

立法會
Legislative Council

LC Paper No. CB(2)2718/01-02
(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 twelfth meeting
held on Tuesday, 28 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 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
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 SZETO Wah
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, JP
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP

Dr Hon LO Wing-lok
Hon MA Fung-kwok

Members Absent : Dr Hon David CHU Yu-lin, JP
Hon Andrew WONG Wang-fat, JP
Hon Timothy FOK Tsun-ting, SBS, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon Audrey EU Yuet-mee, SC, JP

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 Stephen LAM
Information Coordinator

Mr Bobby CHENG
Deputy Private Secretary to the Chief Executive

Mr R C ALLCOCK
Solicitor General

Mr P H H WONG
Senior Assistant Solicitor General

Ms Anissa WONG
Deputy Secretary for the Civil Service 1

Mrs Philomena LEUNG
Principal Assistant Secretary for Constitutional Affairs

Miss Jennifer MAK
Deputy Secretary for the Civil Service 3

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

Action
Column

I. Matters arising

The Chairman drew members' attention that the Legislative Council (LegCo) Secretariat had prepared an updated list of issues raised by members and the Administration's response (as at 25 May 2002) for members' reference (LC Paper No. CB(2)2093/01-02(01)).

Director of Chief Executive's (CE's) Office

2. Information Coordinator (IC) said that as requested by members at the meeting on 14 May 2002, the Administration had provided the job description of the post of Director of CE's Office (LC Paper No. CB(2)2068/01-02(01)).
3. Mr Howard YOUNG questioned the need for the post of Director of CE's Office to be filled by a political appointee, as duties in relation to the post of IC, and the running of the Executive Council (ExCo) Secretariat and the CE's Office were not political in nature. He pointed out that the Director would not be required to be accountable for any policy failure as the principal officials, and it was difficult for the public to know whether the Director had made any serious mistakes in his sphere of responsibilities.
4. IC responded that although the Director of CE's Office was not a principal official and he would not be part of the accountability system, he would work closely with the principal officials. The Director would need to exercise political judgment in discharging these duties. For instance, the Director would have to ensure that the agenda of ExCo meeting reflected the overall priority of the Government's policy agenda. The Director would also be responsible for formulating the media and public relations strategy for making announcements on major issues. IC pointed out that the Director would also need to observe the Code for Principal Officials. If the Director made serious mistakes in his work or lost public confidence, he might be dismissed by CE.

5. Mr Kenneth TING enquired about the role of the Director of CE's Office and whether he would have authority over the policy secretaries. IC gave the example that the Director would act like the manager of a football team to ensure that necessary services would be available and to secure support for the team among spectators; he would assist principal officials and bureaux to formulate government's media and public relations strategy on key policy areas.

6. Mr CHEUNG Man-kwong said that in the Administration's previous paper on the post of the Director of CE's Office, it was stated that the Director was required to "oversee other matters within the Office as directed by CE". Mr CHEUNG asked whether this remained to be part of the Director's duty, as there was no mention of such duty in the job description of the post. He said that as the Director was not a principal official under the accountability system and did not have any policy responsibility, he was concerned how the Director would be held accountable for his work. If the Director was only answerable to CE, he might become the "special envoy" of CE and had excessive influence over government and non-government bodies.

7. Ms Emily LAU and Mr LEE Cheuk-yan were of the view that the public would be confused as to how the Director would be held accountable for his work, if he was not a principal official under the accountability system but the position was to be held by a political appointee. Mr LEE Cheuk-yan referred to the recent row between the Police and Independent Commission Against Corruption (ICAC), and asked what IC had done and how he was held accountable for failing to coordinate a uniform Government position on the matter.

8. Ms Cyd HO considered that there should be specific provisions in the Code about the authority and responsibilities of the Director of CE's Office, and his working relationship with civil servants and other principal officials should be set out in the composite civil service circular. Ms HO also pointed out that "protection of press freedom" was not included in the job description. She expressed concern whether the Director would only work for the benefit of the "ruling party" and sacrifice the right of the public to know, when coordinating government's responses on major issues.

9. IC responded that as the Director of CE's Office was responsible for overseeing the running of CE's Office, he would need to take instructions from CE, and would also attend relevant LegCo panels and committees to answer questions on the work of CE's Office. IC stressed that the Director would be accountable for mistakes made in discharging his duties. The Director would have to comply with the Code for Principal Officials, and other relevant legislation and regulations, including those on declaration of investments and interests, which were applicable to principal officials under the accountability system. The Director should respect the neutrality of civil servants in

working with other staff in the CE's Office.

10. As regards the recent row between the Police and ICAC, IC said that it was basically a matter of communication between the two departments and both departments had reiterated their determination to fight corruption. IC advised that in this incident, he had made arrangements for CE to discuss with the two Commissioners at the earliest opportunity and they had given undertakings that they would improve communication.

11. On the concern about press freedom, IC said that the Administration was committed to safeguarding press freedom at all levels and the Administration would listen to views including dissenting views.

12. Mr NG Leung-sing asked whether the Administration had made reference to overseas experience when drawing up the duties of the Director of CE's Office. IC responded that the work of the Director of CE's Office would be similar to that of Chief of Staff of the White House Office, but with a lower level of responsibility. There would be occasions on which the Chief of Staff in the United States had resigned. There were also similar posts in the governments in the United Kingdom (UK), Denmark, Philippines, etc.

13. Mr CHAN Kam-lam asked about the role of the Director of CE's Office in coordinating the ExCo agenda among CE, the Chief Secretary for Administration (CS) and Financial Secretary (FS). IC said that the long-term policy strategies and priorities were formulated by CE, CS and FS. The Director of CE's Office was only to ensure that the ExCo agenda reflected such strategies or priorities. He further said that the Administration envisaged that there would be even better coordination among CE and principal officials after the introduction of accountability system.

14. Dr Philip WONG asked about the channels for selecting and appointing the Director of CE's Office, and also the terms of his appointment. IC said that to provide flexibility for CE to select suitable candidates from inside or outside the civil service, the Director of CE's Office would be appointed on non-civil service contract terms at a rank equivalent to D8 level.

15. Ms Emily LAU pointed out that in UK, when a political appointee assumed office, the Parliament would pass an Order in Council to empower a political appointee to give instructions or directions to the civil servants. She enquired about the source of authority for the Director of CE's Office to give instructions or directions to civil servants, as he was not a principal official under the accountability system. Miss Margaret NG raised similar concerns. Miss NG said that it was important to define clearly the authority of the Director in his relation to principal officials and civil servants, in order to prevent corruption or abuse of position by the Director, the principal officials and their personal administrative support staff.

16. Secretary for Constitutional Affairs (SCA) said that the Director of CE's Office was answerable to CE and must take instructions from CE. He stressed that there were established mechanism and procedures within the civil service and hence there was no question of the Director acting beyond CE's instructions and the Director's area of responsibility. SCA further said that principal officials and the Director of CE's Office were required to observe the laws of Hong Kong and all relevant legislation and regulations applicable to public servants. The Director would need to observe the provisions of the Code for Principal Officials under the Accountability System and respect the political neutrality and professionalism of the civil service when working with civil servants.

Admin 17. Ms Emily LAU considered that it was not sufficient to state only in the employment contract of the Director that he had to observe the Code for Principal Officials. She urged that the Administration should also spell out clearly in the composite circular the working relationship between the Director of CE's Office and civil servants. SCA agreed to consider the suggestion.

Conflict of interest and Code for Principal Officials

Involvement in political activities

18. Mr CHEUNG Man-kwong and Ms Emily LAU referred to the Administration's response to issues raised at the meeting on 21 May 2002 in relation to the involvement of political activities by a principal official (LC Paper No. CB(2)2092/01-02(02)). They sought clarification whether a person who was a member of non-Hong Kong-based political parties, such as the Communist Party and the Kuomintang, could be appointed as a principal official. If the answer was in the affirmative, Mr CHEUNG asked whether the prospective candidate was required to declare such membership before being appointed as principal official. He was concerned that there might be a conflict of interest if a principal official was also a member of a non-Hong Kong-based political party. For example, if the principal official was a member of Communist Party, the public might have doubts that he might not uphold the "One country two systems" principle in discharging his official duties. Ms LAU questioned whether this might affect public perception of the loyalty and integrity of the principal official concerned.

19. SCA responded that freedom of association was protected by law in Hong Kong. He said that it was the responsibility of principal officials, under the accountability system to ensure that no conflict would arise with his oath to uphold the Basic Law and his oath of allegiance to the HKSAR. It was also his responsibility to ensure that there was no conflict with the principles set out in Chapter 4 of the Code for Principal Officials. SCA further said that the principal official concerned would take into account the principles laid down in

Action
Column

the Code and declare his membership with CE. CE would then decide whether the person concerned was suitable for nomination for appointment as a principal official.

Admin

20. Noting that the principal officials would declare their political affiliation to CE, Mr CHEUNG Man-kwong and Ms Emily LAU said that consideration should be given to making such declarations available for public inspection. SCA agreed to consider the suggestion.

21. Mr Albert HO asked whether a principal official was allowed to take part in fund-raising campaigns and electioneering activities, for example, to solicit support for a political party or candidates of CE election or District Councils elections. He said that he did not object to allowing members of political parties to be appointed as principal officials, but this should be clearly spelt out in the Code for Principal Officials.

22. Miss Margaret NG concurred with Mr Albert HO. She said that while she was open-minded as to whether a person who was a member of non-Hong Kong-based political party could be appointed as a principal official, she was of the view that there should be express provisions in the Code.

23. SCA said that it was not practicable to spell out all possible situations in the Code for Principal Officials. He further said that it would be for individual principal officials to consider, before taking part in activities organised by political organisations or bodies, whether his participation in such activities would contradict the principles set out in Chapter 4 of the Code.

Admin

24. Ms Emily LAU said the Administration should state explicitly in the Code that principal officials could not use public resources for party or constituency work, instead of a general statement to the effect that the use of government resources for non-government purposes was prohibited. SCA explained that the intention of the prohibitions was to prevent abuse of public resources. Nevertheless, SCA agreed to consider Ms LAU's suggestion.

25. Mr CHEUNG Man-kwong considered that there would be a conflict of interest if a principal official took part in electioneering activities to solicit support for a candidate of CE election. SCA responded that principal officials should consider whether they would contravene any of the principles in Chapter 4 of the Code before taking part in any political activities.

26. Ms Cyd HO said that the Administration might consider extending the guidelines to civil servants issued by the Electoral Affairs Commission to cover also principal officials, concerning the extent that a principal official would be allowed to take part in electioneering activities.

27. SCA said that the guidelines were issued by the Electoral Affairs Commission to civil servants for taking part in electioneering activities. As principal officials were not civil servants, such guidelines would not be applicable to principal officials. SCA further said that principal officials were required to comply with the Code, and Chapter 4 of the Code had already set out the principles governing involvement in political activities.

Post-employment activities

28. Referring to the Administration's response to the issues raised at the meeting on 21 May 2002, Mr CHEUNG Man-kwong commented that under the Administration's proposed arrangement, the committee to be appointed by CE to advise on matters concerning employment of former principal officials would be a "toothless tiger", as its advice was not binding and could not be enforced. Mr CHEUNG strongly urged that the Administration should consider introducing an effective mechanism to prevent any possible conflict of interest and enhance public confidence. For example, CE should be empowered to approve or not approve a former principal official taking up a particular employment.

29. Ms Emily LAU echoed Mr CHEUNG's view that the Administration should provide a more effective mechanism to consider and approve post-employment activities of former principal officials.

30. SCA said that the Administration had to strike a balance between preventing abuse of official position and attracting suitable persons from outside the Government to be principal officials. SCA stressed that as the advice of the committee would be made public, the monitoring by the public would provide sufficient sanctions even though the committee's advice was not legally binding on the former principal officials. Nevertheless, SCA agreed to consider Mr CHEUNG's suggestion.

Admin

31. Mr James TIEN said that Members belonging to the Liberal Party were of the view that if the committee's advice was to be made enforceable, the sanitisation period should be shortened to three months.

Declaration of investments and interests

32. Mr Albert HO commented that the Code only provided the general principles and these might be open to interpretation. He asked who would be the authority for interpreting the various provisions in the Code and what would be the procedures for declaration of interests. He also asked whether CE's directions under paragraph 5.6 of the Code would be recorded and made available for public inspection, and whether the Code would be published for general information.

Action
Column

33. SCA responded that the Code had set out clearly the criteria for prevention of conflict of interest. He said that principal officials would be required to declare their investments and interests on an annual basis, and such declaration would be made available for public inspection on request. If it appeared to CE that there was or might be a conflict of interest between a principal official's investments or interests and his official duties, CE might require the principal official to divest himself from the investment or interests, or take other measures as described in paragraph 5.6 of the Code for Principal Officials.

Admin

34. Responding to Mr Albert HO's question on the procedure to amend the Code, SCA said that the Administration would inform the relevant LegCo Panel should there be any change to the Code. Mr Albert HO requested the Administration to provide its response in writing. SCA noted the request.

Preserving the integrity and political neutrality of the civil service

35. Ms Cyd HO said that the first sentence in paragraph 12 of the draft civil service circular (LC Paper No. CB(2)2101/01-02(01)) should be deleted as its content was contrary to the objective of preserving the integrity and impartiality of the civil service. She considered that if civil servants were required to "conduct themselves in such a way as to deserve and retain the confidence of the principal officials who were appointed from time to time" as stated in the draft circular, it would only encourage the culture of "shoe-shining" and currying favour with the bosses. This would politicise the civil service and undermine its impartiality. Ms Emily LAU concurred with Ms HO. Ms LAU asked whether this was a new requirement to be imposed on civil servants.

36. Deputy Secretary for Civil Service 3 (DS(CS)3) responded that paragraph 12 of the circular aimed to enhance professionalism of civil servants and to preserve the core values of the civil service. There was no intention to encourage a "shoe-shinning" culture among civil servants. Moreover, there was a well-established staff performance appraisal mechanism for civil servants. In view of members' concern, the Administration had agreed to revise the wording of paragraph 12 of the circular.

Admin

Admin

37. In response to Ms Cyd HO, DS(CS)3 said that as the draft circular had just been prepared, the views of civil servants' associations were yet to be sought. She further said that the Administration would consult civil servants' associations on the proposed contents of the circular. The Administration would inform the relevant LegCo Panel of the updating of the circular, if necessary.

Leave relief arrangement for principal officials

38. Ms Emily LAU referred to the Administration's paper on "Arrangements during Principal Officials' Temporary Absence" (LC Paper No. 2075/01-02(01)) and sought clarification on the arrangements for CE to appoint another principal official or public officer to exercise the relevant statutory powers or duties during the temporary absence of a principal official. Ms LAU also asked about the leave arrangement for the post of Secretary for Justice (SJ).

39. SCA said that a principal official normally would not take long leave when LegCo was in session. If the relevant statutory powers had not been delegated and the principal official concerned was outside Hong Kong, CE might, as necessary, by notice in the Gazette, direct another principal official or a senior civil servant working in the relevant policy bureau to exercise the statutory powers and functions. Any such arrangement made in this connection would be published in the Gazette. If issues unexpectedly arose in LegCo which concerned the principal official who was temporarily away from Hong Kong, arrangement would be made for another principal official to attend meetings of LegCo and speak on behalf of Government. SCA further said that in the case of SJ and the Secretary for the Civil Service (SCS), during their temporary absence, a designated Law Officer and the Permanent Secretary in the Civil Service Bureau would attend LegCo meetings to speak on behalf of Government on business relating to SJ and SCS respectively. In so doing, they would have to limit themselves to established policy.

40. Mr James TIEN asked whether the principal official's administrative assistant (at D2 level) could attend LegCo meetings on behalf of the principal official if he had other official engagements, such as attendance at a radio programme. SCA responded that it was for the principal official concerned to prioritise his work. A principal official was expected to give priority to attendance at LegCo meetings. If the principal official could not attend a LegCo Panel or other committee meeting due to other more important commitments, he might consider asking the relevant Permanent Secretary to attend the LegCo Panel or other committee meeting to speak on behalf of the Government.

Pay adjustment mechanism for principal officials

41. Ms Emily LAU held a strong view that there should be a pay adjustment mechanism for principal officials. SCA responded that the remuneration of principal officials would be adjusted if civil service salaries were cut later this year. Other than this, there would not be any pay adjustment mechanism for principal officials. In the event that the remuneration of principal officials was out of kilter with movements in the market, it would be for CE to decide if a review should be initiated.

Integrity checking

42. Mr CHEUNG Man-kwong welcomed the proposal that the checking for principal officials would be modelled on the existing extended checking arrangement for very senior civil service posts. However, Mr CHEUNG expressed concern whether the checking of the principal officials under the accountability system could be completed before their appointment which would take effect on 1 July 2002.

43. SCA advised that the Administration would accord priority to the checking of prospective principal officials and ensure that the checking would be completed in time.

44. Responding to Mr CHEUNG Man-kwong's request for a copy of the integrity checking form, Deputy Secretary for Civil Service 1 (DS(CS)1) advised that it was not appropriate for the form to be made available to the Subcommittee for reference as the whole integrity checking process, including the form used, was confidential. Nevertheless, all the information required of the form was spelt out in paragraph 5 of the Administration's paper on "Extended Checking of Principal Officials".

45. Ms Emily LAU asked whether the checking would cover the political affiliation of principal officials. DS(CS)1 answered in the negative as the checking covered the integrity, but not the other aspects, of the officers concerned.

II. Financial and staffing implications

46. Mr CHEUNG Man-kwong asked whether members could propose amendments to the distribution of policy portfolios among Directors of Bureau, provided that the total number of such posts would remain at 11 as proposed under the accountability system. Solicitor General said that the Administration would only be able to offer its opinion on the matter until the text of amendments was available.

III. Transfer of statutory functions

Resolution under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1)

47. SCA took members through the Administration's papers on "Transfer of Statutory Functions" (LC Paper No. CB(2)1880/01-02(01)) and "Transitional Savings Provisions" (LC Paper No. CB(2)2092/01-02(01)). SCA said that the proposed Resolution provided that, with effect from 1 July 2002, the functions

currently exercised by each relevant bureau secretary by virtue of the ordinances would be transferred to the relevant bureau secretary who would take charge of the relevant policy responsibilities after the reorganisation of policy bureaux. SCA stressed that the proposed Resolution did not involve changes in the policy and the statutory and discretionary powers vested in the post holders.

48. Regarding members' concerns raised at the previous meetings that representatives from the respective bureaux should attend the Subcommittee meetings to answer members' questions on the Resolution, SCA said that the Administration considered it appropriate for SCA to attend the meetings. He explained that all the references to the policy secretaries concerned in the existing legislation had been identified with the assistance of the Bilingual Law Information System. The respective bureaux had been requested to confirm the accuracy of the findings. Hence, the Administration held the view that there was no need for representatives from each bureau, other than SCA, to attend the Subcommittee's meetings.

49. Solicitor General supplemented that the exercise of statutory powers of bureau secretaries was regulated by the well-established principles of administrative law, and abuse of such powers was subject to judicial review by the courts. Solicitor General said that the particular powers vested in certain officials must be exercised by them personally or someone delegated with the authority lawfully. It was improper for the Administration to lay down any binding principles as to how the statutory powers would be exercisable by the principal officials.

50. The Legal Adviser said that the Legal Service Division had prepared a paper (LC Paper No. LS 106/01-02) on issues related to the application of a resolution of LegCo made under section 54A of Cap. 1 for the implementation of the proposed system of accountability for principal officials. The Division had also raised some technical questions on the draft Resolution, and the Administration's reply had just been received. The Legal Service Division would, in line with the usual practice, prepare a report on the legal and drafting aspects of the Resolution for consideration of the House Committee after the Administration had given formal notice together with the final text of the Resolution.

51. Dr Philip WONG asked what kind of forms, plans and schemes were within the meaning of paragraph 4(f) of LC Paper No. CB(2) 1880/01-02(01). SCA explained that before the construction of large scale projects, the promulgation of relevant forms, plans and schemes on the projects were required, so that the affected parties would know about the projects and could raise objections or claim compensation where applicable.

52. Responding to Mr Kenneth TING, SCA said that the textual amendments to the relevant Ordinances covered by the Resolution were technical in nature, aiming to give effect to the transfer of statutory functions from existing bureau secretaries to the Directors of Bureau under the accountability system. Generally speaking, the transfer was achieved by means of replacing the full title of the relevant bureau secretaries by the full title of the bureau secretaries of the reorganised bureaux.

53. Referring to LC Paper No. LS 106/01-02 prepared by the Legal Service Division, the Legal Adviser explained that the draft proposed resolution was to effect a transfer of statutory functions among those secretaries who would be involved in the reorganisation of policy portfolios. It did not affect CS, FS, SJ and four bureau secretaries whose title and policy portfolios would not be changed in the new accountability system. However, members might wish to clarify, from the constitutional point of view, whether a transfer of statutory functions from these post holders to the principal officials appointed under a new system was necessary.

54. Solicitor General said that there was no question about the legality of the statutory powers of principal officials as they were lawfully vested in the new principal officials. Solicitor General further said that a two-step process was involved in the transfer of the statutory power, firstly, the creation of the accountability system, and secondly, the transfer of the relevant powers. In the second step, all the titles of those bureau secretaries whose titles and policy portfolios were to be changed would have to be removed from all existing legislation and substituted by the titles of the relevant principal officials. For those officials whose titles were not changed, e.g. S for J and the Secretary for Security, the statutory powers of these posts would remain vested in the same post holders under the accountability system. He added that the fact that there was a change in the appointment terms of the post holders would not affect the legal position in relation to the exercise of the statutory powers vested in these officers.

55. Referring to paragraph 14 of LC Paper No. LS 106/01-02, the Legal Adviser pointed out that there were differences in the legislative process between that for passing of a resolution and that for passing of a bill. The most significant differences lay in the debate process and the procedure for bringing the respective legislative instrument into operation. He further pointed out that there were matters which were desirable for clarification by legislation in the overall context of the proposed system but which might be unrelated to the resolution for the transfer of statutory functions. For example, there was a possible confusion arising from the definition of "public servant" which provided "公務員" as one of the Chinese equivalents of that term, when a new principal official who was not a civil servant (i.e. "公務員") was by definition a public servant and a public officer in law. The Legal Adviser

concluded that he was of the view that there did not appear to be legal grounds for concluding that the application of section 54A of Cap. 1 would be unlawful. However, it might be considered not appropriate nor desirable for the Administration to invoke section 54A of Cap. 1 in the manner as proposed, because the scope of debating the proposed resolution would not be extended to cover the proposed system in its entirety.

56. The Legal Adviser said that the Administration had just provided a paper to explain the savings and transitional provisions in the draft resolution under section 54A of Cap. 1. He would need more time to study the paper to ascertain whether it was within the scope of section 54A(2) for the draft Resolution to contain transitional and savings provision to give full effect to the Resolution.

57. Solicitor General said that as pointed out by the Legal Adviser, there did not appear to be legal grounds for concluding that the application of section 54A of Cap. 1 under the present circumstances would be unlawful. He drew members' attention that the Legal Adviser had distinguished between the "legality" and "appropriateness" of effecting the transfer of statutory functions by way of a resolution under section 54A of Cap. 1. In terms of the legality of it, there is no difference between the Department of Justice and the Legal Adviser. As regards the concerns raised by the Legal Adviser on the Chinese version of the definition of "public servant", Solicitor General said that this should not pose a legal problem, as the references to "public servant" and "public officer" in Chinese had exactly the same meaning, i.e. any person holding an office of emolument under the Government, whether such office was permanent or temporary. There was no doubt about the legality of transferring the statutory functions to non-civil servants under the Resolution.

58. On the "appropriateness" of effecting the transfer by way of Resolution, Solicitor General explained that it was the general policy that amending the legislation by way of subsidiary legislation, including resolutions, would be preferable to passing of a bill. Subsidiary legislation would be used whenever there was power to do so. The current proposal of effecting the transfer of statutory functions by way of resolution was consistent with the previous practice. The Administration would not introduce a bill simply to allow the proposal to be scrutinised with the benefits of a full legislative process.

59. On the question of whether the savings provisions contained in paragraph 14 of the Resolution was properly included, Solicitor General said that the Resolution under section 54A of Cap. 1 included those provisions since they were or expedient for the purpose of giving full effect to the transfer of statutory powers from existing bureau secretaries to secretaries to be appointed under the accountability system. He further said that the purpose of paragraph 14 of the Resolution was to ensure that all the powers would be transferred to

enable the new principal officials to carry on unfinished business.

60. In response to Mr Howard YOUNG, SCA confirmed that the new principal officials would exercise their respective statutory powers in accordance with existing established procedures and mechanism. The new principal officials would be vested with the same powers as those exercisable by current bureau secretaries.

61. Ms Emily LAU said that while she accepted that it was not unlawful to effect the transfer of statutory functions by way of Resolution under section 54A of Cap. 1, it was regrettable that the Administration did not effect the transfer by a bill. Ms LAU further said that having regard to the limitation of the scope of debating the proposed Resolution in the Council, Members could speak only once to the original motion and the motion(s) to amend the original motion, if amendments were proposed to the Resolution. She enquired whether it was possible that Members could speak separately on each aspect of the Resolution, for example, the respective policy portfolios of the principal officials.

62. SCA said that the Subcommittee meetings had provided the opportunity for the Administration to fully exchange views with Members on the accountability system. He did not consider passing of a resolution to effect the proposed transfer had restricted members from sounding out their views on the proposals. He stressed that the Administration held the view that it was constitutionally and legally in order to underpin the accountability system by way of a Resolution.

63. Ms Emily LAU remained 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.

64. Mr Albert HO shared Ms LAU's view. Mr HO said that the legal basis of enacting a piece of subsidiary legislation was normally stipulated in the principal ordinance. However, as far as the Resolution under section 54A of Cap. 1 was concerned, its legal basis was the decision of CE in Council but the decision concerned was not formally promulgated. He held the view that it was inadequate to introduce the new accountability system by way of a Resolution. Mr HO asked whether there were any precedents that resolutions made under section 54A of Cap. 1 contained such lengthy transitional and savings provisions. He also asked whether the Resolution could be amended to require the publication of the Code for Principal Officials in the Gazette.

65. The Legal Adviser said that according to the Administration, precedents for section 54A resolutions that contained transitional and savings provisions could be found at L.N. 370 of 1981 and L.N. 76 of 1982. He would further study the Administration's paper on the subject as it was just received.

66. Referring to paragraph 12 of the Legal Adviser's paper (LC Paper No. LS 106/01-02), Solicitor General explained that the Resolution did not purport to preserve the rights or proceedings, as they were already preserved under section 23 of Cap. 1. If an existing bureau secretary had made a decision before the transfer of statutory powers which gave rise to certain rights to bring about proceedings, the Administration was of the view that those rights would continue to exist after the transfer of powers and should be treated as rights of new principal officials. As regards whether amendments could be made to the Resolution, Solicitor General said that Members might wish to bear in mind that the Resolution was related to the transfer of statutory functions rather than the introduction of the accountability system.

Admin

67. Mr Albert HO said that since principal officials were expected to comply with the Code for Principal Officials, he saw no reason why an amendment to the Resolution to require publishing the Code in the Gazette was not related to the Resolution. SCA said that he had already explained the scope of resolutions made under section 54A. Nevertheless, he agreed to consider ways to make the Code public in view of Mr Albert HO's concern.

68. Dr YEUNG Sum said that it was regrettable that the Administration insisted on using a resolution to effect the transfer of statutory functions arising from the implementation of accountability system. He pointed out that a bill would go through the three-reading stages with Committee of the whole Council discussing the bill clause by clause. On the other hand, the use of a resolution did not allow members to fully discuss and debate the proposals.

69. Ms Cyd HO queried whether the Director of CE's Office was vested the power to oversee the running of the ExCo Secretariat, since the Resolution did not make any reference in this respect. SCA explained that duties in relation to the running of the ExCo Secretariat did not involve any statutory powers, and was therefore not covered by the Resolution.

70. Members agreed that the next meeting should be scheduled for Friday, 31 May 2002.

71. There being no other business, the meeting ended at 12:42 pm.