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Paper for the House Committee Meeting on 24 May 2002

**Interim Report of the Subcommittee to Study the Proposed System
of Accountability for Principal Officials and Related Issues**

PURPOSE

This interim paper reports on the deliberations of the "Subcommittee on the Proposed System of Accountability for Principal Officials and Related Issues" up to the meeting on 21 May 2002.

BACKGROUND

2. In his Policy Address delivered in October 2000, the Chief Executive (CE) undertook to review how the accountability of principal officials for their respective policy portfolios could be enhanced. The objectives are to strengthen the accountability of principal officials, ensure that the Government can better respond to the needs of the community, enhance coordination in policy formulation, strengthen the cooperation between the Executive and the Legislature, ensure effective implementation of policies, and provide quality services to the public. In his Policy Address delivered in October 2001, CE outlined the Government's initial ideas to introduce a new system of appointing principal officials applicable to the top three Secretaries and most Directors of Bureau.

3. On 17 April 2002, in his address to the Legislative Council (LegCo), CE presented the framework of the new accountability system for principal officials and the details relating to its implementation.

THE SUBCOMMITTEE

4. At the House Committee meeting on 19 April 2002, members decided to form a subcommittee to study the proposed accountability system and related issues. The Subcommittee comprises 34 members, and Hon IP Kwok-him and Hon YEUNG Sum were elected Chairman and Deputy Chairman of the Subcommittee respectively. The membership list of the Subcommittee is in **Appendix I**.

5. The Subcommittee has so far held 10 meetings (equivalent to 18 two-hour sessions) with the Administration. It had placed advertisements in two local newspapers to invite public views on the proposed accountability system and subsequently received representations from 126 organisations and individuals. Their names are listed in **Appendix II**. A total of 89 organisations and individuals also appeared before the Subcommittee to present their views.

6. In its deliberations, the Subcommittee has made reference to the relevant minutes of meetings, discussion papers and reports of the Panel on Constitutional Affairs, including the report of the Panel's delegation to study the executive systems of accountability in the United Kingdom (UK), France and Germany in June 2001 as well as various research reports prepared by the Research and Library Service Division for the Panel.

BASIC PRINCIPLES AND MAIN FEATURES OF THE ACCOUNTABILITY SYSTEM

7. According to the Administration, the basic principles of the system of accountability for principal officials are -

- (a) the new system must be consistent with the Basic Law (BL);
- (b) the stability and integrity of the civil service must be maintained; and
- (c) a permanent, meritocratic and politically neutral civil service must be maintained.

8. Under the accountability system, a new system of employment will be introduced into the highest level of Government under CE. There will be a total of 14 principal officials to be appointed under the accountability system, i.e. the three Secretaries of Department and 11 Directors of Bureau. These principal officials will be employed on contract. They will not be civil servants, and their terms and conditions will be different from those of the civil service. The civil service recruitment, employment, assessment, promotion, disciplinary and removal mechanisms do not apply to them. The term of their contract will not exceed the term of CE who nominates them for appointment. They will be appointed to the Executive Council (ExCo) and accountable to CE for the success or failure of matters falling within their respective portfolios. They are responsible for formulating, explaining and defending government policies as well as canvassing support from the public and LegCo. In an extreme case, they may have to step down for serious failures relating to their respective portfolios.

9. Civil servants at D8 rank in bureaux will work to their respective principal officials. They will support their Directors of Bureau in running the bureaux and departments. Officers holding these posts will be re-titled as Permanent Secretaries.

10. The civil service will remain permanent, meritocratic and politically neutral. The system of appointment, posting, promotion and disciplinary action will remain unchanged.

DELIBERATIONS OF THE SUBCOMMITTEE

Main topics

11. The main points of the Subcommittee's deliberations are summarised under the following topics -

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Timetable and public consultation

12. The Administration intends to implement the new accountability system with effect from 1 July 2002 when the second term CE assumes office. According to the Administration's timetable, the Secretary for Constitutional Affairs will move a motion on the accountability system for debate at the Council meeting on 29 May 2002. Proposals relating to the 14 principal official positions will be put to the Establishment Subcommittee for its endorsement and recommendation to the Finance Committee. The financial proposal, which entails an additional commitment of \$43 million to meet the costs of 14 principal official positions, is expected to be put to the Finance Committee in early June 2002. According to the Administration, consequential upon a restructuring of the bureaux, legislative amendments would be necessary to effect the transfer on 1 July 2002.

13. Some members have criticised the tight timetable proposed by the Administration and the lack of public consultation on the proposed accountability system which, in their view, seeks to introduce important and fundamental changes to the existing government structure. They have queried whether it is practicable and reasonable for the Administration to set 1 July 2002 as the target date to implement the new system. Some members consider that the motion debate should only be held after the Subcommittee has concluded deliberations on the proposed system and related issues.

14. The Administration has responded that the intention is for the new system to be implemented on 1 July 2002 when the second term CE assumes office. The Administration would try its best to assist the Subcommittee in its work.

15. As regards public consultation, the Administration has advised that since the announcement made by CE about the accountability system for principal officials in his Policy Addresses in 2000 and 2001, it has exchanged views on the subject with Members at meetings of the Panel on Constitutional Affairs, and has also attended the public consultation meetings arranged by the Panel. The Administration has also exchanged views with academics and commentators on various occasions. The Administration has taken note of all the views expressed when devising the new system.

Powers and functions of CE and his accountability

16. Hon Cyd HO has expressed concern that the powers of CE would be increased under the accountability system as the principal officials would be accountable to CE and CE has the power to remove them. This would be detrimental to the democratic development of the Hong Kong Special Administrative Region (HKSAR) which has been provided for in BL.

17. The Administration has explained that the powers of CE are provided for in BL and would not be increased as a result of implementation of the accountability system. BL 43(1) provides that CE shall be the head of the HKSAR and shall represent the Region. Under BL 60(1), CE is the head of the Government of the HKSAR. BL 48 sets out in detail the powers and functions of CE, including those to lead the Government of the HKSAR, implement BL, decide on government policies, sign bills, promulgate laws, sign budgets, nominate and report to the Central People's Government (CPG) for appointment of principal officials, and conduct, on behalf of the Government of the HKSAR, external affairs and other affairs as authorised by the Central Authorities.

18. The Administration takes the view that the accountability system would not hamper the democratic development of the HKSAR. BL has already provided for a mechanism for a decision to be taken on the method of forming LegCo and selecting CE in respect of their respective terms subsequent to 2007.

19. Hon Emily LAU is of the view that the only advantage for implementing the new system was to enable CE to have greater control on how Hong Kong should be governed as CE would only invite like-minded persons to be appointed as principal officials under the new system. The reason given by the Administration in support of the accountability system, i.e. principal officials under the proposed system would be asked to resign for serious failures in policy outcome or serious mishaps in policy implementation, was not valid, given that BL 48(5) already provided CE with the power to remove existing principal officials.

"Public officer" and "Public servant"

20. In considering whether the introduction of a new system for appointment for certain principal officials on terms different from those in the civil service would contravene BL, members have asked about the differences between the terms "public servants" and "civil servants".

21. The Administration has advised that the term "civil servants" does not appear in BL. The term "public servants" appears in BL 79(4), BL 100, BL 101, BL 102 and BL 103, but BL is silent on the definition of the term. However, it is clear from BL 101 that principal officials are public servants.

22. The Administration has also explained that under the Laws of Hong Kong, the term "civil servant" is not used. Instead, the terms "public officer", "public servant" and "Crown servant" are used. In most instances where the terms "public officer" or "public servant" are used, they have not been defined in their respective ordinances. In such cases, the definition under the Interpretation and General Clauses Ordinance (Cap. 1) applies. Under Cap. 1, "public servant" (公務員、公務人員) has the same meaning as "public officer". "(P)ublic officer" (公職人員) means "any person holding an office of emolument under the Government, whether such office be permanent or temporary".

23. According to the Administration, the definition of "public officer" and "public servant" in Cap. 1 would include civil servants as well as principal officials under the accountability system. In other words, in those ordinances where the terms "public officer" and "public servant" are not defined, the provisions applicable to civil servants will equally be applicable to principal officials under the accountability system.

Constitutionality of the accountability system

24. One of the main concerns of some members is whether the proposed accountability system is consistent with BL.

25. The Administration has advised that in discussing the constitutionality of the accountability system, it is important to keep in mind the approach to the interpretation of BL that has been established by the Court of Final Appeal. In the case of *Ng Ka Ling & Others v Director of Immigration* [1999] 1 HKLRD 315, it was the Court's decision that in the interpretation of a constitution, such as BL, a purposive approach was to be applied. The Court should consider the principles of the particular provision declared in or ascertained from that provision and other provisions in BL and other relevant extrinsic materials, and the language of its text in the light of the context found in BL and relevant extrinsic materials. The Court has to avoid a literal, technical, narrow and rigid approach.

26. The Administration is of the view that the system is constitutional since -
- (a) there is no requirement in BL that principal officials must be employed on civil service terms and conditions;
 - (b) the new terms and conditions of employment for principal officials under the accountability system are consistent with BL 48(5);
 - (c) neither BL 100 nor BL 103 prevent these developments, which are for the good governance of Hong Kong;
 - (d) the constitutional fundamentals relating to principal officials, LegCo and ExCo will be complied with;
 - (e) the reorganisation of bureaux is permitted by BL; and
 - (f) the underlying BL theme of continuity does not prevent the changes from taking place.

27. Hon Albert HO has criticised the change of the Government's position from "what is not expressly provided for in BL is inconsistent with BL" to "what is not prohibited in the BL is consistent with BL". Hon Andrew WONG and Hon Margaret NG are of the view that the Administration should not use different reasoning at different times to suit different needs, and that a consistent approach should be adopted in interpreting BL. Hon Margaret NG has also suggested that the Administration should adopt a generous approach to interpret BL in respect of other aspects of the accountability system, such as the appointment and removal of principal officials.

28. Other issues raised by members relating to the constitutionality of the accountability system are discussed under the related topics.

Legislative measures to give effect to the accountability system

Resolution under section 54A of Cap. 1

29. In view of the important and fundamental changes which the accountability system would bring about, some members, including Hon Albert HO, Hon Margaret NG and Hon Emily LAU, are of the view that primary legislation should be introduced to underpin the accountability system so that the proposal would be scrutinised with the benefits of a full legislative process.

30. The Administration has explained that the implementation of the accountability system involves reorganisation of a number of policy bureaux. Generally speaking, reorganisation of government structure does not require legislation, and can be

effected administratively. This is because the structure of the government is not provided for in either BL or any local legislation. Previous reorganisations of the government structure, both before and after Reunification, were achieved administratively.

31. The Administration has further pointed out that legislative amendments are required to transfer the respective statutory functions previously exercisable by the relevant bureau secretaries to the respective new principal officials. Where there is no such splitting or merging of portfolios, no legislative amendment will be required. The transfer of statutory functions is to be effected by way of a resolution made under section 54A of Cap 1.

32. Hon Margaret NG is not convinced that the resolution under section 54A of Cap. 1 is adequate for the purpose of transferring statutory functions from the bureau secretaries to the new principal officials, given that the latter is a new category of public officers, i.e. political appointees who are not civil servants. She is of the view that the status of principal officials under the new system should first be established by means of legislation, before resorting to the use of a resolution under section 54A of Cap. 1 to transfer the relevant statutory functions. She considers that the use of the resolution would be appropriate if the statutory functions are transferred to the Permanent Secretaries who are civil servants.

33. Hon Albert HO has questioned whether the use of a resolution under section 54A of Cap. 1 alone is adequate to launch the accountability system. He is of the view that Cap. 1 is primarily an interpretation ordinance. In addition, the proposed system is not merely a reorganisation of the government structure as claimed by the Administration, but introduces a new political layer to the existing government structure.

34. The Administration has explained that the resolution under section 54A of Cap. 1 is not the legislation to provide for the reorganisation of bureaux which can be effected administratively. The resolution is only consequential to the reorganisation.

35. As regards whether the use of the resolution is the appropriate legislative vehicle for effecting the necessary transfer of statutory functions arising from the implementation of the accountability system, the Administration has pointed out that section 54A of Cap. 1 was enacted in 1975 and has been used on a number of occasions in the past to transfer statutory functions from a public officer to another public officer consequential to a reorganisation of the government structure. The use of the resolution under section 54A of Cap. 1 in this particular case is fully in line with the established policy on legislation. The resolution is considered sufficient for the purpose of transferring statutory functions from the existing bureau secretaries to the new principal officials, as section 54A provides for the transfer of statutory function from one public officer to another public officer. There is no doubt that principal officials under the accountability system are within the meaning of "public officer" in Cap. 1. Therefore, the fact that relevant principal officials will not be civil servants does not affect the legality or effectiveness of the resolution under section 54A of Cap. 1.

36. According to the Administration, the statutory powers of the Chief Secretary for Administration (CS) and the Financial Secretary (FS) will remain vested in the same positions under the accountability system. Hon CHEUNG Man-kwong has pointed out that under the existing law, there are about 120 and 500 references to the wide-ranging statutory functions of CS and FS respectively. As principal officials under the accountability system are responsible for the success and failure of matters falling within their respective portfolios, he is of the view that some of the statutory functions now exercisable by CS and FS should be transferred to the relevant principal officials. The Administration has responded that as CS and FS are already empowered under existing legislation to delegate their statutory functions to the relevant government officials, no legislative amendment is required.

Lawful authority for introducing the accountability system

37. Hon Albert HO has requested the Administration to explain the lawful authority for introducing the accountability system. According to the Administration, CE is required to consult ExCo on major policy decisions. The introduction of the accountability system is a policy decision made by CE in Council under the power conferred on CE by BL.

38. Hon Albert HO has expressed concern whether it is appropriate to launch the accountability system on the basis of the ExCo decision, as the modus operandi of ExCo is confidential. He is of the view that in the absence of formal promulgation of the ExCo decision, Members cannot discharge their functions properly in scrutinising the proposed legislative measures relating to the accountability system.

39. The Administration has responded that there is no express requirement in BL that policy decisions of CE, or CE in Council, must be formally promulgated. Moreover, the proceedings as well as the papers and minutes of ExCo are kept confidential. However, details of the accountability system as decided by CE in Council have been made public in various ways. In particular, the accountability system was announced personally by CE in an address to LegCo on 17 April 2002, and the details have been set out in the papers submitted by the Administration to the Subcommittee.

40. Since the nature of the reorganisation and the accountability system has been publicly explained in detail, the Administration considers that Members are fully able to scrutinise the following two pieces of subsidiary legislation to decide whether they will achieve their stated purpose -

- (a) a resolution under section 54A of Cap. 1 to transfer relevant statutory functions to the policy secretaries of the reorganised bureaus; and
- (b) an order under section 62(3) of Cap. 1 to amend the list of public officers who may signify certain acts of CE.

The function, composition and operation of ExCo

Function of ExCo

41. BL 54 provides that ExCo of the HKSAR shall be an organ assisting CE in policy making. BL 56(2) provides that CE shall consult ExCo before making important policy decisions, introducing bills to LegCo, making subordinate legislation, or dissolving LegCo.

42. Hon Audrey EU has pointed out that there are 689 references to CE in Council in the Laws of Hong Kong. She has requested the Administration to provide information on the nature of these references and explain how appeals against decisions of bureau secretaries presently dealt with by CE in Council would be handled when principal officials under the accountability system will automatically become members of ExCo. Given that the membership of ExCo will be dominated by principal officials under the accountability system, some members have suggested that the Administration should review whether some of the appeals that lie to CE in Council should be transferred to other bodies.

43. The Administration has explained that it is provided in Cap. 1 that in considering any appeal or objection, CE in Council shall act in an administrative or executive capacity, and not in a judicial or quasi-judicial capacity. Of the 689 references to CE in Council, 53 provide for appeals in particular situations, 32 relate to the approval of plans, etc. by CE in Council which may involve the consideration of public objections, and the rest relate to the making of subsidiary legislation, amendment of schedules of primary legislation and miscellaneous matters, such as giving directions, making appointments, etc. Two guiding principles are adopted in considering the types of appeals that are appropriate to be heard by ExCo, namely, the need to relieve ExCo of minor decision-making, such as granting of licences, and consistency with Article 10 of the Bill of Rights Ordinance. The Administration has pointed out that as Article 10 requires, among other things, that all persons shall be equal before the courts and tribunals, appeals involving the determination of rights and obligations in a suit at law should not be heard by ExCo.

44. Some members have expressed concern that conflict of interest and other problems may arise when an appeal goes to ExCo from the decision of a bureau or department, since the principal official who heads that bureau or department will be a member of ExCo. The Administration believes that the situation can be resolved by the current arrangement that legal advice is given to the principal official concerned as to whether he should stand down from the particular appeal.

45. On whether other remedies are available if an appellant is not satisfied with the decision of CE in Council, the Administration has advised that remedies in respect of administrative decisions that are subject to a right of appeal or objection to CE in Council are governed by section 64(3) of Cap. 1. According to existing judicial interpretations of that section, where an appeal lies to CE in Council, this is an administrative remedy that is additional to, and not a substitute for, any remedy by way of judicial review of the original administrative decision. If an appeal is made to CE in Council and rejected, it is still possible for the appellant to apply for judicial review of the original administrative decision.

46. Hon Audrey EU has requested the Administration to consider putting in place a mechanism to deal with appeals that lie to ExCo against decisions of principal officials under the accountability system, to ensure transparency and consistency.

Composition of ExCo

47. BL 55(1) provides that members of ExCo shall be appointed by CE from among the principal officials of the executive authorities, members of LegCo and public figures.

48. Hon TSANG Yok-sing has asked whether the arrangement of principal officials under the accountability system automatically becoming ExCo members would be contrary to the legislative intent of BL 55 and restrict CE's power in appointing ExCo members. The Administration has advised that BL does not specify either the number of ExCo members or the proportion of members who are principal officials, members of LegCo or public figures. As BL provides that the appointment of members of ExCo shall be decided by CE, the proportion of the various categories of members is a matter for CE to decide.

Operation of ExCo

49. BL 56(3) provides that CE shall put the specific reasons on record if he does not accept a majority opinion of ExCo. Hon CHEUNG Man-kwong considers that the legislative intent of the provision is to enable ExCo to check and balance the powers of CE. However, this provision would be rendered redundant or ineffective as the majority of ExCo members under the new system, being principal officials accountable to CE, would defer to CE's view. Hon CHEUNG Man-kwong also considers that there might be a need to amend BL as ExCo would become a cabinet-type of organ.

50. The Administration has pointed out that the constitutional functions of ExCo in assisting CE in policy making are expressly and unequivocally stated in BL 54, and the role of ExCo is not to check and balance the decision-making power of CE. As the head of the HKSAR and the Government of the HKSAR, CE will consider carefully the views of members of ExCo, including any contrary views that may be expressed by a majority of the members. Under BL, if CE does not accept a majority opinion of ExCo, it would suffice if he puts the specific reasons on record. However, this course of action is unlikely to be taken without specific reasons on the part of CE. Moreover, CE will be accountable to CPG and the HKSAR for the policy decisions made by him after consultation with ExCo.

A new system of employment of principal officials

51. Some members have pointed out that the principal officials will be employed on terms and conditions different from those of the civil service, and the civil service recruitment, assessment, promotion, disciplinary and removal mechanisms would not be applicable to them.

52. These members have expressed concern whether the introduction of a new layer of political appointees into the highest level of Government under CE is consistent with BL, given that BL 100 provides that public servants serving in all Hong Kong government departments, before the establishment of the HKSAR, may all remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before, while BL 103 provides for the maintenance of the previous system of recruitment, employment, assessment, discipline, training and management for the public service.

53. Hon Emily LAU has also pointed out that some civil servants have expressed concern that the proposed system is not consistent with the spirit and recommendations of the McKinsey Report on Strengthening the Machinery of Government published in the 1970s.

54. The Administration has advised that there is no requirement in BL that principal officials must be employed on civil service terms and conditions. It is clear from BL 101 that principal officials are public servants. However, the fact that they are public servants does not mean that they must be employed on civil service terms and conditions. There are public servants employed on other than civil service terms and conditions in various government bureaux and departments. Two principal officials, namely the Commissioner of the ICAC and the Director of Audit, are not on the civil service establishment. Since CE is to lead the Government of HKSAR and to decide on government policies, he may decide on the terms of service to be offered to principal officials under the accountability system.

55. The Administration has also advised that the absence of security of tenure for principal officials under the accountability system is entirely consistent with BL. BL 89 provides that judges shall have security of tenure, but there is no similar provision for principal officials. On the contrary, BL 48(5) empowers CE to recommend to CPG the removal of principal officials. It is implicit that principal officials can be removed at any time and are not to have security of tenure.

56. In the view of the Administration, BL 103 does not inhibit development and improvement to the public service system provided that such changes are for the good governance of the HKSAR. The benefits of the accountability system, as described by the Administration, are considered to satisfy the "good governance" requirement.

57. The Administration has also pointed out that even if BL 103 applies to principal officials, it does not prevent the development of the terms and conditions on which they are employed. Nor does it prevent developments in delivery of public services or limit adjustments in the civil service grades and ranks. Similarly, the statutory powers presently exercisable by civil service principal officials can be transferred to principal officials who are not employed on civil service terms without breaching BL 103.

58. The Administration considers that BL 100 does not apply to principal officials under the accountability system who are appointed from outside the civil service. Those civil servants who currently benefit from BL 100, and who are offered appointment as a principal official under the accountability system, have a choice. They may either remain as a civil servant, with the benefit of BL 100, or they may voluntarily leave the civil service and take up the appointment. There will not be a breach of BL 100 in either situation.

Leave relief arrangement for principal officials

59. The Administration has advised that it has no intention to provide deputies for the principal officials under the accountability system. Members have sought clarification from the Administration on the leave relief arrangement during the temporary absence of a principal official from Hong Kong. The Administration has advised that arrangement will be made for the duties of a Director of Bureau to be taken up by another Director of Bureau, CS or FS, as appropriate. In the case of SJ, past experiences have shown that SJ could be contacted for making urgent decisions even if she was away from Hong Kong. Moreover, some of SJ's powers have already been delegated to the Law Officers. The Administration does not envisage any problem even if no leave relief arrangement is put in place in respect of SJ's leave absence.

60. Hon Andrew WONG considers that Deputy Directors of Bureau should be provided under the accountability system, even if it meant incurring additional expenditure. The Administration believes that the leave relief arrangement for the temporary absence of a principal official would only be required under rare occasions, for instance, to attend LegCo meetings to answer questions from Members.

61. Some members consider that it would be more appropriate for the relevant Permanent Secretary rather than another Director of Bureau to stand in during the absence of the Director of Bureau concerned, as the Permanent Secretary would be more conversant with the work of the bureau and is therefore in a better position to respond to questions from Members. The Administration's position is that it is inappropriate to require a civil servant, who is politically neutral, to assume the duties of a politically appointed principal official.

62. Hon Emily LAU has requested that Members should be informed of the stand-in arrangement for principal officials with justifications as early as possible, and that the leave relief arrangement for principal officials should be stipulated in the Code.

Post of SJ

63. Some members have expressed strong opposition to the inclusion of the post of SJ in the accountability system. They are of the view that SJ's power to make prosecution decisions should be completely transferred to the Director of Public Prosecutions (DPP), if the post is to be filled by a political appointee.

64. The Administration has explained that –

- (a) the proposed arrangements would not materially alter the position of a SJ who is recruited from outside the civil service;
- (b) BL 63 provides that the Department of Justice (D of J) should control criminal prosecutions, free from any interference. SJ is required to act independently in respect of prosecutions and would continue to do so under the new system;
- (c) the proposed arrangements are consistent with arrangements for similar posts in many other common law jurisdictions;
- (d) it is appropriate that SJ should be politically accountable for the manner in which he or she formulates and executes policy in respect of the legal system and legal services; and

- (e) in relation to certain functions (particularly the function of making prosecution decisions), SJ is constitutionally required to act independently and the proposed arrangements would not alter the position either in law or in practice.

65. The Administration has further explained that the current position in Hong Kong is that, in practice, DPP or other counsel in the Prosecutions Division make the vast majority of prosecution decisions. However, SJ, as head of D of J is accountable for those decisions. In addition, SJ personally makes prosecution decisions in some of the cases that DPP brings to her attention. This system works well and complies with BL 63. The Administration considers that the delegation of all prosecution powers to someone who might be a career civil servant, with the effect that SJ has no control over prosecutions, would undermine the move to greater accountability.

66. Hon Margaret NG considers that letting DPP to have a complete control on prosecution decisions is not uncommon in other jurisdictions. For instance, in the UK, the power to make prosecution decisions is vested in DPP and the power of the Attorney General is limited to appointing DPP and determining his remuneration, and making prosecution decisions on certain types of cases. Hon Margaret NG has suggested that the Administration should, for good governance of Hong Kong, adopt a generous approach to interpret BL 63 which stipulates that the "Department of Justice" rather than the "Secretary of Justice" should control criminal prosecutions.

67. Hon Audrey EU is disappointed that the Administration has ignored the concerns raised by some Members and the Hong Kong Bar Association at previous discussions of the Panel on Constitutional Affairs that to fill the post of SJ by a political appointee would undermine the independence and impartiality of the post as an institutional safeguard to uphold justice. Hon Audrey EU has also criticised the Administration for not learning its lesson from the public outcry and concern about SJ's decision not to prosecute certain individuals, and SJ's decision to seek an interpretation of BL from the Standing Committee of the National People's Congress.

68. Hon Andrew WONG has indicated that he would accept the inclusion of the post of SJ in the accountability system, provided that DPP will be given the power to make prosecution decisions independently and free from interference. He has also suggested that DPP should be nominated by a committee comprising members from the legal profession for appointment by CE.

69. The Administration has stressed that while it is permissible for SJ to delegate her powers to a Law Officer whilst retaining ultimate control and responsibility, a complete transfer of her powers and responsibilities in respect of prosecution matters would amount to an abdication of her duties as head of department and is likely to be inconsistent with BL 63. It would also lead to a situation of an "unaccountable" prosecutor, as DPP is a career civil servant and has security of tenure. The Administration is also not aware of any other common law jurisdictions which have the appointment of their Law Officers nominated by an outside body.

Post of SCS

70. Some members have expressed concern about the inclusion of the post of SCS in the accountability system. They are worried that SCS, being a political appointee, may put his political career above the interests of civil servants. There may be conflict in his role to formulate civil service policy on the one hand, and manage the civil service on the other hand. These members have also pointed out that as a member of ExCo, SCS is bound by the rule of collective responsibility and has to implement whatever policy is decided by ExCo. He may therefore not be in a position to fully represent and speak for the interests of civil servants in situations where their interests, in matters such as civil service pay and structure, differ from those of the Government or the community as a whole.

71. Hon LI Fung-ying considers that as principal officials (including SCS) will have a strong say in the deployment of their subordinates, the development of a "shoe-shinning" culture in the civil service might be encouraged. Hon Andrew WONG is of the view that the present system of posting and promotion would be politicised if SCS is a political appointee.

72. Dr Hon YEUNG Sum has suggested that the post of SCS should be filled by a permanent civil servant to serve as a "firewall" to protect the civil service from being politicised. Hon CHEUNG Man-kwong is of the view that SCS should be a Permanent Secretary underpinning CS, so that civil servants would be able to perceive their head of service as someone who is prepared to identify himself with the values and interests of the civil service.

73. Hon Andrew WONG has suggested that a system similar to the UK should be put in place. In the UK, the responsibility for central coordination and management of the civil service rests with the Prime Minister as Minister for the Civil Service. The Prime Minister is supported by the Head of Home Civil Service who is a senior civil servant. Hon Andrew WONG requests the Administration to clarify whether there will be a Permanent Secretary working to the politically appointed SCS. He also requests the Administration to consider appointing a Permanent Secretary at D9 or D10 rank as the head of the civil service.

74. The Administration has explained that the accountability system covers all government policies. As civil service policy is an important government policy, SCS will be one of the principal officials under the accountability system. He is responsible to CE for civil service policy and the management of civil service. In introducing the accountability system, CE has clearly stated that the distinct qualities of the civil service system must be preserved and enhanced, i.e. permanence, professionalism, political neutrality and an uncorrupt administration. One of the major tasks of SCS is to safeguard the core values of the civil service. As he will come from within the civil service and will be a member of ExCo, he will bring his civil service experience and perspective, including knowledge of the interests and

concerns of the civil servants and the core values of the civil service, to bear on the decision making process in ExCo. The Administration has assured members that the system of appointment, posting, promotion and disciplinary action will remain unchanged.

75. Regarding whether it is appropriate for SCS to replace CS as the head of civil service under the new system, the Administration has explained that the term "head of civil service" is only a concept, not a post title. There has never been a head of civil service. CS is regarded as the head of the civil service simply because he is the highest ranking civil servant. Under the accountability system, SCS is answerable to CE directly for policy issues concerning the civil service.

Preserving the integrity and political neutrality of the civil service

Role and responsibilities of Permanent Secretaries and other civil servants in relation to principal officials

76. Some members have stressed the need and importance for the political neutrality of the civil service to be preserved under the accountability system. The Administration has advised that under the accountability system, civil servants should continue to offer their honest advice to the Government in the course of formulating policies. However, once decisions are made, civil servants are duty bound to support the decisions, regardless of their personal convictions, and will fully and faithfully implement decisions. The civil service will continue to abide by the principle of political neutrality.

77. A few members, including Hon Kenneth TING and Hon NG Leung-sing, have asked about the mechanism for handling complaints from civil servants and instituting disciplinary procedure against them. Some other members are concerned that the Permanent Secretaries may be dismissed if they are at odds with the principal officials. They consider that the interests of career civil servants should be safeguarded.

78. The Administration has explained that a composite civil service circular will be issued to set out the framework within which civil servants are to work to principal officials. It aims to foster a spirit of trust between principal officials and the civil servants working to them, and to build a partnership relationship. The Administration has undertaken to provide a copy of the composite circular for members' reference.

79. The Administration has advised that safeguards will be put in place to assure civil servants that they will not be put in an invidious position or a position which may compromise their integrity, probity or impartiality. There are also established procedures for a civil servant to lodge his complaint against unfair treatment to his head of department, SCS or CE. In addition, the civil servant may lodge a complaint with statutory watchdog bodies, such as the Public Service Commission and The Ombudsman, where the subject matter falls within their jurisdiction. The civil service disciplinary system will remain unchanged, under which allegations of misconduct against individual civil servants are determined through an impartial process based on consideration of factual evidence.

80. A few members have expressed concern that principal officials might encounter difficulties in ensuring the successful implementation of government policies since the actual management of the operation of the executive departments rests with Permanent Secretaries, but the latter need not be held personally accountable for any policy failure. Hon James TIEN, Ir Dr Hon Raymond HO and Hon Abraham SHEK consider that principal officials should be given the power to deploy and dismiss civil servants working under them. Hon James TIEN has requested the Administration to provide information on the practice in some overseas jurisdictions.

81. The Administration has explained that there is well-established posting mechanism in the civil service, in which views of the supervisors will be taken into account. As senior members of the civil service, Permanent Secretaries would abide by the highest standards of public service and make their best endeavour to support the principal officials. As supervisors, Principal officials' views will be taken into account in the assignment of personnel working directly under them. Any requests for staff transfer from principal officials will be given careful consideration. The civil service management system, including promotion, disciplinary and removal mechanisms, will remain unchanged.

Code for Principal Officials

82. The Administration has stressed that the principal officials under the accountability system, representing the upper echelon of Government, would be expected to take the lead in, and contribute towards, maintaining and building up a civil service which upholds its core values. They will be required, as part of their condition of employment, to observe a Code which sets out the basic principles they should follow in the performance of their duties.

83. Hon Margaret NG is not convinced that the arrangement to stipulate in the employment contract a requirement for principal officials to observe the rules and principles contained in the Code is the best way to uphold and preserve the integrity and neutrality of the civil service. She has suggested that the Administration should consider drawing up a code similar to the UK Ministerial Code.

84. Hon CHEUNG Man-kwong has expressed concern about the enforcement of the Code, in particular SCS's ability to investigate complaints against principal officials, who are of the same rank as his. Hon CHEUNG Man-kwong has suggested that the Administration should consider setting up an independent investigation committee, similar to the Civil Service Commissioners system in the UK, to make enquiry into complaints against principal officials.

85. The Administration has indicated that it has no intention to follow the UK practice. However, it has pointed out that the employment contract between the Government and respective principal officials is legally binding. A contravention of the Code by principal officials would be regarded as a breach of the employment contract.

Ranking of Permanent Secretaries and their role as Controlling Officer in the Approved Estimates of Expenditure

86. Some members have asked the Administration to provide the justifications for pitching Permanent Secretaries at D8 rank and whether a ranking review will be conducted, as they will have less responsibilities and are no longer principal officials under the new system. Some other members, however, consider that Permanent Secretaries would have a heavier workload than principal officials under the proposed division of responsibilities.

87. The Administration has explained that under the new system, there is a need to retain civil servants at D8 rank in the bureaux. They will work to their respective principal officials. They do not have to shoulder the responsibility for the performance of the bureaux in the same way as new Directors of Bureau will. They will support their Director of Bureau in running the relevant bureaux and departments. They will continue to front up in public and to attend meetings of LegCo Panels and committees and to deal with the media. Given the increasing complexity of government policies and programmes and the increased demands from LegCo and the public, it is appropriate to continue to pitch the rank of the most senior civil servants in most of the bureaux at D8. However, the Administration agrees that there is a case to review the staffing and structure of the policy bureaux including the number of D8 civil service posts in bureaux when the new principal officials assume office.

88. Hon Howard YOUNG has requested the Administration to make reference to the practice in the private sector in conducting the review, as it is not uncommon to reduce the remuneration of a company employee who has subsequently taken up a post with less responsibilities after reorganisation of the company.

89. The Administration has advised that Permanent Secretaries or heads of department, i.e. civil servants, will be designated as Controlling Officers under the Public Finance Ordinance (Cap.2). They are responsible and accountable for the expenditure of the bureaux and departments falling within their purview, and will attend special meetings of the Finance Committee (FC) to examine the draft Estimates

of Expenditure and meetings of the Public Accounts Committee (PAC).

90. Hon Andrew WONG has requested the Administration to provide a written response on whether the requirements for the Controlling Officers to comply with administrative regulations and directions issued by FS and to be accountable to FS are compatible with the proposed system.

91. Hon Emily LAU has also requested the Administration to provide more information on the regulations made and directions or instructions given by FS under the Public Finance Ordinance (Cap. 2) to designated Controlling Officers.

92. Hon Emily LAU has expressed reservations that Permanent Secretaries, and not principal officials, will be attending special FC meetings and PAC meetings, as public expenditure was directly related to the implementation of policies for which principal officials are accountable. Members have requested the Administration to explain the delineation of responsibilities and duties between principal officials and their Permanent Secretaries in attending meetings of LegCo and its committees including PAC Committee, the special FC meetings, Panel and Bills Committees, and whether the Permanent Secretary will be required to sell policies and how they will carry out such duties.

93. Hon Andrew WONG does not object to Permanent Secretaries serving as Controlling Officers. Both Hon Margaret NG and Hon Andrew WONG have pointed out that under the UK Ministerial Code, an Accounting Officer will set out in writing his objections to a funding proposal with the reasons to the Comptroller and Audit General should his advice be overruled, and the Committee of Public Accounts would regard that the Accounting Officer does not bear personal responsibility for the action concerned. Hon Margaret NG and Hon Andrew WONG have suggested that the Administration should make reference to the UK experience.

94. The Administration has advised that the responsibilities of Controlling Officers are provided in the Public Finance Ordinance. The Code for Principal Officials will also include a provision that Controlling Officers will be responsible and accountable for the expenditure of the bureaux and departments under their purview. The Code will also specify that principal officials have a duty to give fair consideration and due weight to informed and impartial advice from the Controlling Officers. The principal officials will also attend the relevant PAC meetings if policy matters are discussed.

Director of CE's Office

95. Some members have expressed concern about the scope of work of the proposed post of Director of CE's Office, and have asked the Administration to explain the reasons for including the post in the accountability system since the Director will not be a principal official and does not oversee any policy portfolio. Some members, including Hon Emily LAU, have also asked whether the proposed

transfer of the Secretariat of the ExCo from the Office of CS to CE's Office is for facilitating centralisation of power in CE, or is because the working relationship between the two offices has not been very smooth in the past.

96. The Administration has explained that with the introduction of the accountability system, the position of Information Coordinator will be re-titled as Director of CE's Office. The Director will oversee the running of the ExCo Secretariat, in addition to performing the duties of Information Coordinator. Although the Director will not be a principal official, he will play an important role as he will work closely with the principal officials. The Administration has also pointed out that the powers of CE are provided in BL and there is no question of "centralising" the powers in CE. The proposal for the Director to oversee the running of the ExCo Secretariat is only a productivity enhancement measure for greater efficiency.

97. Members have expressed concern that although the Director is not a principal official, the proposal that he will only work to CE and also oversee other matters as directed by CE may give him much more power or influence than is intended. Some members, including Hon CHEUNG Man-kwong and Hon Andrew WONG, are worried that the Director will become a "special envoy" of CE, and will have excessive influence over the work of government bureaux and departments as well as non-government bodies. In this connection, some members, including Hon Kenneth TING, Hon CHEUNG Man-kwong and Hon Emily LAU, have also asked whether the Director will have any role to play in determining the ExCo agenda. Hon CHEUNG Man-kwong and Hon Margaret NG have requested the Administration to provide more information on the authority, functions and job description of the Director, and his working relationship with CS and Directors of Bureau.

98. The Administration has undertaken to provide the detailed job description of the post to Members before the motion debate on the proposed accountability system scheduled for the Council meeting on 29 May 2002. As regards the agenda of ExCo, the Administration has advised that it is ultimately a matter for CE to decide, and he will continue to rely on the assistance of the Secretaries of Department. The present internal procedures are that CS's approval must be obtained before any urgent items can be added to the agenda of the ExCo. There will be no change to these procedures after the introduction of the accountability system.

99. Some members, including Hon Margaret NG, have expressed concern about the impartiality and independence of the ExCo Secretariat if it is to be placed under the Director of CE's Office. These members consider that it will be more appropriate for a civil servant, who is politically neutral, to be responsible for keeping records of ExCo discussions, and discharging duties relating to integrity checking and declaration of interests of ExCo Members.

100. The Administration has advised that the Clerk to ExCo is currently a civil servant ranked at D2 level, and the arrangement will continue under the accountability system. The Clerk to ExCo will also continue to be responsible for records of discussions of ExCo. The Director of CE's Office will not assume the role of Clerk to ExCo. If the Clerk to ExCo is unable to discharge his duties, for instance, if he is on leave, arrangement will be made for another civil servant to act in his absence.

101. Hon Albert HO, Hon CHEUNG Man-kwong and some other members have also queried why the Director needs to be appointed on non-civil service contract terms at a rank equivalent to D8. Hon NG Leung-sing has asked the Administration to clarify whether the post is intended to be a political appointment, whether the Director will be subject to the "sanitisation" requirement after expiry of office, and whether he can be transferred to another post during his five-year term.

102. The Administration has responded that the proposed arrangement is to provide flexibility for CE to select suitable candidates from within or outside the civil service. The Administration has also confirmed that although the Director is not a principal official, he is a political appointee. The Administration has stressed that as a public servant, the Director must be dedicated to his duties and must also abide by the Prevention of Bribery Ordinance and other legislation that are applicable to public servants. There is therefore no question that the Director will not carry out his duties in a responsible and impartial manner. The Administration has also advised that the employment terms of the Director will be the same as those for principal officials. His appointment will not exceed that of the CE who selects him for appointment. If a civil servant is appointed to the post, he will have to leave the civil service, and cannot be transferred to a civil service post during or after his term of office.

103. Some members have questioned why the Director should be politically appointed given that he will not have any policy responsibility and does not need to step down for the failure of policy outcome. In this respect, members have asked whether the Director will be accountable to, and subject to monitoring by, LegCo and the public.

104. The Administration has responded that the Director will be answerable to CE, and he will have to answer questions from relevant Panels of LegCo and the public on the work of CE's Office. In addition, like all senior officials, he will need to listen to the views of different sectors of the community but it will be up to policy bureaux to secure the support of LegCo Members for government policies and legislation; the Director may offer assistance, where appropriate. In response to Hon Andrew WONG, the Administration has informed members that the Private Secretary to CE, and not the Director, is the Controlling Officer of CE's Office.

Establishment and development of constitutional conventions

105. A few members consider that the following constitutional conventions should be established to enhance the accountability of CE and principal officials -

- (a) principal officials should be required to appear before LegCo to brief Members on their aspirations and policy goals before appointment by CPG;
- (b) in the event that a no-confidence motion has been passed by LegCo against a principal official, he should resign and CE should accept his resignation; and
- (c) if CE decides to recommend to CPG the removal of a principal official, he should explain the reasons for his decision to LegCo, before making the recommendation.

106. The Administration has advised that principal officials would attend LegCo meetings to brief Members on their policy portfolios after their appointment. The Administration would not rule out the possibility of developing conventions provided such conventions would not contravene BL or undermine the executive-led principle. However, constitutional conventions were usually established through precedents accumulated over a period of time.

107. Hon Margaret NG and Hon Andrew WONG do not agree with the Administration's view and have pointed that constitutional conventions could be established by one single precedent or by mutual agreement between parties concerned without any precedent. The Administration has reiterated that BL 48(5) provides that principal officials are nominated by CE for appointment by CPG and are recommended by CE for removal by CPG. The appointment and removal of principal officials must be dealt with in accordance with BL. In the event that a motion of no-confidence has been passed against an individual principal official, CE had advised at the LegCo meeting on 17 April 2002 that he would consider, among other things, the circumstances leading to such a motion.

Issues relating to appointment, employment and removal of principal officials

Appointment and employment

108. In response to concerns raised by Hon Howard YOUNG, the Administration has explained that under BL, principal officials are recommended by CE for appointment and removal by CPG. They will be nominated by CE for appointment by CPG only after they have completed the integrity check and medical examination. Only after CPG has approved the relevant appointments will the Government of the HKSAR enter into an employment contract with the principal officials. If CE recommends to CPG the removal of a principal official, the recommendation should

be accepted by CPG before the principal official can be removed.

Remuneration

109. Hon Margaret NG is of the view that the Administration has not taken into account the relativity of the pay level between senior judicial posts and principal officials when proposing the remuneration package for principal officials. She has pointed out that under the proposed remuneration package for principal officials, even the Directors of Bureau (\$311,900 per month) will receive a much higher salary than the Chief Justice (\$227,450 per month) who is head of the judiciary. Hon Margaret NG has reminded the Administration that the Chief Justice is at least equivalent to CS in status and in the constitutional hierarchy. As far as she is aware, no other jurisdiction has adopted a salary structure under which the judiciary staff receive less pay than the administrative staff. She questions the Administration's basis for proposing such a remuneration package for principal officials without having regard to the impact on judicial grades.

110. Hon Margaret NG has requested the Administration to provide the following information -

- (a) the relativity of the remuneration for the principal officials (such as CS) and the Chief Justice;
- (b) the basis and principles for determining the remuneration for members of the Judiciary; and
- (c) whether any overseas countries have a system where the head of judiciary has a lower salary than that of the principal officials such as directors of policy bureau.

111. The Administration has explained that the structure of the cash remuneration for principal officials is different from that of judicial posts. While the remuneration of judicial grades is comparable to equivalent ranks in the civil service, the employment package of principal officials will not be linked to civil service salaries. The remuneration package for principal officials is so structured that there will be no housing allowance, no passage allowance, no children's education allowance and no gratuity or retirement benefits.

112. Hon James TIEN has requested the Administration to provide a breakdown to show how the remuneration for principal officials is arrived at. He is concerned that there appears to be an "increase" of some \$1.5 million in annual salary for principal officials under the accountability system, when compared to those civil servants holding comparable posts at D8 level.

113. The Administration has responded that an important consideration in drawing up the remuneration package for principal officials is to enable CE to select prospective principal officials from within and outside the civil service, and the remuneration should not be too far below chief executive officers (CEOs) in the public and private sectors. The proposed cash remuneration falls within the range recommended by a human resources consultant, Hay Group Limited, which has conducted a survey. The consultant has recommended that the median level of total remuneration of the 56 CEOs surveyed (i.e. \$6.658 million per annum) be used as a reference point. However, the Administration considers that it will be more appropriate to make reference to the median level of total direct compensation i.e. total remuneration less elements relating to retirement benefits or contract gratuity. This is because the nature of employment as a principal official is such that it can be cut short at any time without cause or compensation. The Administration has therefore decided to pitch the remuneration of principal officials at a level equivalent to the total weighted average cost of the incumbent substantive civil servants at Directors of Bureau rank (D8), i.e. \$3,760,836 per annum.

114. The Administration has further explained that the proposed remuneration of \$3,743,050 per annum for principal officials is the net amount less \$12,000 for MPF contribution and \$5,808 for medical and dental coverage a year. This is between the 15th and 20th percentile of the total direct compensation of the CEOs surveyed. The Administration considers the proposed remuneration appropriate given that these are appointments to the public service.

115. Hon James TIEN has expressed reservations about including benefits such as housing allowances in the remuneration, if the civil servant appointed as principal official has already obtained housing benefits and is allowed to encash his accrued leave balance before severing links with the civil service.

116. Hon James TIEN also considers that the remuneration of CE should not be lower than that of the principal officials, in order to reflect the status of CE and maintain relativity with the principal officials. In this respect, Hon Emily LAU has suggested reducing the remuneration of principal officials instead of increasing that of CE.

117. Noting that the employment package for principal officials will not be linked to civil service salaries, Hon Emily LAU has suggested that a mechanism for adjusting the remuneration of principal officials should be put in place. The Administration has agreed to consider the suggestion.

Removal

118. Hon CHEUNG Man-kwong considers that the Administration should provide a mechanism whereby LegCo and the public will be involved or at least be informed before a decision is taken on the appointment or removal of the principal officials. He has stressed that principal officials should be accountable to the public and LegCo.

119. The Administration has responded that how principal officials are to be appointed and removed has been provided in BL 48(5), and that the arrangement under the accountability system has been drawn up in accordance with the relevant provisions in BL.

Support staff

120. Hon Kenneth TING and Hon HUI Cheung-ching have sought clarification whether a Director of Bureau can recruit his own support staff and whether extra funding will be required.

121. The Administration has explained that each Director of Bureau will be provided with four administrative support staff, including an administrative assistant (pitched at D2 level), a press secretary, a personal secretary and a personal chauffeur. These positions can be filled either by civil servants or by way of direct appointment if the Director of Bureau considers it more appropriate to do so. The Administration has also advised that extra provisions will not be sought for the administrative support staff for principal officials, and if direct appointment is necessary, the expenses will be met from the bureau's existing provisions. These support staff will also be subject to the civil service regulations and requirements on conduct and avoidance of conflict of interest during their term of office.

122. Hon LI Fung-ying has enquired whether the arrangement for principal officials to recruit their own support staff, such as the press secretary, will affect the relevant grades in the civil service, for instance, the Information Officers. The Administration has explained that the arrangement is to provide flexibility for the principal official concerned to recruit his administrative support staff if necessary. Nevertheless, it is expected that most of these positions, including the press secretary, will be filled by civil servants. The Administration does not envisage any posting or staff redundancy problem in this respect.

123. Hon LI Fung-ying has expressed concern whether the Government will need to pay compensation to those support staff appointed from outside the civil service, if they have to leave their posts before expiry of their contract because the principal official concerned has stepped down. The Administration has advised that the employment contract for these staff will include a clause that their tenure will be the same as that of the Director of Bureau, and they will have to leave their posts when the Director of Bureau concerned leaves the Government. The Government will act in accordance with the terms of contract and relevant provisions in the Employment Ordinance.

Integrity checking and medical examination

124. Dr Hon Philip WONG has expressed concern that there will not be sufficient time for conducting integrity checking and medical examination for prospective principal officials if their appointments are to take effect from 1 July 2002. Members have asked the Administration to provide more information on the criteria

and arrangements for integrity checking, such as the moral standard and conduct required of the prospective principal officials, average time taken for completion of integrity checking, and the departments involved in the checking.

125. The Administration has advised that integrity checking and medical examination for prospective principal officials will follow the existing procedures applicable to prospective appointees for senior civil service posts. CS's office will arrange for integrity checking and medical examination for the principal officials except that for CS, which will be coordinated by CE's Office. The Administration has also confirmed that the Police is responsible for carrying out the integrity checking.

126. As regards the criteria and standards adopted for integrity checking, the Administration has undertaken to provide further details to the Subcommittee.

Conflict of interest and Code for Principal Officials

Involvement in political activities

127. Regarding the restriction on involvement in political activities, Hon Albert HO has asked the Administration to clarify whether principal officials can be members of political parties or organisations, and whether they will require CE's approval to participate in activities organised by political parties and organisations. The Administration has confirmed that principal officials can be members of political parties or organisations. Hon Emily LAU and Hon Albert HO have suggested and the Administration has agreed to include an express provision in this respect in the Code.

128. Hon CHEUNG Man-kwong has asked whether a person who is a member of the Communist Party or the Kuomintang can be appointed as a principal official. Hon CHEUNG Man-kwong has also asked whether a principal official can stand as a candidate for the CE election. He has expressed concern about conflict between the electioneering activities of the principal official and his official duties. The Administration has agreed to provide a response.

129. Hon Emily LAU has suggested that the Administration should make reference to the provisions of the UK Ministerial Code and spell out explicitly in the Code that principal officials cannot use public funds and other resources for political party or constituency work.

130. Hon Albert HO has requested the Administration to provide a written response to the following -

- (a) whether a principal official can be a member of a political party or organisation;
- (b) whether CE's approval is required for participation of activities organised by political parties or organisations;
- (c) the meaning of "not cause any embarrassment to the Government" and "distract their attention" in paragraph 4.2 (b) and (c) of the draft Code for Principal Officials under the accountability system; and
- (d) whether a principal official can be directors of companies during his term of office.

Prevention of conflict of interest

131. Regarding the declaration of investments and interests requirements, the Administration has advised that these include investment, shareholding or indirect interest in any company or undertaking and any interest in land or buildings in Hong Kong or in places outside Hong Kong. The declaration requirement will cover not only those held in the name of the principal official, but also those held in the name of his spouse, children or any other persons or companies that are acquired on the principal official's account or in which the principal official has a beneficial interest. As requested by Dr Hon Philip WONG, the Administration has agreed to provide information on whether the declaration requirements also cover interests and investments held on trust.

132. In response to members, the Administration has explained that under the provisions of the pension legislation, a retired officer at ranks of Director of Bureau or above will require prior approval of the Government before he takes up employment or engages in any business activity, the principal part of which is in Hong Kong, within three years after retirement.

133. To remove any doubt about principal officials' contractual obligations concerning prohibitions in relation to conflict of interest, Hon James TIEN considers that the provisions prohibiting principal officials from using official position for personal gain or other purposes listed in paragraphs 16 and 17 of the Administration's paper on Employment Contract and Conflict of Interest should be set out in greater detail in the employment contract. The Administration has agreed to consider the suggestion.

134. Hon James TIEN considers that the sanitisation period for prohibiting principal officials from taking up employment or going into business after stepping down should be reduced from 12 to three months. He is of the view that "sensitive information" obtained during the term of office of principal officials will become out-

dated quickly given the fast pace of social and economic developments nowadays.

135. The Administration has clarified that there is no intention to prohibit the principal official from returning to his original profession or business within the 12 months after stepping down. The proposal is that former principal officials will be required to obtain the advice of a committee appointed for this purpose by CE before taking up any employment or going into any business within one year after stepping down from office. In tendering its advice, the committee will have regard to the nature of the responsibilities of the principal official while in the Government and the nature of the proposed employment or business. The committee may advise whether an appointment is suitable, not suitable, or it may make other recommendations. The purpose is to avoid or minimise a perception that the Government's performance of its functions during the tenure of the principal official, or during the year after his stepping down, may have been compromised.

136. Dr Hon YEUNG Sum, Hon CHEUNG Man-kwong, Hon Albert HO and Hon Emily LAU are in favour of introducing a two-year sanitisation period for principal officials, similar to that adopted in the UK. Hon Albert HO considers that a period longer than 12 months is necessary to prevent the principal official from making use of sensitive information obtained during his term of office to benefit himself or any other person after stepping down. Hon CHAN Kam-lam considers that a one-year sanitisation period appropriate, but has suggested that the committee should be empowered to give directions as to whether a principal official should take up an employment or engage in a business activity. Hon Margaret NG is of the view that the objective of putting in place a sanitisation period is to enhance public confidence in the performance of the principal officials during their term of office.

137. The Administration has informed the Subcommittee that the members of the committee to be appointed by CE to advise on matters concerning the employment of former principal officials will be drawn from persons of high public standing from outside the civil service. The advice of the committee will be made public to facilitate public scrutiny.

138. Hon CHEUNG Man-kwong has criticised the committee as a "toothless tiger" without power as its advice is not binding on the principal officials concerned. Hon CHEUNG Man-kwong, Hon Albert HO and Hon Emily LAU are of the view that the Administration should put in place a more effective mechanism, instead of an advisory committee, to consider and approve applications from principal officials on taking up employment after stepping down or leaving the Government. Hon CHEUNG Man-kwong has suggested that a system of post-office employment similar to that for retired civil servants at D8 level should be adopted for principal officials under the accountability system.

139. Some members, including Hon Kenneth TING, Hon CHEUNG Man-kwong and Hon Albert HO have expressed concern whether the terms of contract and the Code will still be binding on the principal officials after they have stepped down. These members have requested the Administration to clarify how the Government can enforce these terms, for instance, those prohibiting the use of sensitive information obtained during their term of office, after the principal officials have stepped down.

140. The Administration has assured members that the terms of the contract relating to sensitive information and the relevant legislation including the Official Secrets Ordinance are binding on the principal officials even after they have stepped down. It is also possible to institute legal action against these former principal officials if they are found to have breached the contract or the Code. The court can draw inference from evidence, such as the outcome of the business decision taken by the company which the former principal official now works for, in determining whether the latter has taken advantage of sensitive information obtained during his term of office.

141. Hon Albert HO has suggested that the Code should be subject to scrutiny by LegCo and changes should not be made by CE unilaterally. The Administration has maintained the view that the sanctions as provided in existing legislation and employment contract, in addition to public monitoring, will be sufficient for the purpose. As the Code will be subject to public scrutiny, discussion on any changes to the Code can be followed up by the relevant LegCo Panel.

142. In order not to deter people from taking up appointment as principal officials and to address some members' concern that adequate measures should be put in place to guard against conflict of interest, Hon James TIEN has requested the Administration to consider reducing the one-year sanitisation period to three months, stipulating in the employment contract express and detailed provisions on the prohibitions that will continue to apply to a principal official after he has stepped down from office, dealing with any breaches of the Code by way of criminal sanctions, and allowing the committee to have substantive power. The Administration has agreed to consider members' views on the matter.

Splitting, merging and retention of bureaux

143. Under the proposed accountability system, there will be 11 bureaux, as against the 16 bureaux at present. The Administration has explained that in amalgamating the various policy portfolios, the Administration has balanced the need to contain the number of senior positions under the new set-up and to ensure that the scope of responsibility of each principal official is reasonable and manageable.

144. Members have different views on the number of Directors of Bureau under the accountability system and the grouping of policy portfolios under their purview. Some members consider that the proposed distribution of portfolios among Directors of Bureau arbitrary. The uneven distribution of responsibilities will create some

"super bureaux", whilst the portfolios of some other bureaux will be very light. Members have urged the Administration to review and rationalise the distribution of policy portfolios under the accountability system, and provide further information on the justifications for such restructuring.

145. While members belonging to the Liberal Party are generally in support of amalgamation of policy portfolios, they consider that the structure of bureaux can be further streamlined. Hon James TIEN is of the view that eight Directors of Bureau should be sufficient, as Hong Kong is a small place, and the Government does not need to take care of foreign affairs and defence matters.

146. Hon James TIEN expresses support for placing the Manpower portfolio and the Commerce and Industry portfolio under one Director of Bureau. He considers that manpower planning and employee retraining need to keep pace with the development of the economy and technology. He points out that development in commerce and industry will also create new employment opportunities and improve the unemployment situation. He agrees that the Director of Bureau looking after the two portfolios can strike a balance between the interests of the commerce and industry sectors and the interests of employees.

147. Some members, including Hon LEE Cheuk-yan and Hon LI Fung-ying, are strongly opposed to the proposed merging of the Manpower portfolio with the Commerce and Industry portfolio. They are worried that if the Director of Bureau is to be appointed from the commerce and industry sector, and given the emphasis on promoting commerce and industrial development in government policies, the interests of employees will be sacrificed. These members consider that the Manpower portfolio is not a ready partner with the Commerce and Industry portfolio, and the proposed amalgamation of the two will create conflicts instead of achieving consensus or greater efficiency. Hon CHAN Kam-lam considers that the Manpower and Education portfolios should come under the purview of one principal official.

148. Some members, including Hon Cyd HO, Hon CHOY So-yuk and Dr Hon YEUNG Sum, have expressed strong opposition against the proposal of placing the Environment and Food portfolios under the same Director of Bureau responsible for Health and Welfare, as the schedule will be unduly heavy given the numerous new policy initiatives in all these areas. Hon Cyd HO has pointed out that the Director of Bureau will be responsible for almost one-third of government expenditure for providing services to the community. These members are particularly concerned that given the wide span of control of this Director of Bureau, matters relating to environmental protection, conservation and sustainable development will not be given the same importance as has been pledged in CE's Policy Addresses.

149. Hon James TIEN has suggested grouping the Environment portfolio with the portfolios of Planning and Land, or Transport and Works. However, some other members have objected to this suggestion on the ground that the Director of Bureau will be placed in a difficult position, if the Director of Environmental Protection under him has to exercise statutory authority to reject reports on Environmental Impact Assessment in respect of certain infrastructural development projects advocated by the Director of Bureau.

150. Some members also consider that the pollution problem in Hong Kong has an adverse impact on attracting investments in, and professionals coming to, Hong Kong, and this will hamper the growth of Hong Kong as an international city and major financial centre. In this connection, some members, including Hon Cyd HO and Hon CHOY So-yuk, have suggested that there should be a dedicated Director of Bureau to look after the Environment portfolio.

151. Some members are of the view that the proposed Director of Bureau for Constitutional Affairs will have a lighter schedule than the other Directors of Bureau. Hon Howard YOUNG has pointed out since there will be a permanent secretary at D8 level to oversee the long-term constitutional development of Hong Kong, it is not necessary to have a dedicated Director of Bureau to look after the Constitutional Affairs portfolio. Hon Howard YOUNG and Hon James TIEN have suggested that the Constitutional Affairs and Home Affairs portfolios can be placed under one Director of Bureau for greater efficiency. They consider that it is more appropriate for one Director of Bureau to look after both constitutional development and District Councils matters.

152. Some members have expressed concern that with one Director of Bureau overseeing the portfolio of Financial Services and the Treasury functions, FS will have a much lighter schedule than before.

153. The Administration has responded that the principle for the proposed amalgamation of portfolios is to minimise changes and disruption to the existing bureaux and departments. There are many permutations, but the Administration has to balance all considerations and to retain the existing set-up and establishments as far as possible. The Secretary for Constitutional Affairs has undertaken to reflect members' views and suggestions.

Relationship between bureaux and departments

154. Members have noted that the Administration proposes to review the working relationship between bureaux and departments within 12 months after the introduction of the accountability system. Members have expressed concern about the objective of the review, and whether the Administration has in mind any restructuring plans or staff reduction targets. Members have requested the Administration to provide more information on the objectives, consideration and plaus (such as percentage of savings)

for streamlining the structure of departments and bureaux.

155. Some members, including Hon CHEUNG Man-kwong and Hon Albert HO, have pointed out that under the proposed accountability system, some policy bureaux, such as the Housing Bureau and Home Affairs Bureau, will each have only one department to supervise. There should be scope for streamlining to avoid duplication of resources. These members have asked whether the existing directorate structure in the policy bureaux and departments should also be reviewed, for instance, whether the Permanent Secretaries should still be ranked at D8 level, and whether there is a need to retain the existing deputy policy secretaries as deputy permanent secretaries.

156. Hon LEE Cheuk-yan has questioned whether the review of the working relationship between bureaux and department aims to centralise the powers of departments in the Directors of Bureau. Hon Albert HO and Hon Cyd HO have expressed concern that some Directors of Bureau may have conflicting roles to play if certain statutory powers now conferred on the heads of departments are to be transferred to the Directors of Bureau.

157. Hon Howard YOUNG has reminded the Administration to pay special attention to rationalising the working relationship between the bureau and their departments, especially if the Directors of Bureau are given a wide range of duties which involve the Directors performing conflicting roles.

158. Some members, including Hon CHEUNG Man-kwong and Hon LI Fung-ying, have expressed concern whether the restructuring will lead to deletion of non-directorate posts and staff redundancy, if the additional expenditure arising from the creation of 14 principal officials is to be met by staff savings. Hon LI Fung-ying has also asked whether a further voluntary retirement scheme will be planned for those grades affected by any such restructuring.

159. Hon CHEUNG Man-kwong has urged the Administration to carefully assess any possible adverse impact on the quality of service and civil service morale, particularly if the streamlining proposals will affect the middle and lower ranks. He considers that there should be sufficient lead time for the implementation of any restructuring proposals.

160. The Administration has responded that it will be for the Directors of Bureau to decide how the review should be carried out and whether any streamlining or restructuring will be required. The Administration will carefully assess the impact of any restructuring proposals on the civil service.

161. Hon LEE Cheuk-yan has requested the Administration to provide an organisation chart showing the policy bureaux and departments as well as the advisory boards and committees under the respective Directors of Bureau.

Review of advisory and statutory bodies and other public bodies, implications of the proposed system on their roles and functions

162. Hon Emily LAU is particularly concerned about the implications of the proposed system on the roles and functions of statutory bodies such as the Monetary Authority and the Securities and Futures Commission. She has requested the Legal Service Division to prepare a paper on the functions and roles of existing policy secretaries in ordinances relating to the Monetary Authority and Securities and Futures Commission.

163. Some members, including Hon Andrew WONG, Hon Margaret NG and Hon LEE Cheuk-yan, have expressed concern whether the Directors of Bureau will have the authority to determine the membership of all advisory/statutory committees and public bodies under their respective portfolios. They have reminded the Administration that some of these bodies have important statutory functions and it is important to maintain their credibility and independence. There should be sufficient checks and balances, and the Administration should avoid centralising too much power in the Directors of Bureau.

164. Hon Margaret NG suggests that the Administration should review the powers and functions of each of these advisory committees and bodies. She is of the view that certain statutory powers in relation to determination of appeals should be transferred to the Permanent Secretaries, instead of to the Directors of Bureau.

165. Hon Andrew WONG has pointed out that there is public concern that the Directors of Bureau will only appoint persons of their own "coalition" or political parties or groupings. To allay any such concern, Hon Andrew WONG has requested the Administration to undertake that members of boards and committees will be drawn from people of high public standing who are from different sectors of the community and who are familiar with the work of these committees.

166. Hon Howard YOUNG has asked the Administration to consider converting some of the advisory bodies into "think tanks" to assist the Directors of Bureau in the formulation of policies. The Administration has responded that it agrees that the advisory bodies could serve as "think tanks" to the principal officials.

Pension payment arrangements for serving civil servants appointed as principal officials

167. Members have noted a paper prepared by the Legal Service Division on an analysis of the legal issues relating to the proposed arrangements for payment of pension to serving civil servants appointed as principal officials. Public officers who retire from the civil service under the Old Pension Scheme are entitled to receive a lump sum and a monthly pension. Under the Pensions Ordinance (Cap. 89), the Government may suspend payment of their monthly pension, and this is the practice

presently adopted by the Government. For those public officers who retire under the New Pension Scheme, the Pension Benefits Ordinance (Cap. 99) also provides that the Government may suspend payment of monthly pension, and again this is the practice presently adopted. For civil servants who resign before reaching retirement age, Cap. 99 provides that unless otherwise directed by CE, payment of pension benefits will be deferred until retirement age. The view of the Legal Service Division is that the Administration's proposal not to suspend payment of monthly pension to those who retire under the Old and New Pension Schemes would be a departure from existing Government practice, and a disparity in treatment between those appointed as principal officials and other retired public officers. However, under Cap. 89 and 99 the Government has a discretion whether to suspend. For those who resign under the New Pension Scheme, CE has a power under Cap. 99 to direct payment of the pension lump sum and monthly pension before they reach retirement age.

168. Members have sought clarification from the Administration about the retirement arrangements for pensionable civil servants who are to be appointed as principal officials under the accountability system, and whether they differ from the existing arrangements for retired civil servants employed in the public service.

169. The Administration has advised that serving civil servants appointed as principal officials will be given approval to retire if they have reached the earliest permissible retirement age under their respective pension schemes. For those under the Old Pension Scheme (Cap. 89 officers), the earliest permissible retirement age is 45. Those reaching 45 will receive their pension lump sum, and their monthly pension payment will not be suspended. For those who have joined the New Pension Scheme (Cap. 99 officers) with 10 years' qualifying service but have not reached the earliest permissible retirement age, they will be allowed to resign and receive their pension lump sum immediately. However, their monthly pension payments will only be payable when they have attained the earliest permissible retirement age under the New Pension Scheme, (i.e. 55 for those appointed before 1 July 1987, and 60 for those appointed on or after that date), or when they leave the Government, whichever is earlier.

170. The Administration has explained that the proposed retirement arrangements are different from those currently applied to retired civil servants on re-employment in that -

- (a) the monthly pension payment will not be suspended if the civil servant appointed to be principal official has reached the minimum permissible retirement age under the respective pension scheme; and
- (b) the pension lump sum will be paid immediately even if the civil servant appointed as principal official has not reached the earliest permissible retirement age under the New Pension Scheme (but the monthly pension payment will be suspended until he has reached the earliest permissible retirement age or ceases to be a principal official and is no longer in the public service, whichever is the earlier).

171. Some members, including Hon HUI Cheung-ching and Hon Abraham SHEK Lai-him, have queried that the Administration is giving "preferential" treatment to those civil servants who will be appointed principal officials. The Administration has explained that the arrangement aims to minimise any possible constraints for CE to select prospective principal officials from among civil servants who have not yet reached the retirement age. The Administration has pointed out that the cash remuneration package of the principal officials does not include a contract gratuity or pension element, as is usually provided for in the employment contracts in the public service or by public-funded organisations.

172. The Administration has further pointed out that principal official posts are political appointments of non-civil service contract terms, and there is no security of tenure as in the case of most public servants. Furthermore, these civil servants will only be paid their earned pension and no enhanced pension is proposed. The Administration does not consider that there is any question of "double standard" or "double benefit" for those civil servants who are to be appointed as principal officials. The Administration has also clarified that suspension of monthly pension payment is currently only applicable to retired civil servants taking up employment in 16 specified public-funded organisations, and the suspension does not apply to those taking employment in the private sector.

FOLLOW-UP ACTIONS REQUIRED OF THE ADMINISTRATION

173. Members are invited to note that the Administration has agreed to spell out explicitly in the Code that principal officials can be members of political parties or organisations. For details, please refer to paragraph (para) 127 above.

174. For Members' easy reference, appended below is a summary of the issues or views which members have requested the Administration to consider -

The function, composition and operation of the Executive Council (ExCo)

- (a) A mechanism should be put in place to deal with appeals that lie to ExCo against decisions of principal officials (para 46);

Leave relief arrangement for principal officials

- (b) Leave relief arrangement for principal officials should be stipulated in the Code (para 62);

Preserving the integrity and political neutrality of the civil service

- (c) Principal officials should be given the power to deploy and dismiss civil servants (including Permanent Secretaries) working under them (para 80);

Issues relating to appointment, employment and removal of principal officials

- (d) A mechanism should be put in place for adjusting the remuneration of principal officials (para 117);

Conflict of interest and Code for Principal Officials

- (e) The prohibition that principal officials cannot use public funds or resources for party or constituency work should be explicitly spelt out in the Code (para 129);
- (f) The various prohibitions against principal officials using their official position for personal gain or other purposes should be set out in greater detail in the employment contract (para 133);
- (g) Views of members on the duration of the sanitation period (paras 134 and 136);
- (h) A more effective mechanism should be put in place, instead of an advisory committee, to consider and approve applications from principal officials taking up employment after leaving the Government (para 138);
- (i) Changes to the Code should be subject to the scrutiny of the Legislative Council (para 141);
- (j) Breaches of the Code should be dealt with by criminal sanctions and other related views put forward by Hon James TIEN (para 142);

Splitting, merging and retention of bureaux

- (k) Views of members on the number and proposed amalgamation and splitting of policy portfolios (para 145 to 152); and

Relationship between bureaux and departments

- (l) The Administration should make an undertaking that members of boards and committees will be drawn from people of high standing and who are familiar work of such committees (para 165).

175. Members are invited to note that the Administration has been requested to provide information on the issues/topics listed in **Appendix III** and a written response is still outstanding as at 22 May 2002.

RELEVANT PAPERS

176. A list of all relevant papers of the Subcommittee (as at 22 May 2002) is in **Appendix IV**. Members are invited to note that these papers are available on the LegCo website at http://www.legco.gov.hk/yr01-02/english/hc/sub_com/hs51/papers/hs51_ppr.htm.

ADVICE SOUGHT

177. The Subcommittee invites Members to take note of this interim report. The Subcommittee will hold meetings to continue discussion on the proposed accountability system and related issues.

Council Business Division 2
Legislative Council Secretariat
22 May 2002

**Subcommittee to study the proposed
accountability system for principal officials and related issues**

Membership list

Chairman	Hon IP Kwok-him, JP
Deputy Chairman	Dr Hon YEUNG Sum
Members	<p>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 Hon NG Leung-sing, JP Hon Margaret NG Hon CHEUNG Man-kwong Hon HUI Cheung-ching, JP Hon CHAN Kam-lam Hon Andrew WONG Wang-fat, JP Dr Hon Philip WONG Yu-hong Hon Jasper TSANG Yok-sing, JP Hon Howard YOUNG, JP Hon YEUNG Yiu-chung, BBS Hon Ambrose LAU Hon-chuen, GBS, JP Hon Emily LAU Wai-hing, JP Hon CHOY So-yuk Hon Andrew CHENG Kar-foo (up to 26.4.2002) Hon SZETO Wah Hon Timothy FOK Tsun-ting, SBS, 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 Michael MAK Kwok-fung Hon LEUNG Fu-wah, MH, JP Dr Hon LO Wing-lok Hon Audrey EU Yuet-mee, SC, JP Hon MA Fung-kwok</p>

(Total : 34 Members)

Clerk Mrs Percy MA

Legal Adviser Mr Jimmy MA

Date 24 April 2002

研究擬議主要官員問責制及相關事宜小組委員會

**Subcommittee to Study the Proposed
Accountability System for Principal Officials and Related Issues**

曾向小組委員會表達意見的團體／個別人士名單
**List of organisations/individuals who have
submitted views to the Subcommittee**

團體名稱	Name of organisation
* 1. 九龍社團聯會	Kowloon Federation of Associations
* 2. 九龍城區居民聯會	Kowloon City District Residents Association
* 3. 九龍婦女聯會	Kowloon Women's Organisation Federation
* 4. 大坑關注社	Tai Hang Concern Association
5. 中山大學法律系香港同學會	Zhongshan University Law Faculty Hong Kong Students Association Limited
* 6. 公務員工會聯合會	Hong Kong Federation of Civil Service Unions
* 7. 屯門青年協會	Tuen Mun Youths Association
* 8. 文康服務中心	Cultural and Recreational Services Centre
9. 文職及專業人員協會	Clerical and Professional Employees Association
* 10. 本地高級公務員協會	Senior Non-Expatriate Officers Association
* 11. 民主黨	The Democratic Party
12. 汕尾市海陸豐同鄉會有限公司	Shan Wei City Hai Lu Feng Clansmen Association Limited

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| * 13. 李鄭屋居民協會 | Lei Cheng Uk Residents Association |
| * 14. 汽車交通運輸業總工會 | Motor Transport Workers General Union |
| 15. 東九龍居民委員會 | East Kowloon District Residents' Committee |
| 16. 東區協進社 | The Society for the Coordination & Promotion of Eastern District |
| 17. 油尖旺社團聯會 | Yau Tsim Mong Federation of Association |
| * 18. 社團活動中心 | Community Activities Centre |
| * 19. 長春社 | The Conservancy Association |
| 20. 長春社，香港地球之友，綠化中國基金，香港觀鳥會及世界自然(香港)基金會 | The Conservancy Association, Friends of the Earth (Hong Kong), Green China Foundation, Hong Kong Bird Watching Society, and World Wide Fund for Nature Hong Kong |
| 21. 保健體育會 | Po Kin Athletic Society |
| * 22. 勁松聯誼會 | The King Chung Association |
| * 23. 紀律部隊評議會(職方) | Disciplined Services Consultative Council (Staff side) |
| 24. 食品及飲品業僱員總會 | Food and Beverage Industry Employees General Union |
| 25. 香港工商專業聯會 | Business and Professionals Federation of Hong Kong |
| 26. 香港工會聯合會社會政策委員會 | The Hong Kong Federation of Trade Unions Social Policy Committee |
| * 27. 香港工業總會 | Federation of Hong Kong Industries |
| * 28. 香港中西區各界協會 | The Association of the Hong Kong Central and Western District Limited |
| * 29. 香港中國企業協會 | The Hong Kong Chinese Enterprises Association |
| 30. 香港中華出入口商會 | The Hong Kong Chinese Importers' & Exporters' Association |

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| * 31. 香港中華廠商聯合會 | The Chinese Manufacturers' Association of Hong Kong |
| 32. 香港中華總商會 | The Chinese General Chamber of Commerce |
| * 33. 香港中華總商會-中西區聯絡處 | The Chinese General Chamber of Commerce - Central and Western District Liaison Group |
| * 34. 香港中華總商會-油尖旺聯絡處 | The Chinese General Chamber of Commerce - YMT-TST-MKK District Liaison Group |
| 35. 香港公共事業工會聯合會 | Hong Kong Federation of Employees Unions in Public Utilities |
| 36. 香港仔居民聯合會 | Aberdeen Inhabitants Union Association Ltd |
| 37. 香港印刷業工會 | Hong Kong Printing Industry Workers Union |
| * 38. 香港地球之友 | Friends of the Earth (Hong Kong) |
| 39. 香港汕尾市社團聯合會 | Hong Kong Federation of Shan Wei City Association |
| * 40. 香港汕頭商會 | Hong Kong Swatow Merchants Association Limited |
| * 41. 香港行政管理文職人員協會 | The Hong Kong Executive, Administrative & Clerical Staff Association |
| * 42. 香港佛山工商聯合會 | Hong Kong Foshan Trader Association Ltd |
| * 43. 香港青年協進會 | Hong Kong Youths Unified Association |
| * 44. 香港青年社團聯盟 | Alliance of Hong Kong Youth Groups |
| * 45. 香港青年會 | Hong Kong Youth Association |
| * 46. 香港青年聯合會 | Hong Kong United Youth Association |
| 47. 香港南區婦女會 | Hong Kong Southern District Women's Association |
| * 48. 香港南區聯盟 | The Hong Kong Southern District Alliance |
| 49. 香港建造業總工會 | Hong Kong Construction Industry Employees General Union |

- * 50. 香港律師會 The Law Society of Hong Kong
- * 51. 香港政府華員會 Hong Kong Chinese Civil Servants' Association
- 52. 香港政治經濟文化學會 Hong Kong Political, Economical and Cultural Society
- * 53. 香港島各界聯合會 The Hong Kong Island Federation
- * 54. 香港教育工作者聯會 Hong Kong Federation of Education Workers
- * 55. 香港華人革新協會 Hong Kong Chinese Reform Association Ltd
- * 56. 香港資訊科技商會 Hong Kong Information Technology Federation
- * 57. 香港漁民互助社 Hong Kong Fishermen's Association
- * 58. 香港漁民團體聯席會議 Joint Committee of Hong Kong Fisherman's Organizations
- * 59. 香港福建社團聯會 Hong Kong Federation of Fujian Associations
- * 60. 香港福建體育會 Fukien Athletic Club Ltd
- 61. 香港製造業總工會 Hong Kong Manufacturing Industry Employees General Union
- * 62. 香港衛生護理專業人員協會 The Association of Hong Kong Health Care Professionals
- * 63. 香港總商會 Hong Kong General Chamber of Commerce
- * 64. 香港灣仔區各界協會 The Hong Kong Wan Chai District Association
- * 65. 旅港福建商會 Fukien Chamber of Commerce
- 66. 海港運輸業總工會 Harbour Transportation Workers General Union
- * 67. 荃灣青年會 Tsuen Wan Youths Association
- * 68. 專業視野 Pro-Vision
- * 69. 將軍澳青年會 Tseung Kwan O Youth Association

- * 70. 深水埗居民聯會 Sham Shui Po Residents Association
- 71. 港九紡織染業職工總會 Hong Kong & Kowloon Spinning Weaving and Dyeing Trade Workers General Union
- 72. 港九勞工教育促進會 The Education Advancement Society for Workers in Hong Kong and Kowloon
- * 73. 港九新界販商社團聯合會 Federation of Hong Kong Kowloon New Territories Hawker Associations
- * 74. 華富服務中心 Wah Fu Service Centre Limited
- 75. 華富邨婦女聯合會 Wah Fu Estate Woman's Association
- * 76. 新世紀協會 New Century Society Limited
- * 77. 新世紀論壇 New Century Forum
- * 78. 新青年論壇 New Youth Forum
- * 79. 新界社團聯會 New Territories Association of Societies
- * 80. 新界鄉議局 Heung Yee Kuk, New Territories
- * 81. 新界漁民聯誼會 New Territories Fishermen Fraternity Association
- * 82. 葵涌居民協會 Kwai Chung Residents Association
- 83. 筲箕灣柴灣坊眾會 Shauiwan and Chaiwan Residents Fraternal Association
- * 84. 福州十邑旅港同鄉會 The Foochow Association Ltd
- * 85. 銅鑼灣協進會有限公司 Causeway Bay Association Limited
- * 86. 劍藝會 Union Fencing Club
- * 87. 潮僑塑膠廠商會 The Chiu Chau Plastic Manufacturers Association Company Limited
- * 88. 觀塘民聯會 Kwun Tong Residents Association
- 89. 鰂魚涌居民協會 Quarry Bay Resident's Association

個別人士姓名

Name of individual

- | | |
|----------------------------|---|
| 1. 卜約翰教授
香港大學 | Professor John BURNS
University of Hong Kong |
| * 2. 王紹爾先生
九龍城區議會議員 | Mr WONG Siu-yee
Member, Kowloon City District Council |
| * 3. 匡增意先生 | Mr HONG Tsang-yi |
| * 4. 朱俊犖先生 | Mr CHU Chun-lok |
| * 5. 余桂珍女士 | Ms YU Kwei-chun |
| * 6. 吳日章先生 | Mr NG Yat-cheung |
| * 7. 吳民光先生 | Mr NG Man-kwong |
| * 8. 李明佩女士
黃大仙區議會議員 | Ms LEE Ming-pui
Member, Wong Tai Sin District Council |
| * 9. 李思泌博士, JP
黃大仙區議會議員 | Dr LI Sze-bay, Albert, JP
Member, Wong Tai Sin District Council |
| 10. 李穎儀博士
香港中文大學 | Dr Eliza LEE
The Chinese University of Hong Kong |
| * 11. 周興先生 | Mr CHOW Hing |
| 12. 林咏然先生
西貢區議會議員 | Mr LAM Wing-yin
Member, Sai Kung District Council |
| * 13. 邱全先生
西貢區議會議員 | Mr HIEW Chin
Member, Sai Kung District Council |
| 14. 范國威先生
西貢區議會議員 | Mr FAN Kwok-wai
Member, Sai Kung District Council |
| * 15. 馬嶽博士
香港科技大學 | Dr MA Ngok
The Hong Kong University of Science and
Technology |

- * 16. 張仁康先生
黃大仙區議會議員
Mr CHEUNG Yan-hong
Member, Wong Tai Sin District Council
- * 17. 張逸峯先生
香港大學
Mr CHEUNG Yat-fung
University of Hong Kong
- * 18. 陳振彬先生
Mr CHAN Chung-bun
- * 19. 陳財喜先生
中西區區議會議員
Mr CHAN Choi-hi
Member, Central & Western District Council
- 20. 陳堅先生
Mr CHAN Kin
- * 21. 陳捷貴先生
中西區區議會議員
Mr CHAN Chit-kwai
Member, Central & Western District Council
- * 22. 陳新先生
Mr CHAN Sun
- 23. 傅浩堅教授
香港浸會大學
Professor Frank FU
Hong Kong Baptist University
- * 24. 曾淵滄先生
深水埗區議會議員
Mr CHAN Yan-chong
Member, Sham Shui Po District Council
- 25. 湯歷姬博士
香港大學
Dr Irene TONG
University of Hong Kong
- 26. 無名氏
Anonymous person
- * 27. 馮華健先生, QC, SC
Mr Daniel R. FUNG, QC, SC
- 28. 黃偉豪博士
香港中文大學
Dr Wilson Wong
The Chinese University of Hong Kong
- * 29. 楊佰成先生
觀塘區議會議員
Mr YEUNG Pak-sing
Member, Kwun Tong District Council
- 30. 溫悅球先生
西貢區議會議員
Mr WAN Yut-kau
Member, Sai Kung District Council
- * 31. 葉方強先生
Mr YIP Fong-keung, Christ
- 32. 劉慶基先生
西貢區議會議員
Mr LAU Hing-kee
Member, Sai Kung District Council

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| 33. 樓曾瑞先生
西貢區議會議員 | Mr LOUR Tsang-tsay
Member, Sai Kung District Council |
| * 34. 盧兆興博士
香港大學 | Dr LO Shiu-hing
University of Hong Kong |
| * 35. 謝炳堅先生
觀塘區議會議員 | Mr TSE Ping-kin
Member, Kwun Tong District Council |
| * 36. 鄺錦鈞先生
香港大學 | Mr Kwong Kam-kwan
University of Hong Kong |
| * 37. 羅麗娟女士
觀塘區議會議員 | Ms LAW Lai-kuen
Member, Kwun Tong District Council |
- * 曾向小組委員會口頭申述意見的團體/個別人士
Organisations/individuals who have made oral representations to the Subcommittee

**The Administration's written response to the following
Issues/Topics is still outstanding as at 22 May 2002**

Leave relief arrangement for principal officials

- (a) Stand-in arrangement for principal officials on leave (para 62);

Post of Secretary for the Civil Service (SCS)

- (b) Whether there will be a Permanent Secretary working to the politically appointed SCS (para 73);

Preserving the integrity and political neutrality as the civil service

- (c) Provide a copy of the composite civil service circular for members' reference (para 78);

Ranking of Permanent Secretaries and their role of Controlling Officers in the
Approved Estimates of Expenditure

- (d) Whether the requirements for the Controlling Officers to comply with administrative regulations and directions issued by the Financial Secretary (FS) and be accountable to FS are compatible with the proposed system (para 90);
- (e) Regulations made and directions or instructions by FS under the Public Finance Ordinance to designated Controlling Officers (para 91);
- (f) The delineation of responsibilities and duties between principal officials and Permanent Secretaries (para 92);
- (g) Whether Permanent Secretaries will be required to sell policies and how they are to carry out such duties (para 92);

Director of the Chief Executive (CE)'s Office

- (h) Detailed job description of the post of Director of CE's Office (para 98);

Issues relating to appointment, employment and removal of principal officials

- (i) Relativity of the remuneration for principal officials and the Chief Justice, the basis and principles for determining the remuneration for members of the Judiciary, and related information in overseas countries (para 110);

- (j) Breakdown on how the remuneration for principal officials is arrived at (para 112);
- (k) Criteria and standards adopted for integrity checking (para 124);

Conflict of interest and Code of Practice

- (l) Whether a person who is a member of the Communist Party or the Kuomintang can be appointed as a principal official (para 128);
- (m) Whether a principal official can stand as a candidate for the CE election (para 128);
- (n) Whether a principal official can be a member of a political party or organisation, whether CE's approval is required for participation of activities organised by political parties or organisations, the meaning of "not cause any embarrassment to the Government" and "distract their attention" in paragraph 4.2(b) and (c) of the Code of Practice, and whether a principal official can be directors of companies during his term of office (para 130);
- (o) Whether principal officials will be required to declare interests and investments held on trust (para 131);
- (p) Objectives, considerations and plans (e.g. percentage of savings) for streamlining the structure of departments and bureaux (para 154); and
- (q) An organisation chart showing the policy bureaux and departments as well as the advisory boards and committees under the respective Directors of Bureau (para 161).

**Subcommittee to Study the Proposed
Accountability System for Principal Officials and Related Issues**

List of relevant papers issued

A. LegCo Paper on System of Accountability for Principal Officials provided by Constitutional Affairs Bureau to Members at the Council meeting on 17 April 2002

B. Papers issued in respect of specific areas for study by the Subcommittee

I. General issues

LC Paper No. CB(2)1679/01-02(01) -- Administration's paper on whether introducing a new system of appointment for principal officials on terms different from those in the civil service would contravene the Basic Law
(issued on 23 April 2002)

LC Paper No. CB(2)1735/01-02(01) -- Administration's paper on "Constitutionality of the Accountability System"
(issued on 26 April 2002)

LC Paper No. CB(2)1787/01-02 -- Websites of court judgments of the four cases quoted in LC Paper No. CB(2)1735/01-02(01)
(issued on 2 May 2002)

LC Paper Nos. CB(2)1803/01-02(01) - (04) -- Information notes prepared by Legal Service Division on the judgments of the four cases quoted in LC Paper No. CB(2)1735/01-02(01)
(issued on 2 May 2002)

LC Paper No. CB(2)1809/01-02(01) -- Administration's paper on relationship between Chief Executive/principal officials/Permanent Secretaries/LegCo, powers and functions of Chief Executive and relationship between Central People's Government and principal officials
(issued on 2 May 2002)

LC Paper No. CB(2)1822/01-02(01) -- Administration's paper on "Resolution under Section 54A of the Interpretation and General Clauses Ordinance"
(issued on 6 May 2002)

LC Paper No. CB(2)2000/01-02(01) -- Administration's paper on "The Decision relating to the Accountability System"
(issued on 18 May 2002)

II. Principal officials under the proposed system

LC Paper Nos. CB(2)1678/01-02(01) - (03) -- Bar Association's submission and the Administration's two papers provided to the meetings of the Panel on Constitutional Affairs on 17 December 2001 and 21 January 2002 concerning the proposal to include the Secretary for Justice in the proposed system
(issued on 23 April 2002)

LC Paper No. CB(2)1734/01-02(01) -- Existing role of the Secretary for Justice
(issued on 26 April 2002)

LC Paper No. CB(2)1734/01-02(02) -- Existing schedule of responsibilities of the Secretary for the Civil Service
(issued on 26 April 2002)

LC Paper No. CB(2)1734/01- -- Existing role and span of control of the

- 02(03) Chief Secretary for Administration
(issued on 26 April 2002)
- LC Paper No. CB(2)1734/01-02(04) -- Existing role and span of control of the Financial Secretary
(issued on 26 April 2002)
- LC Paper Nos. CB(2)1734/01-02(05) and (06) -- Existing role and membership of the Executive Council
(issued on 26 April 2002)
- LC Paper Nos. CB(2)1874/01-02(01) and (02) -- Relevant extracts of the meetings of the Panel on Constitutional Affairs on 17 December 2001 and 21 January 2002 when the proposal to include the Secretary for Justice in the proposed system was discussed
(issued on 9 May 2002)

III. The function, composition and operation of the Executive Council

- LC Paper No. CB(2)1809/01-02(02) -- Administration's paper on "Executive Council"
(issued on 2 May 2002)
- LC Paper No. CB(2)1822/01-02(02) -- Administration's paper dated 6 May 2002 on "References to the Chief Executive in Council in the Laws of Hong Kong"
(issued on 6 May 2002)
- LC Paper No. CB(2)1911/01-02(01) -- Administration's paper dated 10 May 2002 on "References to the Chief Executive in Council in the Laws of Hong Kong"
(issued on 13 May 2002)
- LC Paper No. CB(2)1911/01-02(02) -- Administration's paper on "Appeals to the Chief Executive in Council"
(issued on 13 May 2002)

IV. Splitting, merging and retention of Bureaux

- LC Paper No. CB(2)1870/01-02(01) -- Administration's paper on "Portfolios of Directors of Bureau under the

(issued on 9 May 2002)

Accountability System"

V. Civil service under the proposed system

LC Paper No. CB(2)1809/01-02(03) -- Administration's paper on "Civil Servants" and "Public Servants"

(issued on 2 May 2002)

IN23/01-02 issued under LC Paper No. CB(2)1810/01-02 on 3 May 2002 -- Information Note on "The Civil Service Code of the United Kingdom" prepared by Research and Library Services Division

IN25/01-02 issued under LC Paper No. CB(2)1810/01-02 on 3 May 2002 -- Information Note on "Some Civil Service Management Issues in the United Kingdom" prepared by Research and Library Services Division

LC Paper No. CB(2)1822/01-02(03) -- Information note prepared by the LegCo Secretariat on the McKinsey Report
(issued on 6 May 2002)

LC Paper No. CB(2)1822/01-02(04) -- Administration's paper on "Preserving the Integrity and Probity of the Civil Service"
(issued on 6 May 2002)

VI. Chief Executive's Office

LC Paper No. CB(2)1871/01-02(01) -- Letter dated 8 May 2002 from Hon CHEUNG Man-kwong concerning the Director of the Chief Executive's Office
(issued on 9 May 2002)

LC Paper No. CB(2)1929/01-02(01) -- Administration's paper on "Director of the Chief Executive's Office"
(issued on 13 May 2002)

VII. Relationship between bureaux and departments

VIII. Review of advisory and statutory bodies and other public bodies, implications of the proposed system on their roles and functions

IX. Development and formulation of constitutional conventions

IN26/01-02 issued under LC Paper No. CB(2)1886/01-02 on 10 May 2002 (Chinese version issued vide LC Paper No. CB(2)1925/01-02 on 14 May 2002) -- Information Note on "Some Basic Information on Constitutional Conventions" prepared by Research and Library Services Division

X. Issues relating to appointment, employment and removal of principal officials

LC Paper Nos. CB(2)1677/01-02 (01) - (03) (issued on 23 April 2002) -- Executive Summary, Parts 5 and 6 of the Research Report on Process of Appointment of Senior Members of Government in Selected Countries

LC Paper No. CB(2)1976/01-02 (01) (issued on 16 May 2002) -- Administration's paper on "Appointment, Employment and Removal of Principal Officials"

LC Paper No. CB(2)1986/01-02 (01) (issued on 17 May 2002) -- Letter dated 16 May 2002 from Hon CHEUNG Man-kwong concerning integrity checking and medical examination

XI. Conflict of interest

LC Paper Nos. CB(2)1676/01-02 (01) - (04) (issued on 23 April 2002) -- Executive Summary and Part 6 of the Research Report on Restrictions on Activities of Former Heads of Government and Former Senior Members of Government and Supplementary Information

LC Paper Nos. CB(2)1868/01-02 (01) and (02) (issued on 9 May 2002) -- Relevant extract of the Report of the delegation of the Panel on Constitutional Affairs and the UK Ministerial Code

LC Paper No. CB(2)1910/01-02(01) -- Democratic Party's proposals on maintaining the political neutrality of the Civil Service - Code of Practice for Principal Officials
(issued on 13 May 2002)

LC Paper No. CB(2)1952/01-02(01) -- Administration's paper on "Employment Contract and Conflict of Interest"
(issued on 15 May 2002)

XII. Arrangements for civil servants appointed as principal officials under the proposed accountability system

LC Paper Nos. CB(2)1758/01-02(01) - (04) -- Papers relating to pension arrangements for civil servants appointed as principal officials under the accountability system
(issued on 29 April 2002)

LC Paper No. LS95/01-02 issued under LC Paper No. CB(2)1961/01-02 on 16 May 2002 -- Paper on "Proposed Arrangements for Payment of Pension to Serving Civil Servants Appointed as Principal Officials under the Accountability System for Principal Officials" prepared by Legal Service Division

LC Paper No. CB(2)1992/01-02(01) -- Administration's paper on "Retirement Arrangements for Pensionable Civil Servants"
(issued on 17 May 2002)

XIII. Transfer of statutory functions

LC Paper No. CB(2)1880/01-02(01) -- Administration's paper on "Resolution under section 54A of the Interpretation and General Clauses Ordinance - Transfer of Statutory Functions"
(issued on 9 May 2002)

LC Paper No. CB(2)1880/01-02(02) -- Administration's paper on "Transfer of Statutory Functions from Secretary for Commerce and Industry to Secretary for Commerce, Industry and Manpower"
(issued on 9 May 2002)

- LC Paper No. CB(2)1883/01-02(01) -- Administration's paper on "Transfer of Statutory Functions from Secretary for Economic Services to Secretary for Economic Development"
(issued on 10 May 2002)
- LC Paper No. CB(2)1884/01-02(01) -- Administration's paper on "Transfer of Statutory Functions from Secretary for Education and Manpower to Secretary for Education and Secretary for Commerce, Industry and Manpower"
(issued on 10 May 2002)
- LC Paper No. CB(2)1953/01-02(01) -- Administration's paper on "Transfer of Statutory Functions from Secretary for Information Technology and Broadcasting to Secretary for Economic Development"
(issued on 15 May 2002)
- LC Paper No. CB(2)1954/01-02(01) -- Administration's paper on "Transfer of Statutory Functions from Secretary for the Environment and Food to Secretary for the Environment, Health and Welfare"
(issued on 15 May 2002)
- LC Paper No. CB(2)1955/01-02(01) -- Administration's paper on "Transfer of Statutory Functions from Secretary for Financial Services to Secretary for Financial Services and the Treasury"
(issued on 15 May 2002)
- LC Paper No. CB(2)1956/01-02(01) -- Administration's paper on "Transfer of Statutory Functions from Secretary for Housing to Secretary for Housing, Planning and Lands"
(issued on 15 May 2002)
- LC Paper No. CB(2)1977/01-02(01) -- Administration's paper on "Transfer of Statutory Functions from Secretary for Works to Secretary for Transport and Works"
(issued on 17 May 2002)
- LC Paper No. CB(2)1978/01-02(01) -- Administration's paper on "Transfer of Statutory Functions from Secretary for

- (issued on 17 May 2002) Health and Welfare to Secretary for the Environment, Health and Welfare"
- LC Paper No. CB(2)1979/01-02(01) -- Administration's paper on "Transfer of Statutory Functions from Secretary for the Treasury to Secretary for Financial Services and the Treasury"
(issued on 17 May 2002)
- LC Paper No. CB(2)1980/01-02(01) -- Administration's paper on "Transfer of Statutory Functions from Secretary for Planning and Lands to Secretary for Housing, Planning and Lands"
(issued on 17 May 2002)
- LC Paper No. CB(2)1983/01-02(01) -- Administration's paper on "Transfer of Statutory Functions from Secretary for Transport to Secretary for Transport and Works"
(issued on 17 May 2002)

XIV. Financial and staffing implications

C. Other relevant papers

I. Issues raised at previous meetings

- LC Paper No. CB(2)1691/01-02(04) -- A summary of concerns and views raised at the meetings of the Panel on Constitutional Affairs prepared by LegCo Secretariat
(Chinese version issued vide LC Paper No. CB(2)1710/01-02 on 23 April 2002)
- LC Paper No. CB(2)1711/01-02(01) -- Administration's response to issues previously raised at the meetings of Panel on Constitutional Affairs
(issued on 23 April 2002)
- LC Paper No. CB(2)1762/01-02(01) -- Issues raised at the meeting of the Panel on Constitutional Affairs on 18 April 2002
(issued on 30 April 2002)
- LC Paper No. CB(2)2034/01-02(01) -- Administration's response to issues raised at the meeting of Panel on

- (issued on 22 May 2002) Constitutional Affairs on 18 April 2002
- LC Paper No. CB(2)1775/01- -- Issues raised at the meeting of the
02(01) Subcommittee on 29 April 2002
(issued on 2 May 2002)
- LC Paper No. CB(2)2034/01- -- Administration's response to issues
02(02) raised at the meeting of the
(issued on 22 May 2002) Subcommittee on 29 April 2002
- LC Paper No. CB(2)1821/01- -- Issues raised at the meeting of the
02(01) Subcommittee on 3 May 2002
(issued on 6 May 2002)
- LC Paper No. CB(2)2034/01- -- Administration's response to issues
02(03) raised at the meeting of the
(issued on 22 May 2002) Subcommittee on 3 May 2002
- LC Paper No. CB(2)1869/01- -- Issues raised at the meeting of the
02(01) Subcommittee on 7 May 2002
(issued on 9 May 2002)
- LC Paper No. CB(2)1924/01- -- Issues raised at the meeting of the
02(01) Subcommittee on 10 May 2002
(issued on 14 May 2002)
- LC Paper No. CB(2)1926/01- -- Issues raised at the meeting of the
02(01) Subcommittee on 11 May 2002
(issued on 14 May 2002)
- LC Paper No. CB(2)1967/01- -- Issues raised at the meeting of the
02(01) Subcommittee on 14 May 2002
(issued on 16 May 2002)
- LC Paper No. CB(2)1991/01- -- Issues raised at the meeting of the
02(01) Subcommittee on 17 May 2002
(issued on 18 May 2002)
- LC Paper No. CB(2)2033/01- -- Issues raised at the meeting of the
02(01) Subcommittee on 21 May 2002
(issued on 22 May 2002)

II. General

- LC Paper No. CB(2)1711/01-02(02) -- A list of areas for study by the Subcommittee proposed by Hon Cyd HO Sau-lan
(issued on 23 April 2002)
- LC Paper No. CB(2)1728/01-02(01) -- List of Areas for Study
- LC Paper No. CB(2)1728/01-02(02) -- Meeting schedule of the Subcommittee
- LC Paper No. CB(2)1733/01-02(01) -- Press release dated 24 April 2002 on Economist Intelligence Unit (EIU) Report on Hong Kong
(issued on 26 April 2002)
- LC Paper No. CB(2)1733/01-02(02) -- Press releases dated 24 April 2002 on the Administration's responses to the EIU Report on Hong Kong
(issued on 26 April 2002)
- LC Paper No. CB(2)1733/01-02(03) -- Press release dated 24 April 2002 on the Chief Secretary for Administration's speech at the luncheon of the British Chamber of Commerce on the proposed accountability system for principal officials
(issued on 26 April 2002)

III. Written submissions

- LC Papers Nos. CB(2)1854, 1857, 1895, 1917, 1931, 1947, 1974, 1985 and 2013/01-02 -- Written submissions from organisations and individuals
(issued on 8, 9, 10, 13, 14, 15, 17 and 21 May 2002)