

立法會
Legislative Council

LC Paper No. CB(2)2857/01-02
(These minutes have been seen
by the Administration)

Ref : CB2/HS/1/01

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

Minutes of the seventh meeting
held on Tuesday, 14 May 2002 at 8:30 am
in the Chamber of the Legislative Council Building

Members Present : Hon IP Kwok-him, JP (Chairman)
Dr Hon YEUNG Sum (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Dr Hon David CHU Yu-lin, JP
Hon James TIEN Pei-chun, GBS, 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 Timothy FOK Tsun-ting, SBS, JP
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, 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

**Member
Attending** : Hon Fred LI Wah-ming, JP

**Members
Absent** : Hon SZETO Wah
Hon Abraham SHEK Lai-him, JP
Hon MA Fung-kwok

**Public Officers
Attending** : Mr Michael M Y SUEN
Secretary for Constitutional Affairs

Mr Clement C H MAK
Deputy Secretary for Constitutional Affairs

Mr Robin IP
Deputy Secretary for Constitutional Affairs

Mr Joseph WONG Wing-ping
Secretary for the Civil Service

Ms Anissa WONG
Deputy Secretary for the Civil Service

Mr Stephen LAM
Information Coordinator

Mr Bobby CHENG
Deputy Private Secretary to the Chief Executive

Mr I G M Wingfield
Law Officer (Civil Law) for Department of Justice

Mr R C Allcock
Solicitor General for Department of Justice

Mr P H H WONG
Senior Assistant Solicitor General for Department of Justice

Mrs Philomena LEUNG
Principal Assistant Secretary for Constitutional Affairs

Clerk in Attendance : Mrs Constance LI
Chief Assistant Secretary (2)5

Staff in Attendance : Mr Jimmy MA, JP
Legal Adviser

Mrs Justina LAM
Assistant Secretary General 2

Miss Monna LAI
Assistant Legal Adviser 7

Miss Betty MA
Senior Assistant Secretary (2)1

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I. Meeting with the Administration

The function, composition and operation of the Executive Council

Mr CHEUNG Man-kwong expressed concern that the independence and impartiality of the Executive Council (ExCo) in dealing with appeals and objections against decisions of bureaux or departments would be impaired, as ExCo would be composed of mainly principal officials and they would be the relevant authorities for making such decisions.

2. Secretary for Constitutional Affairs (SCA) said that he did not envisage that there would be any material difference in the functions of ExCo after the implementation of the accountability system, and a change of ExCo membership would not affect its independence and credibility in dealing with appeals and objections.

3. Solicitor General said that ExCo had always been part of the administrative machinery of Government, and ExCo did not purport to be an independent judicial or quasi-judicial body. He further said that ExCo only provided an additional channel for appeals against administrative decisions which did not involve determination of rights and obligations in a suit at law. Solicitor General further said that appeals made to ExCo were on the merits of a decision, and ExCo would exercise its discretion to make right a decision. He stressed that making appeals to ExCo was different from making a legal

challenge to the court. Moreover, a change in the membership of ExCo under the proposed accountability system would not make any change to the current criteria for deciding whether appeals should or should not lie to the Chief Executive (CE) in Council.

4. Responding to Mr Albert HO's question on the authority for changing the composition of ExCo, SCA pointed out that the Basic Law provided that the appointment of members of ExCo should be decided by CE.

Chief Executive's Office

5. Information Coordinator (IC) took members through the Administration's paper (LC Paper No. CB(2)1929/01-02(01)) on the changes to CE's Office and the role and functions of the Director of CE's Office after the introduction of the accountability system. IC stressed that the changes to the role and functions of the post of IC and the ExCo Secretariat were to complement the introduction of the accountability system, and there would not be any changes to the set-up of the ExCo Secretariat.

6. Mr Howard YOUNG and Ms Emily LAU asked about the rationale for transferring the ExCo Secretariat from the Chief Secretary for Administration (CS)'s Office to CE's Office. Ms LAU also asked whether it was because the working relationship between CS's Office and the ExCo Secretariat had not been very smooth in the past. Dr YEUNG Sum expressed concern about the future working relationship between the Director and CS, if the former was to work to CE.

7. Mr Kenneth TING sought clarification whether the agenda of ExCo would be decided by CE after the ExCo Secretariat was transferred to CE's Office. Mr CHEUNG Man-kwong and Ms Emily LAU asked whether the Director would take part in drawing up the agenda of ExCo and have the authority to determine the priority and timing for a proposal to be discussed by ExCo. Mr CHEUNG further asked whether the transfer of the ExCo Secretariat from CS's Office to CE's Office meant that CS would cease to be the coordinator for the ExCo agenda.

8. Mr CHEUNG Man-kwong also sought clarification on the meaning of "other matters within the Office as directed by CE". Mr CHEUNG and Mr Andrew WONG were concerned that the Director might become CE's "special envoy" and this would give him too much power or influence over the work of bureaux and departments and even non-government institutions.

9. IC responded that under the accountability system, the principal officials would be responsible for developing and formulating the policies under their respective portfolios. CS would assist CE in supervising the policy bureaux and play a key role in coordinating the formulation and implementation of

policies. IC further said that the agenda of ExCo was ultimately a matter for CE to decide and he would continue to rely on the assistance of the Secretaries of Departments. IC added that the agenda for ExCo meetings would be determined having regard to the priorities of the different policies and these might change over time. The present internal procedures were that CS's approval must be obtained before any urgent items could be added to the agenda of ExCo, and such arrangement would continue after the introduction of the accountability system. He said that the existing arrangements had proven effective. IC further said that the transfer of ExCo Secretariat from CS's Office to CE's Office was an administrative arrangement to enhance efficiency. He added that the Director was responsible to CE and must take instructions from CE. While the Director would not be a member of ExCo, he would attend ExCo meetings in the same way as IC currently did.

10. Dr Philip WONG enquired about the delineation of responsibilities between the Director and the Private Secretary to CE. IC said that the Private Secretary to CE and the Senior Special Assistant to CE would organise CE's appointments, visits and meetings with local and overseas dignitaries, while the Director would assist in the more important events involving senior officials from the Central People's Government (CPG). The Director would assist CE in overseeing the running of CE's Office.

11. Mr NG Leung-sing asked whether the Director could be transferred to another post in the civil service during his tenure. Mr NG also asked whether the Director would be a political appointee, and whether he would be subject to the same post-office restrictions as those applied to senior civil servants.

12. IC advised that the Director was a political appointee, and his term of appointment would not exceed that of CE who selected him for appointment. Secretary for the Civil Service said that if the incumbent was selected for appointment by CE from within the civil service, he would be appointed on non-civil service contract terms and he would not be transferred to other posts in the civil service. IC further said that although the Director was not a principal official, he would play an important role and work closely with principal officials. He was therefore expected to abide by the highest standards of public service and would be subject to the same regulations and "sanitisation" requirements after expiry of office in the same way as the principal officials.

13. Mr HUI Cheung-ching asked about the working relationship between CE's Office and the Central Policy Unit (CPU), and whether the Administration has considered transferring CPU to CE's Office. IC responded that the Administration did not have any plan to transfer CPU to CE's Office. He said that CPU would continue to advise on the formulation of long-term policies, after the introduction of the accountability system. The Director of CE's Office would focus on the short to medium term research work related to CE's

Office, and would maintain close liaison and contact with CPU, particularly in preparing CE's annual Policy Address.

14. Mr Albert HO commented that with the transfer of ExCo Secretariat to CE's Office, the executive powers would be concentrated in the hands of CE. Mr HO considered that as the declaration of investment and interests of ExCo members would be dealt with by the ExCo Secretariat, it would be more appropriate for the post of the Director to be filled by a civil servant who was politically neutral.

15. IC said that there was a well established system for making declaration of investment and interests by ExCo members, and the records were kept by the ExCo Secretariat for public inspection. In addition to the Clerk to ExCo who was currently a civil servant at D2 rank, most of the other staff working in CE's Office would continue to be civil servants. If the Clerk to ExCo was unable to discharge his duties due to leave or other reasons, arrangement would be made for another civil servant in the ExCo Secretariat to act in his absence.

16. Miss Margaret NG sought clarification whether the Director was politically neutral. IC said that the post holder would be appointed on non-civil service contract terms and would be one of the political appointees under the accountability system. Responding to Dr YEUNG Sum, SCA said that the Director was not within the meaning of "principal officials" as stipulated in the Basic Law.

17. Miss Margaret NG said that the current duties and functions of IC included explanation of public policies, and this was contrary to the confidential modus operandi of ExCo. She was concerned that the independence of ExCo would be undermined if the ExCo Secretariat was placed under the Director who was a political appointee under the accountability system. IC responded that it was stipulated in the Basic Law that ExCo was to assist CE in the making of policies and there was no question that ExCo operated as an independent body. IC further said that he did not envisage any conflict in roles for the Director to carry out the current duties of IC and oversee the running of the ExCo Secretariat. He explained that the Director would attend ExCo meetings in the same way as the IC was currently in attendance, and would provide input on major issues from the public relations and media perspective. Where appropriate, the Director would also need to explain policy decisions made by ExCo.

18. To facilitate members' better understanding of the role and functions of the post of the Director of CE's Office, Mr CHEUNG Man-kwong requested the Administration to provide a detailed job description for the post. Miss Margaret NG urged that the job description should be made available to members at the earliest opportunity. Mr CHEUNG considered that, given the importance of the post and the fact that the Director of CE's Office was a

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political appointee, the incumbent should be accountable to the public and there should be checks against possible abuse of office.

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19. IC advised that like other public servants, the Director would be dedicated to his duties and responsible to the Government of the HKSAR. The Director would act in accordance with the laws of Hong Kong and also be subject to the legislation applicable to public servants. IC further said that the Director would be answerable to CE. In addition, the Director would have to answer Members' questions as necessary and be accountable to the public on the work of CE's Office. As requested by members, IC agreed to provide the job description of the Director before the motion debate on 29 May 2002.

20. Mr Albert HO sought clarification whether the post of the Director of CE's Office was part of the accountability system and whether the incumbent would be held politically accountable for his work although he would not be a principal official. IC reiterated that the post holder was a political appointee, and he would have to abide by the Code for Principal Officials. Mr Albert HO was of the view that the Director should not be filled by a political appointee, as he was not a principal official.

21. Miss Margaret NG asked whether the Director would be responsible for the integrity checking of the prospective candidates for appointment as principal officials, and whether such work could be completed in time before they assumed office on 1 July 2002. IC said that integrity checking on prospective candidates would be conducted according to the established mechanism, before they were nominated for appointment as principal officials.

22. The Chairman asked whether the Director of CE's Office would in future be empowered to sign on behalf of CE under section 62 of Cap. 1, which was presently vested in the Clerk to ExCo. IC said that under the accountability system, the present arrangement for the Clerk to ExCo to sign on behalf of CE in accordance with section 62 of Cap. 1 would continue. There would be no change to the duties of the Clerk to ExCo.

23. Mr Andrew WONG was of the view that as the Director would oversee the running of the ExCo Secretariat, the post should be filled by a civil servant. He expressed concern about the absence of checks on the Director who would be a political appointee but would not have political accountability. Mr WONG further asked whether the proposed changes to the current duties and functions of the IC post would be submitted to Establishment Subcommittee (ESC) for approval. SCA responded that ESC's approval would be sought if there were changes in the directorate establishment.

24. Miss Margaret NG enquired about the features of the post of the Director as it would be a political appointment. IC reiterated that the Director would perform the current duties and functions of IC, and oversee the running

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of the ExCo Secretariat and CE's Office. IC explained that the work of the Director was political in nature. As the Director would be one of the political appointees to be selected by CE, his term of appointment would not exceed that of CE.

25. Mr Andrew WONG asked who would be the Controlling Officer of CE's Office under the proposed accountability system. SCA said that the existing Controlling Officer of CE's Office was the Private Secretary to CE, and he would continue to assume such role after the introduction of the accountability system.

Splitting, merging and retention of Bureaux

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26. Mr LEE Cheuk-yan requested the Administration to provide an organisation chart showing the policy bureaux and departments as well as the major advisory boards and committees under the respective Directors of Bureau. SCA agreed to do so.

27. Mr CHEUNG Man-kwong expressed concern about the proposed rationalization of the Education and Manpower portfolio and the Commerce and Industry portfolio. He said that the public would have an impression that the Government would place the interests of the business sector before those of the employees. He was of the view that the Manpower portfolio should not be placed under the Director of Bureau responsible for the Commerce and Industry portfolios, as this would create, rather than resolve, conflicts between the two sectors.

28. SCA said that in reorganising the relevant policy portfolios that accompanied the introduction of the accountability system, the Administration had carefully considered the various permutations. The proposed arrangements sought to place related portfolios under the same Director of Bureau.

29. SCA further said that placing the Manpower portfolio together with the Commerce & Industry portfolio under one Director of Bureau would enable him to have a better assessment of the employment opportunities when promoting commerce and industry development and attracting overseas investments. He pointed out that the Commerce & Industry and Manpower portfolios were related in the sense that manpower planning and development should match the expected development and changes in the various sectors. SCA did not agree that the interests of the labour sector would be sacrificed under the proposed arrangement. He said that the proposal was in line with the world trend that unemployment problems were tackled by way of tripartite cooperation among employees, employers and the government. As regards Mr CHEUNG Man-kwong's request for information on overseas practice in this connection, SCA agreed to provide a response after the meeting.

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30. Mr LEE Cheuk-yan and Ms LI Fung-ying were not convinced that the Secretary for Commerce, Industry and Manpower could balance the conflicting interests of employers and employees, as Government had been placing greater importance on the business sector. Mr LEE pointed out that the Manpower portfolio covered only not the problem of unemployment, but also issues relating to safeguarding employees' rights and interests.

31. SCA responded that he could not agree with the assumption that the Secretary for Commerce, Industry and Manpower would place the interests of the employers before those of employees.

32. Dr Philip WONG asked whether it was necessary to re-arrange the resources already allocated to the Bureaux under the respective Heads and Sub-heads of the approved Estimates, as a result of the proposed splitting and merging of the Bureaux. SCA responded that the Administration did not envisage much problem in this respect, as the changes involved mainly the merging of some policy portfolios where only minor technical adjustments would be required. The Administration was confident that the technical issues could be sorted out before the accountability system was put into operation.

33. Mr Andrew WONG asked whether the re-structuring proposals, for example, the deployment of D8 posts for the Permanent Secretaries, would be submitted to ESC and Finance Committee (FC) for approval.

34. SCA explained that there would be 11 Directors of Bureau under the accountability system. Ten existing policy bureaux would be merged into five bureaux to be headed by five Directors of Bureau. The portfolios relating to two other bureaux would be reorganised and led by two Directors of Bureau. The other four existing bureaux would remain unchanged. He further said that the D8 civil service posts in the policy bureaux would be retained and re-titled as Permanent Secretaries, and the posts would be filled by experienced civil servants. SCA pointed out that the staffing and structure of the policy bureaux, including the number and ranking of D8 civil service posts, would be reviewed after the new principal officials had assumed office.

35. Mr James TIEN said that Members belonging to the Liberal Party supported the proposed accountability system, but considered that eight Directors of Bureau would be sufficient since Hong Kong did not need to deal with foreign affairs and defence matters. He considered that the previous arrangement of placing manpower training under education was not desirable as manpower training needed to keep pace with the economic development of Hong Kong. Mr TIEN said that the proposed merging of the Commerce and Industry portfolio with the Labour portfolio would balance the interests of employers and employees and assist in creating employment opportunities. Nevertheless, Mr TIEN considered that it might not be appropriate to place the

Health and Welfare portfolio and the Environment and Food portfolio under one Director of Bureau. He suggested that consideration should be given to placing the Environment portfolio under the Director of Bureau responsible for Transport and Works.

36. SCA explained that in considering amalgamation of the various policy portfolios, the Government had tried to keep the impact on the operation of bureaux and executive departments to the minimum. The proposed arrangements sought to merge related portfolios together to facilitate more efficient and effective operation of the bureaux. He agreed to relay Mr TIEN's comments on the splitting and merging of bureaux to the Administration for consideration.

37. Mr Howard YOUNG said that he supported the accountability system for principal officials in order to streamline the Government structure. He further said that he supported the proposed amalgamation of the Economic Services portfolio with the Information Technology and Broadcasting portfolio, as well as the merging of the Financial Services and the Treasury portfolios. However, he queried why the Constitutional Affairs and Home Affairs portfolios could not be combined.

38. SCA responded that given the importance of constitutional development, it was necessary to have a dedicated Director of Bureau to look after this portfolio. He added that the Secretary for Home Affairs would play a vital role to gauge public views on the various policies to ensure that the Administration was fully aware of the needs and expectations of the community.

39. Ms LI Fung-ying expressed concern about the increase in the directorate posts, as the existing D8 civil service posts would be retained under the accountability system. She was concerned that the additional expenditure required for the principal official posts would have to be met by savings achieved from deletion of civil service posts in the lower ranks.

40. SCA said that the Administration would provide more information on the arrangement when the Subcommittee discussed the relationship between bureaux and departments at a later meeting. SCA further said that FC approval would be sought for a net additional provision of \$43 million to fund the posts of the three Secretaries of Department and 11 Directors of Bureau, which would be offset by the deletion of the posts of CS, Financial Secretary (FS) and Secretary for Justice. He added that it was the Administration's intention to identify sufficient savings to make the introduction of the accountability system a cost neutral exercise.

41. Miss CHOY So-yuk held a strong view that the Environment portfolio should not be placed under the same Director of Bureau responsible for Health

and Welfare. She said that the Environment portfolio should be assigned to a dedicated Director of Bureau. If this was not possible, she suggested that the Environment portfolio should be placed under the Director of Bureau responsible for the Planning and Lands portfolio instead.

42. Ms Cyd HO did not agree that the Environment portfolio should be merged with any other portfolio. She considered that there should be a dedicated Director of Bureau to look after the Environment portfolio as the portfolio included not only pollution but also conservation matters. Ms HO expressed concern that the proposed merging of the Health and Welfare portfolio with the Environment and Food portfolio would give rise to a super-bureau which oversaw almost one-third of the public expenditure. She wondered whether the Director of Bureau concerned would be able to bid for sufficient resources to carry out all the services under his/her purview.

43. Dr YEUNG Sum said that Members belonging to the Democratic Party were strongly opposed to the proposal of placing the Manpower portfolio under the Commerce and Industry portfolio, as the employees' interests might be sacrificed in favour of the business sector. Dr YEUNG further said the proposed amalgamation of the Environment portfolio with the Health, Welfare and Food Safety portfolio was not desirable. He was concerned that the Director of Bureau concerned would be over-burdened by the many policy initiatives under the health, welfare and food safety portfolios, and he/she would not be able to give sufficient attention to environmental protection matters. He suggested that the Environment portfolio should be assigned to a dedicated Director of Bureau, in order to restore confidence in the environment of Hong Kong and attract overseas investments.

44. Mr LEE Cheuk-yan expressed concern about the uneven distribution of policy portfolios among the principal officials. He commented that the future Health, Welfare, Environment and Food would become a "super-bureau", and he doubted whether the scope of responsibility was manageable for one principal official. On the other hand, he considered the schedules for the proposed Secretary for Constitutional Affairs and the Financial Secretary would be comparatively light.

45. SCA responded that the day-to-day operation of the bureaux and departments would remain unchanged after the reorganisation. However, SCA agreed to consider members' views on the proposed reorganisation of various policy portfolios and revert to the Subcommittee later.

Principal officials under the proposed accountability system

46. Mr Albert HO enquired about the procedures for the appointment of the principal officials and whether the CPG could disapprove such appointments. He further asked whether the principal officials under the proposed

accountability system would be held accountable to the CPG in addition to CE, given that CE was required under Article 48(5) of the Basic Law to nominate and report to CPG for appointment of the principal officials. SCA explained that the introduction of the accountability system was a decision of CE in Council. CE had informed CPG of the proposed introduction of the accountability system, and CPG supported this. CE would nominate and report to CPG for appointment of principal officials in accordance with the Basic Law.

47. Mr HO also expressed concern about the ranking of civil service posts, such as the Director of Immigration and Director of Audit, who were principal officials under the Basic Law but they would not be political appointees. He pointed out that the ranking of some of these principal officials was lower than some non-principal officials. SCA explained that the approved ranking of the principal official posts referred to by Mr HO would not be changed because of the introduction of the accountability system.

Review of advisory and statutory bodies and other public bodies

48. Miss Margaret NG said that with the transfer of statutory functions to the principal officials, they would be given powers to make appointments to the various advisory/statutory bodies and committees within their areas of responsibilities. She was concerned that principal officials might tend to appoint only those people who were their "allies", and this would affect public confidence in the independence of these advisory/statutory bodies. Miss NG pointed out that some of these advisory/statutory bodies made important decisions and it was necessary to maintain its independence and professionalism. She asked whether the Administration had carefully examined the proposed transfer of statutory powers in each of these cases. She considered that in some cases, it might be more appropriate to transfer the powers to the Permanent Secretaries, to avoid centralising too much power in the Directors of Bureau.

49. SCA said that he was confident that the principal officials would exercise their powers with care, and only suitable persons would be appointed to these advisory bodies and committees. SCA further said that while the Directors of Bureau would be held politically accountable for their decisions, it did not mean that they would act in favour of any political group or party.

50. Mr Andrew WONG pointed out that there was public concern that the Directors of Bureau would only appoint persons of their own "coalition" or political parties or groupings. Mr WONG considered that to ensure the independence and professionalism of these advisory/statutory bodies, the Administration should spell out clearly that members of these bodies would be drawn from people of high public standing from different sectors of the community who were familiar with the work of these committees. The

Administration noted the suggestion.

II. Any other business

51. The Chairman referred members to a letter dated 11 May 2002 from the Chairman of Hong Kong Southern District Alliance expressing dissatisfaction with Ms Emily LAU's remarks made at the Subcommittee's meeting on 11 May 2002. The Chairman said that he would reply explaining that the remarks made by individual members at the meeting did not represent the views of the Subcommittee, and the Subcommittee would listen to the views expressed by all deputations.

52. The next meeting of the Subcommittee would be held on Friday, 17 May 2002.

53. There being no other business, the meeting ended at 12:35 pm.

Council Business Division 2
Legislative Council Secretariat
2 October 2002