

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

**Minutes of the eleventh meeting
held on Friday, 24 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
Dr Hon David CHU Yu-lin, JP
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Cheuk-yan
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 Ambrose LAU Hon-chuen, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon SZETO Wah
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

Members : Hon Cyd HO Sau-lan
Absent Hon Eric LI Ka-cheung, JP
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung, BBS
Hon Timothy FOK Tsun-ting, SBS, JP

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

Mr Clement C H MAK
Deputy Secretary for Constitutional Affairs (Special Duties)

Mr Robin IP
Deputy Secretary for Constitutional Affairs 1

Ms Anissa WONG
Deputy Secretary for the Civil Service

Mr I G M WINGFIELD
Law Officer (Civil Law)

Mr R C ALLOCK
Solicitor General

Mr P H H WONG
Senior Assistant Solicitor General

Mr Allen LAI
Senior Government Counsel

Mr W L CHEUNG
Senior Government Counsel

Ms Vicki LEE
Senior Government Counsel

Mrs Philomena LEUNG
Principal Assistant Secretary for Constitutional Affairs

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in Attendance : Mr Jimmy MA, JP
Legal Adviser

Mrs Justina LAM
Assistant Secretary General 2

Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Miss Monna LAI
Assistant Legal Adviser 7

Miss Mary SO
Senior Assistant Secretary (2) 8

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I. Matters arising from previous meetings

Administration's response to issues raised by members at previous meetings

In reply to Mr CHEUNG Man-kwong and Miss Margaret NG, Secretary for Constitutional Affairs (SCA) said that the Administration's outstanding response to issues raised by members at previous meetings would be provided to the Subcommittee before 28 May 2002.

Timetable for implementing the accountability system

2. Mr CHEUNG Man-kwong enquired about the Administration's timetable for implementing the accountability system. SCA responded that in order to implement the new system with effect from 1 July 2002, proposals relating to the 14 principal official positions under the accountability system would be put to the Establishment Subcommittee (ESC) on 6 June 2002 for its endorsement and recommendation to the Finance Committee (FC). The financial proposals which entailed an additional commitment of \$42 million to meet the costs of the 14 principal official positions, would be put to FC on 14 June 2002. Thereafter, a resolution under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) (the Resolution) to effect the transfer of relevant statutory functions to the principal officials would be moved at the Council meeting on 19 June 2002.

3. Mr CHEUNG Man-kwong said that the Administration's proposed order for implementing the accountability system was unacceptable, as Members' power to amend the Resolution would be greatly restricted if the staffing/financial proposals had been approved by ESC and FC beforehand. This was inconsistent with Article 73(1) of the Basic Law (BL) which vested the Legislative Council (LegCo) with the power to enact, amend or repeal laws in accordance with the provisions of BL and legal procedures. Moreover, under section 8 of the Public Finance Ordinance (Cap. 2), ESC and FC were prohibited from amending the proposals put forward by the Administration and could only discuss and vote on any proposal as it stood. To enable Members to make a considered decision on the Resolution and in order to provide a legal backing for the accountability system, Mr CHEUNG was of the view that the Resolution should be dealt with by the Council first, before submission of the staffing and financial proposals to ESC and FC. This would also avoid the undesirable situation of the Administration having to submit fresh proposals to ESC and FC, in the event of non-passage of the Resolution by the Council, or passage of any amendments to the Resolution resulting in discrepancy between the Resolution and posts and funds approved. Dr YEUNG Sum, Ms Emily LAU and Mr LEE Cheuk-yan concurred with Mr CHEUNG.

4. Dr YEUNG Sum expressed strong dissatisfaction over the Administration's proposed arrangement, and asked the Legal Adviser whether the Administration's proposed order for seeking the Council's approval for the staffing, financial and legislative proposals was unusual and a departure from normal practice.

5. The Legal Adviser responded that there were occasions in the past where financial proposals for new posts were sought ahead of the relevant resolutions to effect transfer of statutory functions to the post-holders. However, the Resolution relating to the proposed accountability system was much wider in scope than that of the resolutions previously dealt with by the Council. The Legal Adviser pointed out that the Resolution should be able to effect the transfer of statutory functions on condition that the transferor and transferee of the functions would both be in existence for the transfer. As the Administration had proposed that the Resolution should take effect on 1 July 2002, it therefore should not give rise to legal difficulties whether approval for the financial package, or the Resolution, should be sought first.

6. The Legal Adviser further said that the merits, or otherwise, of the proposed accountability system were matters of policy considerations for Members, and that the proposed accountability system did not necessarily have a causal relationship to the Resolution. He pointed out that the transfer of statutory functions under the Resolution would not cover all the principal officials under the accountability system, as the Resolution was only consequential to the reorganisation of a number of policy bureaux. However, the Resolution did not cover all the principal officials under the accountability

system, i.e. the three Secretaries of Department and 11 Directors of Bureau. The Resolution did not relate to the Chief Secretary for Administration (CS), Financial Secretary (FS), Secretary for Justice (SJ), Secretary for the Civil Service (SCS), Secretary for Constitutional Affairs (SCA), Secretary for Home Affairs (SHA) and Secretary for Security (S for S).

7. The Legal Adviser had also pointed out that under section 8 of the Public Finance Ordinance, proposals to change the approved Estimates of Expenditure must come from FS. As Members could not amend FS's proposals, ESC and FC could only discuss and vote on any proposal as it stood. If ESC or FC did not approve the proposal, it would then be for FS to consider whether a fresh proposal should be submitted.

8. Mr Andrew WONG agreed with the Legal Adviser that both options of seeking approval for the financial package before seeking approval for the Resolution, and vice versa, were feasible. Nevertheless, Mr WONG considered it more reasonable and logical for the Resolution to be dealt with by the Council first, before submission of the staffing and financial proposals to ESC and FC, given that the proposed accountability system was not merely a reorganisation of the government structure but introduced a new political layer to the government structure. Moreover, the Council was higher in status to its committees.

9. Miss Margaret NG disagreed with the Legal Adviser that there were precedents for the Administration's proposed order of seeking approval for the staffing/financial proposals and the Resolution, and that the only difference from past cases was in the scope of the Resolution. Miss NG was of the view that moving of a resolution under section 54A of Cap. 1 to transfer statutory functions from the existing policy secretaries to the principal officials under the accountability system was unprecedented and a departure from past practice, given that the latter was a new category of public officers, i.e. political appointees who were not civil servants. Miss NG considered that the use of the Resolution would be appropriate if the statutory functions were transferred to the Permanent Secretaries who were civil servants.

10. SCA said that it was necessary to first obtain funding for the positions of the 14 principal officials, before the Council's approval was sought for the transfer of statutory functions from existing policy secretaries to the relevant principal officials by way of the Resolution under section 54A of Cap.1. Solicitor General (SG) supplemented that to do otherwise would not be logical, as this would mean transferring statutory functions to non-existent positions.

11. Ms Emily LAU asked what the Administration would do if the Resolution was not passed by the Council or that the Resolution amended by Members was passed by the Council, given that the staffing and financial proposals had been approved by ESC/FC. SCA said that the Administration

would then need to submit fresh proposals for the consideration of ESC and FC.

12. Mr CHAN Kam-lam and Mr TSANG Yok-sing considered the Administration's proposed arrangement appropriate, as they could not see why the Resolution would not be passed by the Council if the related financial proposals were approved by FC. If FC did not support a proposal, FC had the power to vote against it. They further said that the concern of some members about the Administration's proposed arrangement was equally valid if the order was reversed. They added that although ESC and FC could not amend proposals put forward by the Administration, Members had always relied on their veto power to bring the Administration to accede to their requests. They failed to see why the same approach could not be adopted in this particular case. The Chairman also pointed out that the staffing and financial proposals, as well as the Resolution, were part and parcel of the legislative steps for implementing the accountability system. It would only be logical for Members for vote on these proposals in a consistent manner.

13. Mr LEE Cheuk-yan and Ms Emily LAU asked whether amendments to the Resolution proposed by Members for the purpose of increasing the number of principal official positions would have a charging effect within the meaning of Rule 31(1) of the Rules of Procedure of LegCo.

14. SCA responded that as a general rule, the example cited by members in paragraph 12 above would have a charging effect. However, the Administration would need to have sight of the actual text of the amendment to the Resolution before it could say with certainty whether such an amendment had a charging effect.

15. Mr LEE Cheuk-yan said that the question of charging effect would not arise, if the Resolution was dealt with ahead of the staffing and financial proposals. Mr TSANG Yok-sing disagreed pointing out that any amendments to the effect of increasing the number of principal official positions from that proposed by the Administration could be considered to have a charging effect.

16. In reply to Ms Emily LAU, the Legal Adviser advised that as a broad principle, if public expenditure had to be incurred for implementing a proposed motion, that motion was likely to be considered as having a charging effect within the terms of Rule 31(1) of the Rules of Procedure. However, he stressed that according to the Rules of Procedure, it was for the President to form her opinion after having considered the facts of each case and taking into account principles established through previous rulings.

17. Mr James TIEN said that he did not have any strong views about the Administration's proposed arrangement, as there was no great difference between the options of seeking approval for the financial package before

seeking approval for the Resolution, and vice versa.

18. SCA said that the Administration was grateful for members' views, but it remained the Administration's position that the staffing/financial and legislative proposals to ESC, FC and the Council on 6, 14 and 19 June 2002 respectively.

Lawful authority for introducing the accountability system

19. Mr Albert HO said that all the arguments and confusion about whether approval for the staffing/financial proposals, or the Resolution, should be sought first could have been avoided if the Administration had not adopted such a piece-meal approach and had agreed to introduce a comprehensive bill to provide legal backing for the accountability system. Mr HO further said that the Administration's refusal to formally promulgate the decision of CE in Council on the accountability system was tantamount to holding the legislative process in contempt.

20. SG responded that the fact that there was no formal promulgation of the decision of CE in Council on the accountability system should not undermine the constitutional propriety of the process to implement the new system. This was evidenced by the fact that the Administration would seek the endorsement of ESC and the approval of FC on the staffing and financial proposals, and would introduce legislative amendments to effect the transfer of statutory functions to the relevant principal officials.

Integrity checking

21. Mr CHEUNG Man-kwong asked the following questions -

- (a) Whether there was sufficient time to conduct a thorough integrity checking on prospective principal officials if their appointments were to take effect from 1 July 2002;
- (b) Whether the integrity checking system applicable to candidates for appointment to the principal official posts under the accountability system was different from that for candidates for the very senior civil service posts; and
- (c) Whether the integrity checking on the persons to be appointed as principal officials had started.

22. Deputy Secretary for the Civil Service (DS(CS)) responded that the integrity checking system for prospective principal officials would follow the existing procedures applicable to prospective appointees for senior civil service posts. She explained that the integrity checking system provided for three

levels of checks, namely appointment checking, normal checking and extended checking. Principal officials under the accountability system was subject to extended checking which was the highest level of checking applicable to very senior civil service posts. Given that these candidates were for positions outside the civil service and they would be directly answerable to CE, their checking would be initiated by CS, whereas that for CS would be initiated by CE's Office. DC(CS) further assured members that while it was not appropriate to place a time limit on the processing time, the Administration would accord priority to conducting integrity checking on prospective principal officials and every effort would be made to ensure that the checking was completed in a thorough and accurate manner and in time. As regards Mr CHEUNG's last question, Deputy Secretary for Constitutional Affairs (Special Duties) (DS(CA)(SD)) said that he had no knowledge whether the integrity checking on prospective principal officials had started.

23. Mr CHEUNG Man-kwong was unconvinced that the integrity checking on prospective principal officials could be completed within one month's time, and requested the Administration to advise the standards and criteria adopted for integrity checking for prospective principal officials vis-à-vis that for appointees for senior civil service posts, as well as a time chart on all the necessary steps for implementing the accountability system.

24. DS(CA)(SD) assured members that all the necessary steps for implementing the accountability system would be completed before 1 July 2002. For instance, the staffing/financial and legislative proposals would be submitted to ESC, FC and the Council on 6, 14 and 19 June 2002 respectively. After completing the integrity checking and medical examination on prospective principal officials, CE would recommend these candidates to the Central People's Government (CPG) for appointment as principal officials. After CPG had approved these appointments, the Administration would sign employment contracts with the newly appointed principal officials.

25. In reply to Mr CHEUNG Man-kwong's enquiry as to whether the Administration would announce the names of the prospective principal officials after they had passed the integrity check, DS(CA)(SD) said that the names of the principal officials would be announced after their appointments had been approved by CPG.

26. Mr LEE Cheuk-yan enquired about the average time required to complete an integrity checking on a prospective principal official and the details of the checking.

27. DS(CS) responded that the necessary time would vary, depending on the extent and scope of the candidates' activities. DS(CS) further said that the same checking questionnaire or form as currently used in the civil service would be issued to the person who was to be nominated for appointment as principal

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official. The form sought information relating to the personal particulars of the individual, his education background, social activities, employment history, family members, and requested for nomination of two referees. The Police would continue as the agent responsible for the checking and the input of ICAC would be sought as necessary. The checking would comprise interviews with the subject, his referees and supervisors as well as record checks. Upon completion of the checking, a report covering all details as disclosed and collected will be submitted to CE for consideration. CE would then decide whether the candidate's integrity and character were suitable for nomination for appointment as a principal official.

Conflict of interest and Code for Principal Officials

28. Mr Albert HO raised the following issues -

- (a) Whether a principal official under the accountability system could be a director of a profit-making company during the term of his office;
- (b) Reason why there was no express provision to the effect that CE should require a principal official to take one or more of the measures set out in paragraph 5.6 of the Code for Principal Officials (the Code), if it appeared to CE that there was a conflict of interest between the principal official's investments or interests and his official duties; and
- (c) What measures would be taken by the Administration if a principal official who was required by CE to divest himself of all or any of his investments or interests, or to place such investments or interests in a "blind" trust, had failed to do so after assuming office.

Mr HO further requested the Administration to consider stipulating in the Code that principal officials must declare membership of political organisations or parties.

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29. DS(CA)(SD) responded that a principal official should not be a director of a profit-making company during the term of his office. However, he might retain or accept honorary posts in non-profit making organisations or charitable bodies provided that there was no actual or apparent conflict of interests between his interest in such organisations or bodies and his official duties. At the request of Mr Albert HO and Ms Emily LAU, DS(CA)(SD) agreed to consider stipulating these requirements in the Code.

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30. Regarding Mr HO's second question, Law Officer (Civil Law) explained that whether any of the measures listed under paragraph 5.6 of the Code would

be required to be taken by a principal official would depend on the circumstances of each case.

31. As to Mr HO's third question, DS(CA)(SD) said that although a principal official might need time to handle his investments or interest after assuming office, he was nevertheless required to refrain from acquiring or disposing such investments or interests under paragraph 5.6(b) of the Code. Law Officer (Civil Law) supplemented that it was the responsibility of principal officials to take all necessary steps to avoid putting themselves in a position where they might arouse any suspicion of dishonesty, unfairness or conflict of interest. If it became necessary for a principal official to exercise any statutory functions which might arouse public perception of conflict of interest, pending appropriate actions to be taken under paragraph 5.6(b) of the Code, the principal official could delegate the exercising of such statutory functions to his subordinate.

32. Ms Emily LAU enquired whether the Administration would consider disclosing to the public measure(s) which CE had required a principal official to take under paragraph 5.6 of the Code and making available for public inspection upon request the investments and interests which had been divested and/or placed in a "blind trust". DS(CA)(SD) responded that the Administration had no intention to do so.

Sponsored visits

33. Mr Albert HO, Ms Emily LAU and Miss Margaret NG were of the view that to guard against persons making use of their official position for self-interest purposes, a principal official should only accept an invitation from a foreign government or an outside organisation in his official capacity. The Administration was requested to amend the Code to this effect.

34. DS(CS) responded that paragraph 5.12 of the Code merely reflected the existing arrangement whereby a Secretary of Department or Director of Bureau was allowed to accept an invitation from a foreign government or an outside organisation to make a sponsored visit in his private capacity, subject to the approval of CE. In reply to Ms Emily LAU's enquiry on the need for such a provision, DS(CA)(SD) explained that the provision could cater for certain situations. For example, it was possible for a principal official, who was an expert in a special field not related to the policy portfolio for which he was responsible, to be invited to make a sponsored visit in his private capacity, such as to attend a conference.

35. Mr CHEUNG Man-kwong asked whether a principal official could accept an invitation from a foreign government, which did not have formal diplomatic relations with CPG, to make a sponsored visit in his official capacity. DS(CA)(SD) responded that he did not have the answer to the

question as the Code was silent on this point. However, he believed that a principal official would exercise his judgment in deciding whether or not to accept such an invitation.

36. The Legal Adviser said that it was unclear whether paragraph 5.10 of the Code was consistent with the relevant provisions of the Prevention of Bribery Ordinance, having regard to line 2 of the paragraph which read "If the principal official considers it to be in the public interest to take up the invitation, the visit may be regarded as official".

37. Law Officer (Civil Law) responded that if a principal official made a sponsored visit in his official capacity in the interests of the Government, there was no question that he was accepting an advantage from such a visit. He further said that it was the responsibility of principal officials to judge, in accordance with the principles set out in the Code, how he should act in order to meet the highest standards of personal conduct and integrity. In case of doubt, principal officials should seek the advice of CE. At the request of Ms Emily LAU, Law Officer (Civil Law) undertook to confirm in writing as to whether paragraph 5.10 of the Code was consistent with the relevant provisions of the Prevention of Bribery Ordinance.

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Employment contract

38. Mr CHEUNG Man-kwong referred members to paragraph 2(i) to (k) of the Administration's paper on "Employment Contract and Conflict of Interest" (LC Paper No. CB(2) 1952/01-02(01)) which stated that subject to the relevant provisions of BL, the principal officials might resign; the Government might terminate the employment of the principal official; and the Government and the principal official might resolve the employment contract at any time by mutual agreement. In reply to Mr CHEUNG's enquiry, DS(CA)(SD) said that the BL provision which the paper referred to was Article 48(5) of the BL. In the case of resignation or dismissal of a principal official, the approval from CPG for their removal was required under BL.

II. To continue discussion on item XIII of the List of Areas for Study

Transfer of statutory functions

39. At the invitation of the Chairman, DS(CA)(SD) took members through the Administration's paper entitled "Resolution under section 54A of the Interpretation and General Clauses Ordinance - Transfer of Statutory Functions" (LC Paper No. CB(2) 1880/01-02(01)). The paper set out the legislative amendments to be introduced to effect the necessary transfer of statutory functions arising from the reorganisation of certain bureaux.

40. Miss Margaret NG said that the Administration should explain how the statutory functions would be exercised after they were transferred to the principal officials under the accountability system. Miss NG then enquired whether Permanent Secretaries would not be vested with any statutory function under the accountability system.

41. DS(CA)(SD) responded that the exercising of statutory functions by the principal officials under the accountability system would be the same as that by the existing policy secretaries, as the Resolution would not bring any changes to the nature of the statutory functions. In this connection, the Administration did not see the necessity for Miss NG's request. Moreover, the 12 papers submitted by the Administration to the Subcommittee on the transfer of statutory functions from policy secretaries to the relevant principal officials had provided, amongst others, descriptions of the statutory functions to be transferred and marked-up copies to the relevant ordinances which contained the functions to be transferred.

42. DS(CA)(SD) further said that although Permanent Secretaries would not be vested with any statutory function following the implementation of the accountability system, they might be vested with statutory functions in new legislation in future. SG supplemented that although Permanent Secretaries would not have express statutory powers, save with the passage of new legislation to vest them with such powers, it was permissible for principal officials to delegate statutory functions to Permanent Secretaries under Cap. 1.

43. Ms Emily LAU, Mr Albert HO, Dr YEUNG Sum and Miss Margaret NG requested that the relevant policy secretaries should attend the Subcommittee meetings when discussions on the transfer of statutory functions related to them were held. This was in line with the practice adopted for the scrutiny of the adaptation of laws bills. They pointed out that the proposed transfer of statutory functions did not merely involve technical amendments, and could have policy implications given that the grouping of policy portfolios under the purview of the principal officials were different from that under the existing policy secretaries.

44. DS(CA)(SD) considered members' request not necessary, as the Resolution would not bring about changes to the nature of the statutory functions to be transferred and contents of the Resolution had been provided to members. Furthermore, the issue of the grouping of policy portfolios under the purview of the principal officials was different from the issue of transfer of statutory functions, and the former had been discussed at length at previous meeting. Notwithstanding, DS(CA)(SD) agreed to give further thoughts to members' request.

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

Council Business Division 2
Legislative Council Secretariat
28 November 2002