

**Extract from the Draft Minutes of Meeting of  
Panel on Constitutional Affairs on 18 March 2002**

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**III. Item for discussion at the next meeting**

(LC Paper No. CB(2)1344/01-02(01))

Proposed accountability system for principal officials

4. In reply to the Chairman, SCA said that the Administration was likely to be in a position to report to the Panel at the next meeting on 15 April 2002 on the proposed accountability system for principal officials. He undertook to notify the Secretariat at the earliest opportunity, if the Administration eventually decided that discussion of the item should be deferred.

5. SCA suggested that the Panel might consider holding a joint meeting with other Panels such as the Panel on Public Service when the issue would be discussed on 15 April 2002. After some discussion, members agreed that instead of holding a joint meeting, all other LegCo Members would be invited to attend the next meeting of this Panel on 15 April 2002.

6. Ms Emily LAU asked whether the Administration would be prepared to move a motion debate on the proposed accountability system for principal officials after the necessary discussion on the subject had been concluded by the Panel. SCA replied that the proposal was being actively considered by the Administration.

**IV. Research Report on "Process of Appointment of Senior Members of Government in Selected Countries"**

(RP05/01-02 - Research Report conducted by the Research and Library Services Division issued under LC Paper Nos. CB(2)1345/01-02 (English version) and 1349/01-02 (Chinese version))

7. The Chairman said that the Research and Library Services Division (RLSD) had completed the above Research Report on the United Kingdom (UK), the United States (US) and the Republic of Singapore (Singapore). He informed members that due to time constraints for getting sufficient relevant information on the practices adopted in France, the part of the Report on France would not be undertaken at this stage.

8. The Chairman referred members to the Research Report on "Restrictions on Activities of Former Heads of Government and Former Senior Members of Government" (RP02/01-02 issued under LC Paper No. CB(2)887/01-02 which was presented to the Panel on 21 January 2002). He said that for the benefit of discussion of the proposed accountability system for principal officials, the two Research Reports should be considered together.

9. At the invitation of the Chairman, Head, Research and Library Services (H/RL) briefed members on the Research Report. The scope of the research covered the following aspects -

- (a) Qualification of senior members of government;
- (b) Routes to senior members of government;
- (c) Appointment process;

- (d) Pay and benefits;
- (e) Terms of appointment;
- (f) Conflicts of interests; and
- (g) Removal of senior members of government.

10. H/RL said that Part 6 of the Research Report had set out a number of issues which the Panel could consider regarding the appointment of principal officials under the proposed accountability system. These were -

- (a) Applicability of Article 79 of the Basic Law (BL) to LegCo Members if appointed as principal officials, since the appointment was made by the Central Government and not the Government of the Hong Kong Special Administrative Region;
- (b) Whether some form of pre-appointment vetting should be introduced for the principal officials;
- (c) Remuneration package for principal officials and the need for specific legislation to govern principal officials' salaries;
- (d) Whether a system for monitoring possible conflicts of interest and declaration of interest should be introduced, taking into consideration that some principal officials might be appointed from outside the civil service;
- (e) Whether a contractual arrangement between the Chief Executive (CE) and principal officials was appropriate and related issues;

- (f) What courses of action could be taken in the situation of the CE refusing to recommend to the Central Government the removal of a principal official who had committed a serious policy mistake; and
- (g) Whether LegCo should have a role to play in the process of removal of a principal official from office.

11. Ms Emily LAU expressed the following views on the findings of the Research Report -

- (a) As shown in Table 12 of the Research Report, the ministerial salaries in UK and US were relatively modest as compared with the salary levels of senior government officials in Hong Kong. The issue of remuneration for the principal officials under the proposed accountability system had to be carefully considered ;
- (b) Consideration should be given to the merits of adopting the system in UK and US where declaration of interests made by senior members of government covered not only their own personal interests, but also those of their spouses and children;
- (c) In all the three countries under study, the legislature had a part to play in the process of removal of holders of ministerial positions from office. Both the UK and Singapore relied on the vote of confidence, while US relied on the impeachment mechanism. Hong Kong should take reference from their experience; and
- (d) In UK, US and Singapore, holders of ministerial posts were politically appointees and did not have employment contracts. This differed from the proposed accountability system under which

the politically appointed principal officials would be appointed on contract terms.

12. In response to Ms Emily LAU on paragraph 11(d), Research Officer 5 said that in the three countries concerned, the relationship between the head of government and holders of ministerial posts was political rather than contractual. Unlike their civil service counterparts, the political appointees were not employed on contractual terms. Conditions of removal were regulated either by constitutional conventions as in UK or by legal means as in US. He added that the absence of contractual obligations had the advantages of flexibility and minimizing disputes in the event of the removal of the political appointees.

13. Dr YEUNG Sum said that in the countries under study, the legislature could remove a political appointee from office by passing a vote of no confidence or by impeachment. In the US, committees of the Senate could hold public hearings for the purpose of considering the suitability of a candidate for political appointment. Through answering questions, candidates could take the opportunity to explain to the public their visions for policies and how they would commit themselves to achieving the policy goals. He suggested that the Government should consider introducing similar arrangements for the proposed accountability system.

14. Dr YEUNG Sum further opined that constitutional conventions should be developed so that when a vote of no confidence was passed by LegCo on a principal official, CE should respect the consensus view of LegCo and recommend for the removal of the official concerned. He said that although the BL did not provide for a mechanism for removing principal officials from office by LegCo, the development of such constitutional convention would not amount to a violation of the BL.

15. Echoing Dr YEUNG Sum's views, the Chairman pointed out that the Report on the Development of the Political System of the Hong Kong Special Administrative Region published by the Panel in June 2000 recommended, inter alia, "that the Government should explore the feasibility of developing constitutional conventions under which principal officials shall voluntarily resign as a result of having committed serious mistakes in the formulation or implementation of government policies".

16. The Chairman added that in all parliamentary systems of government, although the legislature had a role to play in the removal of senior members of government from office, it played no part in the appointment of the officials. The situation, nevertheless, was different under the presidential system in the US.

17. **In response, SCA said that the Administration would explain to LegCo Members the finalized proposals at the meeting on 15 April 2002. The initial position of the Administration was that the suggestions made by Dr YEUNG in paragraph 13 above might not be the only way to achieve the true objective of enhancing accountability. Under the proposed accountability system, principal officials who committed a serious mistake would be held accountable for their actions and in an extreme case would have to consider voluntarily resigning from office.**

18. Mr CHEUNG Man-kwong opined that the Administration should take necessary measures to address public concern that the proposed accountability system for principal officials might over-strengthen the executive's power, resulting in intensification of the conflicts between the executive and the legislature. He said that the Administration should explain its stance on the following issues at the meeting on 15 April 2002 -

- (a) How to put in place a proper system of pre-appointment integrity

vetting of candidates, bearing in mind that some of the principal officials might be recruited from outside the civil service;

- (b) Whether it was desirable to include as part of the appointment process a procedure under which candidates of principal official posts should appear before LegCo to answer questions put to them by Members;
- (c) Whether constitutional conventions should be developed whereby a principal official should resign from office on a vote of no confidence passed by LegCo; and
- (d) how a system of post-office restrictions on activities of former principal officials would be implemented to guard against possible conflicts of interest.

19. Miss Margaret NG asked whether the proposed accountability system would necessitate enactment of new legislation and if so, how could the Administration ensure that the legislative process could be completed before 1 July 2002 when the new accountability system was intended to be brought into effect.

20. **SCA responded that an internal detailed study was being conducted by the Administration. The initial thinking of the Administration was that some legislative changes might be required to give effect to the changes which would be brought about by the proposed accountability system, e.g. to provide the legal basis for the exercise of the statutory functions by the politically appointed principal officials upon the coming into operation of the new system. However, he anticipated that the legislative process would not be a complicated one.**

21. The Chairman expressed the view that enactment of new legislation might not be necessary if the same policy portfolios of the present Bureaux Secretaries were to be transferred to the newly appointed principal officials who would then be held ultimately accountable for the respective policies.

22. Miss Margaret NG pointed out that principal officials would have a crucial role to play in constitutional litigation cases, where the Government was involved as a party to the proceedings. Citing the right of abode cases as an example, she said that the Director of Immigration was the respondent in the litigation proceedings concerned. She said that the requisite legislative amendments to clarify the authority of the principal officials would have to be completed at an early stage. But there must also be adequate time to allow LegCo to scrutinize the legislative proposals in detail.

23. Miss Margaret NG further said that the proposed accountability system for principal officials had been discussed by LegCo since more than one year ago and yet only very sketchy information had so far been provided by the Administration. As the Administration had yet to unveil the details of the system for consultation, she doubted the feasibility of implementing such a major reform by 1 July 2002, in view of the complexities and legislative amendments involved.

24. Dr YEUNG Sum said that it was likely that the proposed accountability system would enhance the powers of the principal officials in their respective policy areas. This might impact on the structures and functions of some statutory bodies such as the Housing Authority and the Hospital Authority, thus making the legislative process even more complicated and time-consuming.

25. Ms Emily LAU and Dr YEUNG Sum cautioned that the Administration should not expect LegCo to simply “rubber-stamp” the proposed accountability system which involved both financial and legislative proposals. They said

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that the Administration must set a realistic timetable for implementation in order to allow sufficient time for thorough discussion by LegCo and the public, including the holding of a motion debate by the Council on the issue. Otherwise, the Administration would find it a difficult task getting the support of LegCo.

26. **SCA said that the Administration would take note of members' concerns and respond to them at the next meeting. He expressed confidence that the Government and LegCo would work cooperatively in dealing with this important issue of enhancing executive accountability, as on many instances in the past.**

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