. She pointed out that as the design and construction process of land crossings was much faster in the Guangdong Province, she was concerned about the interface of these crossings with complementary projects in Hong Kong.

15. CS responded that the Shenzhen Western Corridor project should be implemented as soon as possible, as LegCo had already given funding approval to carry out the detailed design. The Administration was now identifying the most suitable landing point of the Shenzhen Western Corridor on the Hong Kong side. CS pointed out that following the completion of the Shenzhen Western Corridor, there should not be any problem in the vehicular traffic between Hong Kong and Shenzhen in the next few years.

16. As regards the need for another land boundary crossing, CS said that the Administration would need to carefully examine the likely economic benefits to Hong Kong. He further said that as most part of the Lingdingyang Bridge would be within the waters of the Guangdong Province, one would have to liaise with the Guangdong Authorities to discuss the alignment.

17. CS further said that the State Development Planning Commission was coordinating the various proposals on land boundary crossing projects, and there would be continuous discussions at the Mainland/HKSAR Conference on the Coordination of Major Infrastructure Projects.

18. Mr Abraham SHEK asked how investment by AA in the airports in the Pearl River Delta region would attract more passenger and cargo traffic to Hong Kong. He said that it was for the airlines, air freight and cargo handling companies, rather than AA, to promote such business opportunities.

19. CS explained that the investment by AA would be on providing software and ancillary services, and improving the transport connections between HKIA and the other airports in the Pearl River Delta region. The provision of the connection facilities, such as ferry or helicopter services between HKIA and the Shenzhen Airport, would attract more passenger and cargo traffic, and bring economic benefits to Hong Kong. CS added that if a new passenger ferry pier was to be constructed to connect the major ports in the Pearl River Delta region with HKIA, immigration and customs facilities would need to be provided at the new control points.

20. Mr Abraham SHEK considered that the private sector should participate in providing the transport connection facilities, and it was not necessary to empower AA to extend its scope of activities. CS responded that while the private sector could participate in providing the connection services, it might involve the use of land leased to AA. AA was therefore best placed to coordinate and carry out these activities.

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21. Ms Cyd HO asked CS how the "One Country, Two Systems" principle was safeguarded in the process of enhancing cooperation with the Mainland, and how transparency of the process could be ensured. She further asked whether the concept of sustainable development would be applied to the development of cross-boundary infrastructural projects.

22. CS responded that both Hong Kong and the Mainland authorities attached great importance to adhering to the "One Country, Two Systems" principle throughout the discussions. CS said that while it was necessary to have consensus over the technology to be applied to cross-boundary projects, the two places would implement those parts of the projects which were within their respective territories according to their own way of doing things. He added that the Mainland also put great emphasis on sustainable development when pursuing infrastructural projects. As regards dissemination of information, CS assured Members that he would issue press releases and information briefs to Members at the earliest opportunity. He added that any legislative and financial proposals on the projects would be subject to LegCo approval, and the details would be fully explained to Members.

23. Ms Cyd HO asked whether there would be a process for the views of LegCo Members and the public to be reflected and taken into account in the discussions between Hong Kong and the Mainland. CS responded that he would be pleased to brief Members and the public on the progress of the projects under discussion. He would also welcome any views on how the Administration could further improve the dissemination of information and discussion process.

24. Dr Raymond HO Chung-tai said that according to Mr ZHENG Guobao, Vice Chairman of the State Development Planning Commission, the infrastructural development in the Guangdong Province had shifted southwards to Nansha. As Hong Kong was moving its port development to the west, Dr HO asked whether there was any mismatch between the Hong Kong port development strategy and the recent developments in the Guangdong Province, and whether this mismatch should be rectified.

25. CS responded that he welcomed views and suggestions on how to improve Hong Kong's development strategy. He pointed out that many development plans and projects in the Guangdong Province, such as the Nansha development zone, were still at the preliminary stage. He would provide more information when concrete details of these projects were available. CS said that there had in fact been more cooperation between the two places, for example, in the development of technology and information technology.

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26. Dr Raymond HO Chung-tai asked whether the Administration would consider providing cross-boundary passenger ferry service in Tuen Mun, to enhance the convenience for residents in the New Territories to travel to the Pearl River Delta region.

27. CS responded that the existing cross boundary ferry services had not been used to their full capacity. He informed Members that the Administration had received proposals on an additional cross boundary ferry terminal in Tuen Mun. CS stressed that the Administration would need to carefully examine the economic benefits of the proposal and the staffing and resource requirements to support the proposed new control point at Tuen Mun Pier.

## **II. Government's policy on legislation and administrative measures**

28. The speaking note of CS on the subject is in Appendix II.

29. Miss Margaret NG said that in putting forward the eight questions (LC Paper No. CB(2) 1503/01-02), she hoped to seek clarification from CS on how the principle that the Administration would only legislate if there was a genuine need to do so, as stated in his letter dated 7 February 2002, was applied in practice. Miss NG further said that it was also stated in CS's letter that in considering whether to introduce new or amending legislation to underpin a policy, a Bureau Secretary would critically examine, among other things, the social, political and economic impact of the policy on the community, which meant that the greater the impact, the greater the need to legislate. Referring to the proposed accountability system for principal officials, Miss NG asked why the Administration had resorted to effect the transfer of statutory functions simply by changing the names of a few principal officials by way of subsidiary legislation made under the Interpretation and General Clauses Ordinance (Cap 1).

30. CS responded that he had full confidence that in providing advice on the legislative means to achieve a policy intent, the Department of Justice (D of J) would base its advice on very stringent and solid legal grounds. CS further said that as Miss NG had raised the same query concerning the proposed accountability system at the meeting of the Panel on Constitutional Affairs (CA Panel) held on the previous day, a paper would be provided to the Panel as soon as possible to explain why it was legal, appropriate and reasonable to effect the transfer of statutory functions by way of a resolution and an Order made respectively under sections 54A and 62(3) of Cap 1.

31. CS stressed that if there was a need to legislate, our legal experts in D of J would decide on the most appropriate legislative means, and the simplest and most straight-forward method would be used so as not to delay the legislative process. CS added that if the legal backing could be achieved by way of

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subsidiary legislation, then subsidiary legislation would be made; if it was necessary to draft a piece of new legislation or to amend existing law, then a bill would be introduced into LegCo.

32. Miss Margaret NG said that she was disappointed with CS's response because what she wanted to discuss was not the technical aspects of legislating, but Government's policy on legislation. Miss NG pointed out that whenever D of J was asked who was responsible for deciding whether or not to legislate, it would explain that the department was only responsible for giving "technical" legal advice, and it was the Policy Bureau concerned which made the decision. However, when the Policy Bureau concerned was asked the question, it would respond that it relied on the advice of D of J.

33. CS responded that Miss NG had in fact raised two questions, i.e. whether or not there was a need to legislate and, if so, what form the legislation should take. CS pointed out that in explaining that D of J would decide on the most appropriate legislative means, he was in fact answering the latter question. CS further said that as regards the former question, if there was already sufficient legal basis in existing law to implement a new policy, there would not be the need to legislate. However, if there was doubt as to whether the available authority in existing law was adequate, D of J's advice would be sought.

34. CS said that if Miss NG could provide specific cases of D of J and the relevant Policy Bureau "passing the responsibility to each other" to him after the meeting, he would be most willing to ask both sides to work together to resolve the matter in question.

35. Mr Albert HO said that although D of J might have advised the use of the simplest method, a comprehensive bill on the proposed accountability system should be introduced, given the very important and fundamental changes the system would bring about. The bill should cover matters such as the objects of the accountability system, roles and responsibilities of the principal officials appointed under the proposed system, and the transfer of statutory functions to them.

36. Referring to the paper provided by the Constitutional Affairs Bureau to Members on 17 April 2002, Mr HO further said that what was stated in paragraphs 27 to 30 concerning conflict of interest were merely guidelines, and consideration should be given to legislating against public officers abusing their official position for personal gain. Mr HO asked whether the Administration had deliberately resorted to using subsidiary legislation, and had not introduced a bill, so that LegCo would have very little time for scrutiny and also to consult the public.

37. CS responded that in introducing a new policy, what was most important was to explain to the public and LegCo the intent behind the policy as well as

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its social, political and economic impact. As regards the most appropriate legislative means to adopt to achieve the policy intent, it was a technical question for D of J to decide. CS further pointed out that it was not necessary to legislate every concept and thinking behind a policy, as it would be too rigid and would give rise to problems in the implementation of the policy. CS stressed that under the proposed resolution and Order, the Administration was simply seeking the transfer of existing statutory functions, and not an expansion of or reduction in existing powers.

38. CS further said that the Administration had always made use of internal codes and conditions in employment contracts to provide guidance on matters relating to conflict of interest. CS pointed out that the arrangement was appropriate, and given the high degree of transparency of Government's policy on such matters, scrutiny by the public and the media was much more effective than legislation.

39. Mr HO disagreed that the proposed accountability system only entailed the transfer of existing statutory functions, since principal officials would no longer be civil servants, but political appointees employed on contract terms. Mr HO further said that in the Administration's previous proposal to abolish the two former municipal councils, two years were spent in consulting the public and getting the necessary legislation passed. Mr HO asked whether the Administration would consult the public, and also introduce a comprehensive bill on the proposed accountability system, if the deadline of 1 July 2002 needed not be met.

40. CS pointed out that a lot of civil servants were currently employed on contract terms, including the incumbent Financial Secretary and Secretary for Justice. CS said that while it was important to legislate correctly, different lawyers had different opinions on the most appropriate legislative means to achieve a certain policy intent. CS further said that the Administration would provide a paper to the CA Panel, and try its best to explain to Members' satisfaction that the use of the resolution and Order to be made under Cap 1 was both adequate and appropriate. CS added that subsidiary legislation had been used in the past to effect transfer of statutory functions between Policy Secretaries.

41. Ms Emily LAU said that while Members considered the proposed accountability system very important and the introduction of a bill to give effect to the system necessary, the Administration had regarded the proposed system to be a merely technical issue. In fact, some senior government officials held the view that LegCo would not have been "bothered", had it not been for the need to seek approval for funds and for changing the names of a few principal officials. Ms LAU asked CS how such a big difference in views between the Administration and LegCo about a certain issue or matter could be avoided in the future.

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42. CS responded that he was only saying that the most appropriate legislative means to effect the transfer of statutory functions was a technical issue. The fact that the Chief Executive (CE) personally addressed the Council on 17 April 2002 demonstrated the high degree of importance the Administration attached to the proposal. CS pointed out that in his Policy Address 2000, CE had undertaken to examine the possibility of introducing an accountability system for principal officials. In his Policy Address 2001, CE had set out in greater detail the framework of the system, and had also indicated that the system would be implemented upon the commencement of the second term of the Government of the Hong Kong Special Administrative Region.

43. CS further pointed out that the CA Panel had, over the past two years, done a lot of work, including conducting research studies, holding public hearings and undertaking an overseas duty visit. As the public had generally accepted the concept of introducing an accountability system, CS hoped that the proposed system would be implemented on schedule on 1 July 2002, so that the Executive and the Legislature would be able to serve the public more efficiently and more responsibly. Ms Emily LAU said that the Administration could not possibly claim that it had already consulted the public through the work carried out by the CA Panel. The Administration should issue a green paper or introduce a white bill to properly consult the public on the proposed system.

44. Ms Emily LAU further queried that if the Administration had considered the proposed system so important, it should have introduced a bill, and not the two items of subsidiary legislation the scrutiny of which by LegCo was subject to stringent time constraint. CS responded that using a simple method to effect a change did not mean that the change itself was not important. Moreover, a simple method would be easier for the public to understand and would less likely create problems for implementation.

45. Mr CHEUNG Man-kwong asked whether the deadline of 1 July 2002 must be met because the Central People's Government had endorsed the proposed system and the implementation date of 1 July 2002. He further asked whether the Administration would introduce a bill on the proposed system, if the deadline of 1 July 2002 needed not be adhered to.

46. CS reiterated that in his Policy Address 2001, CE had already said that the new accountability system would be introduced on 1 July 2002. CS further pointed out that a resolution was also a legislative proposal, and LegCo could refuse to approve it if LegCo so wished. He said that the proposed resolution and Order had already been provided to Members in draft form, and a paper would be prepared by the Administration to explain why it was adequate and appropriate to effect the transfer of statutory functions by way of these two items of subsidiary legislation.

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47. Miss Margaret NG reiterated that her main concern was Government's policy on legislation. D of J had often told Members that there were many ways to give legal backing to a policy, and it was up to the Policy Bureau concerned to decide which legislative means to use. Miss NG pointed out that during the scrutiny of the Chemical Weapons (Convention) Bill and the Prevention of Child Pornography Bill, members of the relevant Bills Committees were told that amendments bills could be used, but the Administration had decided to introduce primary legislation given the importance of the subject matters.

48. CS said that there were not many situations where the Administration had a choice over which legislative means to use. CS further said that different methods would produce different outcomes, and the most appropriate method should be selected having regard to the circumstances in hand. If there were ambiguities because the existing authority was provided under different pieces of legislation, putting all the relevant provisions in one single legislation might be more appropriate. However, if there was already clear and sufficient legal basis in existing law, to legislate for the same purpose would be wasting LegCo's time and creating difficulties for future enforcement.

49. Miss NG asked CS whether he agreed that what was most vital to making a law was that it must be allowed its due process. CS replied in the affirmative.

50. Miss NG further said that in legislating for an important policy, the principle should be that it was necessary to define the powers and responsibilities, balance the different interests and consult the public. Miss NG asked whether such a principle represented the Administration's position. CS responded that his answer would also be in the affirmative, if existing legislation did not provide sufficient legal basis to implement the policy.

51. Miss NG said that she did not think that the Administration was in fact adhering to such a principle in practice. However she did not wish to follow up further as it entailed detailed discussion using specific examples.

**III. Follow-up work to examine the Administration's proposed accountability system for principal officials**

52. The Chairman said that the Chief Executive addressed the Council on the proposed accountability system at the meeting on 17 April 2002, and had indicated his intention to implement the system with effect from 1 July 2002. A paper setting out the detailed proposals and the draft legislative proposals was also provided to Members on 17 April 2002. The Chairman further said that she would like to take the opportunity of the special meeting to discuss how the follow-up work to examine the proposed accountability system could

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be carried out in the most effective and efficient manner. The Chairman added that the proposed Resolution and Order to effect the transfer of statutory functions to the principal officials appointed under the system had not yet been formally introduced into the Council.

53. The Chairman informed Members that the CA Panel had been following up the subject of accountability system for principal officials over the past two years. The Administration had also further briefed Members on the proposed system at the meeting of the Panel on 18 April 2002. The Chairman said that as the proposed system had raised subject matters and issues, such as the proposed portfolios of the future principal officials to be appointed under the system, which straddled different policy areas, some Members had enquired whether the relevant Panels should separately discuss these subject matters and issues.

54. The Chairman further said that in considering the follow-up work to examine the proposed accountability system, Members should have regard to the need to avoid duplication of work and to ensure equal participation of all interested Members.

55. Dr YEUNG Sum said that although it was the Administration's intention to put the proposed system into operation on 1 July 2002, it was the duty of Members to examine the proposals carefully, as the proposed accountability system introduced very important and fundamental changes to the civil service system. He said that Members should not rush to approve the proposed system at the expense of sacrificing the quality of scrutiny work and neglecting other business of the Council.

56. Dr YEUNG Sum further said that the CA Panel had already done a lot of ground work, including conducting studies on the accountability systems practised in overseas countries. It was appropriate for the CA Panel to follow up discussion on the proposed system, and its meetings should be open to all Members. He added that a separate committee might not be necessary at the moment, and Members could consider setting up a subcommittee to study the legislative proposals when they were formally introduced into the Council.

57. Mr IP Kwok-him agreed that the proposed accountability system for principal officials required careful examination. He considered that there should be focussed discussion by one committee, and all interested Members should be allowed to participate. He commented that the discussion at the meeting of the CA Panel on 18 April 2002 was not effective, as the meeting spent more than one hour arguing about logistical matters and the time-table for future meetings. He said that there were also criticisms that Members who were not members of the CA Panel did not have equal opportunities to participate in the discussion at that meeting. Mr IP suggested that a subcommittee be set up under the House Committee to hold discussions on the

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proposed accountability system. He also asked whether there were precedents of subcommittees being formed to study important subject matters.

58. The Chairman advised that there were precedents of subcommittees being set up under the House Committee to discuss important subject matters or issues, before the relevant legislation was formally introduced into the Council. The Chairman added that the subcommittee set up under the House Committee in 1994 to examine the Airport Corporation White Bill was one such precedent.

59. Ms Emily LAU expressed regret that there was confusion at the meeting of the CA Panel on 18 April 2002 when the proposed accountability system was discussed. She said that she had no strong view as to which committee, be it the CA Panel or a subcommittee formed under the House Committee, should take the lead in examining the proposed accountability system and related issues. However, she stressed that there should be public consultation on the proposed system, and the discussion should be systematic and rational. She suggested that the policy aspects should be studied first, to be followed by a debate on a Government motion on the subject. If the Government motion was passed by LegCo, Members would then examine the technical aspects, including the legislative proposals and financial implications. Ms LAU further said that the committee or Panel assigned the follow up work should discuss all the subject matters covered in the Administration's paper, including the following -

- (a) the respective portfolios of the new Secretaries;
- (b) the merging of functions and streamlining of structure of the bureaux and departments in the coming 12 months;
- (c) the arrangements for civil servants to be appointed as principal officials under the accountability system;
- (d) the impact on the civil service system; and
- (e) conflict of interest.

60. Ms Emily LAU added that as agreed at the meeting of the CA Panel on 18 April 2002, a list of areas for study should be drawn up for consideration by the designated committee or Panel.

61. Ms Emily LAU further said that while Members might have different views on the proposed accountability system, she hoped that Members could reach agreement on how to proceed with the follow-up work to examine the system, and the scrutiny work should be completed within a reasonable period of time.

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62. Miss Margaret NG said that she was not in favour of having different Panels holding separate discussions. She expressed support for "centralising" discussion of the accountability system and related issues in one Panel or committee which should conduct public consultation, and allow all interested Members equal participation in the work of the committee. Miss NG further suggested that the responsible committee should discuss the policy and other aspects of the accountability system, including the draft subsidiary legislation to effect the transfer of statutory functions.

63. Mr Howard YOUNG expressed support for assigning one committee to take up the follow-up work, as this would be more effective than having different Panels discussing certain aspects of the proposed system. He suggested that the subcommittee, if formed, should make reference to the previous papers and reports of the CA Panel on the subject.

64. Mr James TIEN expressed support that a subcommittee should be set up under the House Committee to take over the follow-up work to examine the proposed accountability system. He pointed out that a subcommittee would have to be set up sooner or later to study the legislative proposals for implementing the accountability system. He said that if a subcommittee was set up right away, it would enable all interested Members to participate in the discussion of all aspects of the proposed accountability system, including the draft subsidiary legislation. Mr TIEN further said that Members belonging to the Liberal Party and the "Eight-party Coalition" would make their best efforts to study the proposals on the accountability system, but would not be bound by the Administration's deadline of implementing the system on 1 July 2002.

65. Mr TAM Yiu-chung, Chairman of the Panel on Public Service, said that before the announcement of the proposed accountability system, he had discussed and agreed with the Chairman of the CA Panel and the Secretary for the Civil Service that discussion on the proposed system should be left to the CA Panel. However, given that the proposed system had raised subject matters and issues which straddled different policy areas, Mr TAM agreed that a subcommittee should be set up under the House Committee, so that any Member could join the subcommittee, if he or she so wished.

66. Dr YEUNG Sum said that he agreed that discussion of the accountability system should be "centralised" in one committee, and he would not insist that the CA Panel should be the responsible committee, if Members preferred to set up a subcommittee for the purpose. Dr YEUNG Sum added that the subcommittee, if formed, should be responsible for examining the proposed system, including the policy issues, the legislative proposals as well as the financial implications.

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67. Mr Ambrose LAU said that he agreed to the proposal to set up a subcommittee to study the proposed accountability system, if there were precedents of subcommittees being formed to examine important proposals before the relevant legislation was formally introduced into the Council.

68. The Chairman proposed that a subcommittee should be set up under the House Committee to examine the proposed accountability system and related issues covered in the Administration's paper issued to Members on 17 April 2002. The Chairman said that it was essential that scrutiny of such an important proposal be allowed its due process, and Members should not rush to pass the proposals without thorough study. She further said that when the Administration gave formal notice for, and arranged gazettal of, the resolution and Order, it would be for the subcommittee to advise how the scrutiny work of the subsidiary legislation should be undertaken.

69. Members agreed that a subcommittee should be set up to examine the proposed accountability system and related issues. The following Members agreed to join the subcommittee: Mr James TIEN, Ms Cyd HO, Mr Albert HO, Mr HO Chung-tai, Mr LEE Cheuk-yan, Mr NG Leung-sing, Mr CHEUNG Man-kwong, Mr HUI Cheung-ching, Mr TSANG Yok-sing, Mr Howard YOUNG, Dr YEUNG Sum, Mr YEUNG Yiu-chung, Ms Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr SZETO Wah, Mr IP Kwok-him and Ms Audrey EU.

70. The Chairman said that the subcommittee should convene its first meeting as soon as possible, and provide a report to the House Committee after completing its work. At the suggestion of Ms Emily LAU, the Chairman requested the Secretariat to provide a list of previous papers and research reports on the subject for Members' reference.

71. There being no other business, the meeting ended at 4:35 pm.

政務司司長曾蔭權於 2002 年 4 月 19 日出席立法會內務委員會特別會議時的發言要點

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### 訪京之行

我於今年一月尾及二月中先後兩次訪問北京。一月之行是出席「內地與香港特區大型基礎設施協作」會議，與內地有關當局，特別是國家發展計劃委員會，商討如何可以加強香港與內地的交通及大型基建項目的協調和合作，用以促進兩地經濟的共同發展。

在二月時我再訪問了北京，當時我拜會了國家領導人，特別是向朱鎔基總理及錢其琛副總理講述香港當時的社會狀況。我亦和港澳辦、人大法工委、國家計委及公安部等中央部委會晤，討論香港和內地共同關注的事項。

### 粵港合作

我現在介紹一下有關粵港合作方面我所做的工作。在三月十五日召開的第五次「粵港合作聯席會議」上，雙方就三個議題作出重點的討論，第一個是如何利用落馬洲皇崗口岸試行「一地兩檢」，第二是港粵旅遊合作，第三是開通香港機場至珠三角水上客運服務這三個課題。我在此簡單匯報一下。在中央政府和有關部委的支持下，粵港雙方原則上同意在皇崗／落馬洲和深港西部通道的口岸實行「一地兩檢」查驗模式，我們希望用這個方法可以進一步提升通關效率。現階段「一地兩檢」的構思是雙方有關部門共同利用皇崗方面的邊境場地，按各自的有關法律、規定辦理出入境查驗手續，即是香港有香港的手續，內地有內地的手續，我們是分別作查驗的。在實踐過程中，雙方必定恪守「一國兩制」的原則，和確保香港獨立關稅區的地位，以保存香港的出入境及出入口管制的完整性。初步構想的運作模式是利用落馬洲／皇崗口岸現有的硬件設施實行「一地兩檢」，我們會將大部分客車分流至皇崗口岸進行兩地清關手續，從而可以騰出車道供貨車使用。這安排不但會增加貨車通關的效率，更能改善客運的顧客服務。兩地的專家小組已經為這件事碰頭多次，而且會繼續商討具體方案，並研究解決關於法律及司法管轄權等問題。我們會在適當時候向立法會報告進展及跟進有關法例修改的問題。

我們討論的第二個重點項目是旅遊，雙方在會上同意加強珠江三角洲的資訊合作，和交由專家小組研究進一步提升旅遊資訊交流和聯

合推廣的工作。再者，雙方自今年一月起已採用增加「港澳遊」組團旅行社和取消「香港遊」配額限制等措施。實施這些措施後，內地來港旅客的數量在首兩個月較去年同期增加了 43%，這的確促進了本地旅遊業的持續興旺的趨勢。

我們第三個重點討論的項目是開通珠三角主要口岸至香港機場水上客運航線，在這一方面，我們進行了討論並且達成共識。我們雙方認為開拓連接兩地的水上客運航線，可加強連接粵、港兩地不同運輸模式聯運的發展，是一個值得支持的項目。兩地政府將成立專責小組研究和跟進有關課題。

此外，我亦希望藉此機會向各位議員匯報第四次「粵港合作聯席會議」中所推動多項措施和進展。當中延長羅湖及落馬洲管制站旅檢通關的時間，大家都知道，以前我在文書上也報告了，在去年十二月一日已全面實施；而羅湖橋短期改善工程（加風扇的工程）亦已於本年二月初竣工。根據我們的調查，這些措施是深受使用這些設施的兩地市民和業界歡迎。下一階段就是羅湖橋改善工程，我們會安裝空調和其他工作。雙方正透過專家小組商討有關工程細節，我們希望在年底前展開有關工程。

在環境方面合作，粵港兩地負責研究區內空氣質素的顧問公司已完成了研究工作，兩地政府正努力共同制定長遠改善空氣質素的方案，我們計劃於本月底大家碰頭，希望可以達成共識。此外，雙方政府在其他環保合作項目，包括林業護理、城市規劃、海洋資源護理、大鵬灣及后海灣區域環境管理等方面的交流合作，均取得良好進展。在東江水質方面，雙方會繼續共同努力研究加強水質資料的發放，使香港市民對東江的水質有正面了解。

在基建協調方面，我們有關項目的進度都十分理想，例如就深港西部通道，工程方面雙方已達成了設計方法，我們的設計是會採用獨塔混凝土斜拉橋作為方案的共識；而落馬洲人行通道橋的設計也進行得相當順利，我們預期全部設計工程可以於明年中完成。

在發展南沙的項目上，我們認為可以由香港科技園與廣州市對外貿易經濟合作局，共同跟進有關「南沙資訊產業園」的事宜，雙方可通過組織互訪及交流活動，希望鼓勵兩地企業進入產業園，開展業務及進行合作。

關於物流合作方面，雙方會在粵港合作聯席會議的框架以外，繼續進行溝通。在發展香港與珠海機場合作的項目上，香港機場管理局和珠海機場管理局已就貨運合作方面聘請了顧問公司，研究發展珠海機場成為速遞貨運中心的可行性。

最後我介紹一下兩地的大型基建設施協調工作。在這個範疇上，有關的討論已經提升至中央的層次，我們的目標是協調港粵兩地的規劃，避免重覆建設，和發掘合作機會。由國家計委牽頭的「內地與香港特區大型基礎設施協作會議」已於一月在北京舉行首次會議。會議後，計委張國寶副主任已於三月初率團來港參觀香港的主要基建項目，其中包括交通項目、機場、港口及物流發展等，在這一方面我們進一步進行了交流及探討合作機會。此外，我亦率領特區政府代表團於三月底考察了廣東省重要城市的基建項目，我希望藉此機會了解珠江三角洲整體規劃佈局和發展策略。

這次考察給我很大的感受，就是內地經濟發展十分迅速，並且有龐大的基建規劃在後台。當中我認為這些基建會給香港帶來一些競爭是必然的，但這不等如是惡性競爭。由於香港與內地是處於不同的經濟發展階段，客源和貨源都迥異，所以我認為兩地的合作空間大於兩地的競爭，最重要的是協調雙方的基建發展，避免資源錯配及重覆建設。

我們看過內地基建之後，我們體會到香港的優勢在於高增值、高效率、可靠性和國際網絡。從區域角度出發，香港和珠江三角洲的城市可以考慮策略性的合作項目，範圍可涵蓋交通、機場和港口等。合作的大前提是互惠互利及以促進區域競爭力為目標，整個區域與其他區域競爭為目標。在「協作會議」的框架下，雙方成立了廣深港高速鐵路規劃小組和港口、物流專家組。有關廣州、深圳與香港之間的高速鐵路規劃小組所作的研究，是連接了廣州市、深圳市與香港之間的高速鐵路，我們會研究它的必要性、功能、定線、過境位置和鐵路科技，特別是經濟效益等問題；而有關港口、物流專家組的工作，我們會就兩地港口和物流業的發展策略及規劃交換資料，而且有關專題，例如華南貨量增長及物流園發展規劃等會作出專題討論。我們希望在年中再召開協作會議，就珠江三角洲的基礎設施規劃作進一步討論。

各位議員，基建的規劃和完成都不是一朝一夕的事，這是一個經年的大事業，但肯定的是，我們多與腹地溝通和交流，是我們尋求兩地經濟繁榮的重要一步，這亦是粵港合作最終的宗旨。

政務司司長曾蔭權於 2002 年 4 月 19 日出席立法會內務委員會特別會議時的發言要點

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### 政府對立法政策及行政措施

有關政府立法政策和行政措施，我們看這個問題，純粹是用政務方法、行政方法看這個問題；有關技術層面，有律政司司長幫我們做。有關我們的意見和看法，以前也與立法會交換，當然文件講及這事。

根據《基本法》，立法會是香港特別行政區的立法機關，行使包括制定、修改和廢除法律的功能。所以特區政府是絕對尊重立法會在制定法例方面的憲制功能，絕對無意以行政措施取代立法會或避開立法會的監察。

在這個原則之下，政府只會在我們覺得當有立法程序，立法開始時，一定要有一個首先的先決條件，就是我們需要何時才會立法。在這方面我十分感謝吳靄儀議員就這個課題提出很多寶貴的意見。我們在決定是否制定新法例或修訂現有法例時，要落實新的政策建議時，政府所考慮的因素已載於我在二月七日發給司法及法律事務委員會的函件。我知道有關的函件已分發給各位議員參閱。所以在這方面，我不想再重申或重述裏面的內容。

至於吳議員在會前提出的一系列具體的問題，我需要一些時間，因為裏面談及個別的法案及提議，希望給我充份時間考慮，我希望更詳細答吳議員。總體來說，我有以下的回應：

政府內部已有既定的程序，確保各政策局在制訂條例時，能夠維持透明度，確認個人權利和自由等各方面的考慮。有關的指引規定各政策局必須確定：

- 立法是爲了公眾利益而必需的；
- 已考慮實施該等建議時會產生的一切主要影響，包括人權和《基本法》方面的影響；
- 建議與《基本法》有無任何抵觸；
- 我們一定會全盤考慮其他受影響人士的意見。這些意見包括它影響個別人士，是否要更多開支？會否增加多些責任？

現時，我們在部分提交立法會的法例內指明某項文書並不屬於附屬法例，完全純粹是文書的工作。有關安排是政制事務委員會於1999年討論的結果，目的是想在我們給立法會的文件釐清有關文書的處理方式，應該不是有關附屬法例，避免不需要的誤會，無其他意義。政府絕對無意以此迴避立法會的審議。議員可在審議有關條文時，因應具體情況作詳細的討論，我們是樂意作出解釋。

還有一些是關於授權行政長官的法例，均需經立法機關通過，至於回歸以前所制定的法律，同這類有關的，亦須符合《基本法》第八條規定才可予以保留。（即香港原有法律．．．除同基本法相抵觸或經立法機關作出修改外，予以保留。）

無可避免地，每項政策建議在社會、政治及經濟層面上，都會影響市民大眾，可能影響他們的生活、日常消閒方式、經濟條件及很多其他東西。有些亦都會影響政府的運作。正如我在回覆司法及法律事務委員會的函件中提及，我們會盡可能計算及量化所涉及的費用及影響，並適當地加以平衡。我們會在落實主要的政策建議前諮詢有關的事務委員會及有關人士。在這方面，我很歡迎任何議員向我們提供怎樣改善這制度的方法。我們覺得這個制度是可行的。

無容置疑，法例的質素是非常重要的。法例應有明確的宗旨，必須草擬得宜，並能有效執行。事實上，我們在落實政策前，都會詳細研究及進行詳細的諮詢工作，其中包括諮詢業界及立法會有關的事務委員會，使到我們在提出立法建議前，能深入研究有關政策的細節，並了解可能引致的各項影響。立法會在這方面一直都向政府提供十分寶貴的意見。每一條法例進行之前，提前在這個會討論之前，都經過這些手續及詳細工作。

吳議員向個別政策局的提問或意見，我已囑咐有關政策局在制定法案時仔細考慮。關於這方面，有關個別具體問題，另外一方面我會再進一步提供資料給吳議員和她的委員會。

最後，我想強調一下，政府必須依法辦事。如必須透過立法才可落實新的政策時，我們絕對不會以行政措施達到目標。