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

Minutes of the eighth meeting
held on Friday, 17 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
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 Margaret NG
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon CHAN Kam-lam
Dr Hon Philip WONG Yu-hong
Hon Howard YOUNG, JP
Hon Ambrose LAU Hon-chuen, 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

Members Absent : Dr Hon David CHU Yu-lin, JP
Hon Eric LI Ka-cheung, JP
Hon NG Leung-sing, JP
Hon Andrew WONG Wang-fat, JP
Hon Jasper TSANG Yok-sing, JP

Hon YEUNG Yiu-chung, BBS
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon SZETO Wah
Hon Timothy FOK Tsun-ting, SBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Fung-kwok

Public Officers : Mr Clement C H MAK
Attending Deputy Secretary for Constitutional Affairs (Special Duty)

Mr Robin IP
Deputy Secretary for Constitutional Affairs (1)

Ms Anissa WONG
Deputy Secretary for the Civil Service

Mr R C Allcock
Solicitor General

Mr P H H WONG
Senior Assistant Solicitor General

Mrs Philomena LEUNG
Principal Assistant Secretary for Constitutional Affairs

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

Staff in : Mr Jimmy MA, JP
Attendance Legal Adviser

Mrs Justina LAM
Assistant Secretary General 2

Miss Betty MA
Senior Assistant Secretary (2)1

Mr CHAU Pak-kwan
Research Officer 5

I. Matters arising from discussion on items I - III of the areas for study

Splitting, merging and retention of Bureaux

Mr LEE Cheuk-yan expressed concern about the uneven distribution of responsibilities for the Directors of Bureau under the accountability system. He pointed out that the schedule for the Financial Secretary would become lighter, as there would be one Director of Bureau taking care of the financial services and management of public finance. He also queried why there should be a dedicated Director of Bureau responsible for the Constitutional Affairs portfolio.

2. Mr Howard YOUNG and Mr James TIEN suggested that to further streamline the existing structure of bureaux, one Director of Bureau could take care of both the Constitutional Affairs and Home Affairs portfolios.

3. Deputy Secretary for Constitutional Affairs (Special Duty) (DS(CA)SD) responded that in amalgamating the various policy portfolios, the Administration had tried to merge those portfolios which were closely related or where the merging could bring better efficiency. DS(CA)SD further said that the Administration was fully aware of members' views on the proposed redistribution and rationalisation of policy portfolios. The Administration would consider members' views and revert to the Subcommittee later.

Relationship between bureaux and departments

4. Mr CHEUNG Man-kwong said that there was overlap in the functions of some Directors of Bureau and their Permanent Secretaries which would be ranked at D8 level. He asked whether the Administration would spell out clearly the criteria or standards for reviewing the relationship between bureaux and departments.

5. DS(CA)SD said that the overall direction of the review on the role of bureaux vis-à-vis departments would be to streamline the structure and working relationship between the two, to merge and integrate similar functions being performed by both, and to make better use of resources and enhance the efficient and effective implementation of policy and delivery of services to the public. The review would be completed in 12 months. DS(CA)SD further said that it was expected that sufficient savings would be identified after the review to make the introduction of accountability system a cost neutral exercise.

6. Mr CHEUNG Man-kwong said that the Administration should give due consideration to the impact on civil servants especially the middle and lower ranks, particularly if this would lead to reduction of establishment and staff redundancy. He further said that sufficient lead time should be allowed for

implementation of any re-structuring or reorganisation proposals, in order to reduce any adverse impact on staff.

7. DS(CA)SD said that the Administration had not set any target for the review in this respect and it would be a matter for the new principal officials to consider after they had assumed office. He assured members that the respective principal officials and the Secretary for the Civil Service would take into consideration the interests of civil servants.

8. Deputy Secretary for the Civil Service (DS(CS)) said that the major consideration of the review was to enhance the efficiency and effectiveness in the implementation of policy. She further said that staff consultation would be made on proposals which carried staffing implications.

9. Mr Howard YOUNG expressed concern that some Directors of Bureau would have a number of departments under them. He said that the Administration should pay due attention to rationalising the working relationship between the bureaux and their departments, especially if the Directors of Bureau were given a wide range of duties which involved the Directors performing conflicting roles.

10. Ms Cyd HO expressed concern that certain statutory powers currently exercisable by some department heads might be transferred to the relevant Directors of Bureau. She cited examples such as the discretionary power of Director of Immigration to allow a person to stay in Hong Kong, and the power of Director of Environmental Protection to reject an Environmental Impact Assessment report.

11. Ms Cyd HO also expressed concern that the merging of bureaux and departments would lead to staff redundancy. She asked whether there were any objective criteria for rationalising the working relationship between bureaux and departments.

12. Mr LEE Cheuk-yan asked whether the objective of the review was to centralize the powers and resources of departments in the Directors of Bureau.

13. DS(CA)SD responded that the review did not necessarily result in a merger of the bureaux and departments concerned. He stressed that the overall direction was to streamline the structure and working relationship between the two, in order to reduce overlap of functions and better utilise existing resources to achieve greater efficiency. The principal officials were expected to complete the review within 12 months after they had assumed office. DS(CA)SD said that the existing statutory functions currently exercisable by the Heads of Departments should not be affected by the review. He added that any proposed transfer of statutory functions from Heads of Departments to principal officials would be subject to the approval of the

Legislative Council (LegCo).

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14. Mr Albert HO expressed concern that the Permanent Secretaries would be in a difficult position to instruct the Heads of Departments as the statutory powers of bureau secretaries would be transferred to principal officials, while the Heads of Departments retained their discretionary powers for the administration of policies. DS(CA)SD agreed to provide further information at the next meeting on the exercise of statutory powers by principal officials, Permanent Secretaries and department heads.

Review of advisory and statutory bodies

15. Mr CHEUNG Man-kwong asked about the criteria for reviewing the roles and functions of the various advisory and statutory bodies.

16. Mr LEE Cheuk-yan asked whether the review was to further centralise the powers in the principal officials, so that they would become the chairmen of the advisory and statutory bodies under their respective portfolios.

17. DS(CA)SD said that the aim of the review was to ensure the effectiveness of the advisory bodies by drawing on the best talents and advice from a wide spectrum of the community. The statutory bodies would not derogate from the role, authority, responsibility and accountability of the principal officials. DS(CA)SD further said that it would be for the principal officials to decide how to carry out the review having regard to the purposes and functions of different advisory/statutory bodies and committees. DS(CA)SD agreed that the Administration would revert to LegCo on the review findings in due course.

Issues relating to appointment, employment and removal of principal officials

18. Dr YEUNG Sum asked whether there would be any difference in retirement benefits for civil servants appointed as principal officials and those who took up other public office on retirement. He also enquired about the differences in arrangements for those who had reached the normal retirement age and those who had not.

19. DS(CS) explained that for civil servants who were appointed as principal officials and had reached the earliest permissible retirement age (45 under Old Pension Scheme (OPS) and 55 under New Pension Scheme (NPS)), they would be given approval to retire immediately. They would be granted both the commuted pension gratuity and monthly pension immediately on retirement, in accordance with the respective pensions legislation. For civil servants who were appointed as principal officials but had not reached the earliest permissible retirement age, they would be given approval to resign if they were on the NPS. In these cases, they would be granted the commuted

pension gratuity immediately on resignation if he had completed more than 10 years of service. The monthly pension would be suspended until the principal official had reached the earliest permissible retirement age, or when he stepped down from the position of principal official and was no longer in the public service, whichever was the earlier.

20. On the arrangements for civil servants who were re-employed in other public office after retirement, DS(CS) said that they would be granted the commuted pension gratuity upon retirement, but their monthly pension would be suspended during the period of appointment. DS(CS) further said that the Administration considered that the retirement arrangements for civil servants appointed as principal officials were appropriate. This was to enable the Chief Executive (CE) to choose from within the civil service the most suitable persons as the principal officials. Moreover, the civil servants leaving the civil service to take up the principal official appointments would only get what they had earned during the period they served in the civil service, and they would not receive any enhanced pension. DS(CS) added that it was not appropriate to withhold their monthly pension because the nature of appointment was different from a normal public service appointment, i.e. there was no security of tenure for principal officials.

21. Responding to Dr YEUNG Sum's further question, DS(CS) said that civil servants who were appointed as principal officials had not received preferential treatment in terms of the retirement arrangements. She explained that the remuneration for the principal officials did not contain any gratuity or retirement benefit which was normally provided for in other public service posts. She also pointed out that the existing arrangement for suspension of monthly pensions only applied to re-employment in certain public-funded organisations.

22. Mr Kenneth TING asked about the pay adjustment mechanism for principal officials. DS(CA)SD responded that the employment package of principal officials under the accountability system would not be linked to civil service salaries, as they were not civil servants. He added that no pay adjustment mechanism was formulated for principal officials. However, if their remuneration was significantly out of line with the market, CE could request for a review of their remuneration.

23. Mr HUI Cheung-ching and Mr Kenneth TING enquired about the terms and conditions of appointment for the administrative support staff of the principal officials. They asked whether additional resources would be required. Ms LI Fung-ying enquired whether these personal support staff would have to leave if the principal officials concerned left their office before completion of the employment contract.

24. DS(CA)SD said that the Administration envisaged that the administrative support staff would most likely be redeployed from amongst existing staff, and no additional resources would be required.

25. DS(CS) added that if the administrative support staff for individual principal officials were recruited from outside the civil service, the appointments would be made on contract terms which would be in line with those of the civil servants. Their contracts would include a clause that their tenure would be the same as that of the principal officials concerned, which meant they would depart as and when the principal officials concerned left the Government. The Government would act in accordance with the relevant provisions in the Employment Ordinance. During their appointment in the Government, they would be subject to the civil service regulations and the requirements on conduct and avoidance of conflict of interest.

26. Ms LI Fung-ying asked whether appointing the administrative support staff, e.g. the press secretary for individual principals officials, from outside the civil service would lead to deletion of civil service posts and staff redundancy in the corresponding ranks, e.g. Information Officers. She also expressed concern about the working relationship between these personal staff and the civil servants. DS(CS) said that she did not envisage any staff redundancy in this respect as these posts would likely be filled by staff deployment within the civil service. Nevertheless, the Administration would carefully assess the impact on the civil servants.

27. Mr Howard YOUNG asked whether there would be other support staff, apart from the administrative support staff, to assist the principal officials in the formulation of policies. He suggested that the advisory boards and committee might play the role of "think tanks" and provide support to the principal officials in the formulation of policies.

28. DS(CA)SD replied that the Permanent Secretaries and the civil servants in the respective bureaux and departments would provide assistance to the principal officials in formulating and implementing policies. As regards the role of advisory boards and committees, DS(CA)SD said that it would be reviewed by the respective principal officials after they had assumed office. He believed that the impending review would likely be along the line as suggested by Mr YOUNG.

29. Dr Philip WONG and Miss Margaret NG asked about the timetable as well as the criteria and standards for integrity checking. They also asked about the departments responsible for the checking. Dr WONG was concerned that the Administration might not be able to complete the necessary checking given the short time available, if the principal officials were to assume office on 1 July 2002. Mr LEE Cheuk-yan expressed a similar concern and asked about the average time taken for completion of integrity

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checking.

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30. DS(CA)SD said that integrity checking and medical examination on prospective candidates for appointment as principal officials would follow the existing procedures applicable to senior civil service posts. The Office of the Chief Secretary for Administration (CS) would arrange for the integrity checking and medical examination of the principal officials, while the Private Secretary to CE would be responsible for arranging the integrity checking for CS. DS(CA)SD added that the integrity checking would be carried out by the Police. He agreed to provide further details on the criteria and standards for integrity checking after the meeting.

31. Miss Margaret NG expressed concern that the remuneration for the Chief Justice (CJ) would be lower than that of CS and the principal officials after the introduction of the accountability system. She asked whether any overseas country had a system where the Head of Judiciary had a lower salary than that of the principal officials. She stressed that it was unacceptable if the remuneration for CJ would be lower than CS under the accountability system, having regard to the implications on the constitutional role of members of the Judiciary. In this connection, Miss NG asked the Administration to explain the basis and principles for determining the remuneration for members of the Judiciary, and the relativity of the remuneration for the principal officials and CJ.

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32. DS(CA)SD explained that the remuneration for CE and members of the Judiciary would not be affected as a result of the implementation of the accountability system. DS(CS) said that the remuneration package of judicial grades was structured in similar form as in the civil service. On the other hand, the remuneration package for principal officials under the accountability system was not linked to the civil service salaries. The remuneration of principal officials was so structured that apart from the cash remuneration, there would be no retirement benefits and no other allowances such as housing allowance. It was therefore not appropriate to compare the employment package for the principal officials with that for CJ only in terms of cash remuneration. Nevertheless, DS(CS) agreed to provide more information in this respect after the meeting.

33. Dr YEUNG Sum remarked that in devising an employment package for principal officials that was not linked to the civil service salaries, the Administration would have regard to the implications on the relativity and the overall civil service pay structure.

34. Ms Cyd HO asked whether there was any time limit for CE to fill a principal official vacancy since either CE or a principal official could give one month's notice, or one month's salary in lieu of notice, to terminate the contract of a principal official. Mr Albert HO also asked whether there was any acting

arrangement in the event that the office of CE became vacant.

35. DS(CA)SD said that more information on the appointment, employment and removal of principal officials would be provided when item X of the Areas for Study was discussed at a later meeting. He further said that there would be practical difficulties to specify a time limit for filling a principal official vacancy. He believed that CE would select an appropriate person to fill the vacancy as soon as practicable. DS(CA)SD said that Article 53 of the Basic Law (BL) had stipulated how the duties of CE would be assumed, if CE could not discharge his duties for a short period or the office of CE became vacant. He added that if the office of CE became vacant, the principal officials would remain in office until a new CE assumed office.

36. Mr Albert HO said that the leave relief arrangement for principal officials was an important matter, and the Administration should inform members of the specific arrangement. DS(CA)SD said that the Administration had explained the arrangements in the previous meetings, and the matter could be further discussed under item X of the Areas of Study.

Constitutional conventions

37. Mr CHEUNG Man-kwong said that in accordance with BL 64, the Government of the Hong Kong Special Administrative Region should, among other things, present regular policy addresses to the Council and answer questions raised by Members of the Council. Mr CHEUNG said that the Administration should consider developing constitutional conventions relating to the appointment and removal of principal officials for enhancing accountability, as follows -

- (a) before CE made nomination and report to the Central People's Government (CPG) for appointment of the principal officials in accordance with BL 48(5), the principal officials should attend LegCo meetings to brief Members on their policy objectives and goals, and to answer questions from Members;
- (b) the principal official should resign when a motion of no-confidence was passed by LegCo on him; and
- (c) before CE made recommendation to CPG for removal of a principal official in accordance with BL 48(5), CE should attend LegCo meetings to explain to Members the reasons for making the recommendation.

38. DS(CA)SD responded that BL 48(5) provided that CE should exercise his powers and functions to make nomination and report to CPG for appointment and removal of principal officials. He said that the Administration would make arrangements for the principal officials to attend

LegCo meetings and to answer questions from Members as soon as possible after they had assumed office. DS(CA)SD further said that if LegCo passed a motion of no-confidence on a principal official, the incumbent would no doubt take serious consideration of the matter. DS(CA)SD was of the view that the principal official would consider ways to rectify mistakes made as soon as possible, and resignation was not the answer to the problem.

39. Mr CHEUNG Man-kwong remained of the view that the Administration should provide a mechanism whereby LegCo and the public would be involved or at least be informed before a decision was made on the appointment or removal of principal officials. He stressed that principal officials should be accountable to the public and LegCo.

Conflict of interest

40. Mr Albert HO sought clarification on the following in relation to involvement in political activities by principal officials -

- (a) whether a principal official could be a member of a political party or organisation;
- (b) whether CE's approval was required for participation of activities organised by political parties and 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 could still be directors of companies during his term of office.

41. DS(CA)SD said that principal officials could be members of political parties and organisations. He further said that the matter would be discussed in greater detail under item XI of the Areas for Study. Mr Albert HO said that for the avoidance of doubt, the Administration should include an express provision in this respect in the Code for principal officials. DS(CA)SD said that the Administration would revise the draft Code, if necessary, after taking into account members' views.

II. Date of next meeting

42. The next meeting of the Subcommittee would be held on Tuesday, 21 May 2002 at 8:30 am.

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43. There being no other business, the meeting ended at 10:40 am.

Council Business Division 2
Legislative Council Secretariat
2 October 2002