

## **EXECUTIVE SUMMARY**

1. Cabinet Ministers/Secretaries in the United Kingdom (UK), the United States (US), and Singapore are political appointees. In the UK, the Cabinet comprises some 20 Ministers. In the US, a President's Cabinet includes the Vice President and the Heads of 14 executive departments (Cabinet Secretaries). In Singapore, the Cabinet consists of the Prime Minister and 16 other Ministers.
2. In the UK, the US and Singapore, there are generally no specific criteria for a person to be eligible for ministerial posts, except for requirements concerning citizenship and allegiance. In a parliamentary system of government, such as the UK and Singapore, persons who hold ministerial posts are required to possess parliamentary qualification.
3. In the UK, most Cabinet Ministers are career politicians and are drawn from the Shadow Cabinet. In the US, Cabinet Secretaries are drawn from a variety of sources, especially those having close personal ties with the President. In Singapore, Ministers may be handpicked from the private sector by the ruling party to participate in politics.
4. In the US, appointment to a Cabinet office is undertaken only after the 'advice and consent' of the Senate have been obtained, following a detailed pre-checking process. In both the UK and Singapore, ministerial appointment is entirely at the discretion of the Prime Minister based upon the personal and political reputation of a candidate. There is no pre-checking on a candidate's fitness for ministerial office.
5. There is a big difference in ministerial salary levels among the countries covered in this study. Ministerial salaries in Singapore are at the higher end and are pegged with the private sector through a benchmark scheme. Ministerial salaries in both the UK and the US are kept at a more modest level.
6. In the UK, the US and Singapore, ministerial positions are different from civil service posts. Therefore, unlike civil servants, holders of ministerial posts do not have employment contracts. The relationship between the head of government and political appointees is political rather than contractual.
7. As regards the ways to avoid conflicts of interest, there is a fundamental difference among the countries covered in this study owing to the different systems of government adopted. The parliamentary system of government in both the UK and Singapore relies on codes of conduct to regulate Ministers' conflicts of interest. The presidential system of

government in the US relies on statutory regulations.

8. In all three countries, ministerial positions are held by politicians and can be removed for political reasons. Conditions of removal are regulated either by constitutional conventions as in the UK or by legal means as in the US.

**PART 5 - COMPARISON OF THE VARIOUS ATTRIBUTES OF THE  
PROCESS OF APPOINTMENT OF SENIOR MEMBERS OF  
GOVERNMENT**

31.1 Table 7 presents some basic facts of the three countries studied and Hong Kong. Table 8 to Table 14 summarize various attributes of the process of appointment of senior members of government in the three countries studied and Hong Kong. The information regarding Hong Kong refers to the practice applicable to existing principal officials.

**Table 7 - Basic Information of Selected Countries and Hong Kong**

Country	Population (million)	GDP per capita (HK\$)	Number of Civil Servants	Number of Seats in the Legislature	Cost of Living <sup>#</sup>	Salaries of Cabinet Ministers / Secretaries (in millions of HK\$)
UK	59.1	190,242	460,000 <sup>^</sup>	The House of Lords: 670 The House of Commons: 659	99	1.344 <sup>@</sup>
US	272.9	261,612	2,218,000 <sup>+</sup>	The Senate: 100 The House of Representatives: 435	100	1.300
Singapore	3.2	205,608	63,300 <sup>*</sup>	85	97	6.114 - 4.162
Hong Kong	6.9	180,258	187,000 <sup>**</sup>	60	117	N/A

Remarks: # New York=100, December 1999.  
 ^ *Civil Service Year Book 2001*, The Stationery Office.  
 @ including full parliamentary salary.  
 + *World Almanac 2001*, World Almanac Books.  
 \* *Singapore 2001*, Ministry of Information and Arts.  
 \*\* *Establishment of the Civil Service*, Civil Service Bureau web site, The Government of the HKSAR, March 2001.

Source: Unless otherwise indicated, all data is abstracted from *The Economist Pocket World in Figures 2002*.

**Table 8 - Qualification of Senior Members of Government**

Country	General Requirements	Specific Requirements for Particular Offices	Parliamentary Qualification	Disqualification Criteria
UK	<ul style="list-style-type: none"> <li>- Must be able to take the oath of allegiance to the Crown</li> <li>- Must not be an alien*</li> <li>- Member of Parliament</li> </ul>	<ul style="list-style-type: none"> <li>- Nil</li> <li>- Except that the Lord Chancellor is traditionally held by a member of the legal profession</li> </ul>	<ul style="list-style-type: none"> <li>- By convention, each Minister has or obtains a seat in either House of Parliament</li> </ul>	<ul style="list-style-type: none"> <li>- Nil</li> <li>- But a serious criminal record could jeopardize a person's prospect of a ministerial career</li> </ul>
US	<ul style="list-style-type: none"> <li>- Must be a US citizen</li> </ul>	<ul style="list-style-type: none"> <li>- Nil</li> <li>- Except that a candidate of the Secretary of Defense must be a civilian</li> </ul>	<ul style="list-style-type: none"> <li>- Not Required</li> </ul>	<ul style="list-style-type: none"> <li>- No officer shall be Member of either House simultaneously</li> <li>- Prohibits Members of Congress being appointed to any office created during their term</li> </ul>
Singapore	<ul style="list-style-type: none"> <li>- Must be a Singapore citizen</li> <li>- An elected Member of Parliament</li> </ul>	<ul style="list-style-type: none"> <li>- Nil</li> <li>- Except that the Minister of Law is traditionally a legally-trained Member</li> </ul>	<ul style="list-style-type: none"> <li>- By convention, Cabinet Ministers are elected Members of Parliament</li> </ul>	<ul style="list-style-type: none"> <li>- A Minister will be disqualified if he has a criminal record or is declared bankrupt</li> <li>- Cabinet Ministers shall not hold any office of profit and shall not actively engage in any commercial enterprise**</li> </ul>
Hong Kong	<ul style="list-style-type: none"> <li>- (1) A Chinese citizen;</li> <li>- (2) A permanent resident of Hong Kong;</li> <li>- (3) No right of abode in any foreign country; and</li> <li>- (4) Ordinarily resided in Hong Kong for a continuous period of not less than 15 years</li> <li>- Swear to uphold the Basic Law and swear allegiance to the HKSAR</li> </ul>	<ul style="list-style-type: none"> <li>- Nil</li> </ul>	<ul style="list-style-type: none"> <li>- Not Required</li> </ul>	<ul style="list-style-type: none"> <li>- Nil</li> </ul>

Remarks: \* persons born outside of the Kingdoms of England, Scotland or Ireland or the dominions.  
 \*\* the "Code of Conduct for Ministers" provides rules governing the question of the participation by Ministers in business and professional activities. Please

refer to para. 29.2 for details.

**Table 9 - Routes to Senior Members of Government**

Country	Typical Routes	Typical Social Background
UK	- A back-bencher → a Parliamentary Private Secretary → a Parliamentary Under-secretary of State → a Minister of State → a Cabinet Minister	- Lawyers and businessmen
US	- From departments of previous administrations - Early or long-term friends and supporters of a President	- Lawyers, civil servants and businessmen
Singapore	- May be handpicked by the People's Action Party → a Member of Parliament → a Minister → a Cabinet Minister	- Executives of banks or multi-national companies, civil servants and academics
Hong Kong	- Administrative Officer  - Ms Elsie Leung (Secretary for Justice) -- a private practice solicitor before assuming her post  - Dr E K Yeoh (Secretary for Health and Welfare) -- Chief Executive of the Hospital Authority before assuming his post  - Mr Anthony Leung (Financial Secretary) -- Chairman of a major international bank before assuming his post	- Public Servants





**Table 10 - Appointment of Senior Members of Government**

Country	Appointment Process			Role of Parliament	Whether Senior Members Must Be Member of Parliament
	Nomination	Clearance	Approval		
UK	Prime Minister	No	Queen	No	Must be, by convention
US	President	Yes	Approved by the Senate and appointed by the President	Advice and Consent by the Senate	No
Singapore	Prime Minister	No	President	No	Must be, by constitution
Hong Kong	Chief Executive	Yes	Appointed by the Central Government	No	No

**Table 11 - Salary Determination of Senior Members of Government**

<b>Country</b>	<b>Regulatory Framework</b>	<b>Determination Criteria</b>	<b>Annual Adjustment</b>	<b>Review Body</b>
UK	<i>The Ministerial and Other Salaries Act 1975</i>	Past history and comparison with their counterparts in the private and public sectors	Yes, in line with senior civil service pay bands	A full review every three years by the Senior Salaries Review Body
US	<i>Section 5312, Title 5 of the US Code</i>	Linked to the salaries of Members of Congress and federal judges	Yes, in line with the Employment Cost Index	Citizen's Commission on Public Service & Compensation
Singapore	No specific legislation subject to Parliament's approval	Pegged with private sector benchmarks	Yes, in line with the economic performance, individual's performance and the private sector salary benchmark adjustment	Public Service Division of the Prime Minister's Office
Hong Kong	No specific legislation subject to LegCo's approval	Broadly comparable with the private sector	Yes, follows the Pay Trend Survey	No

**Table 12 - Comparison of Annual Salary (in millions of HK\$)**

Office-holders		UK	US	Singapore	Hong Kong
Prime Minister/President/ Chief Executive		1.272 (1.853 <sup>@</sup> )	3.120	8.342 <sup>*</sup>	3.412
Cabinet Ministers/ Cabinet Secretaries		0.763 (1.344 <sup>@</sup> )	1.300	4.162 - 6.115	Not applicable
Permanent Secretaries/ Directors/ Secretaries of Departments and Directors of Bureaux		1.168 - 2.005	0.881 - 1.014	3.165 - 4.369	2.281 - 2.729 <sup>~</sup>
Members of Parliament/ Members of Congress/ Legislative Councilors		0.622 <sup>#</sup>	1.170 <sup>+</sup>	0.757	0.699 <sup>^</sup>
Chief Executive Officers in the Private Sector**	Total Remuneration	5.215	15.074	5.037	5.745
	Basic Compensation	2.243	4.221	2.367	2.356

Remarks: @ including full parliamentary salary.  
 \* salary of the Prime Minister.  
 ~ Secretaries of Departments refer to DL7, D9 and D10; Directors of Bureaux refer to D8.  
 # basic annual salary, not including allowances.  
 + members are not permitted to take part in business activities.

^ not including operating expenses.  
\*\* Towers Perrin, *Worldwide Total Remuneration 2001-2002*.

**Table 13 - Ways to Prevent Conflicts of Interest of Senior Members of Government**

Country	Major Regulatory Framework	Declaration of Interest	Interests to be Declared	Post-office Employment
UK	- <i>The Ministerial Code: A Code of Conduct and Guidance on Procedures for Ministers</i>	- Make declaration to Permanent Secretaries - Make returns to both Houses as Parliamentarian	- Cover financial instruments and partnerships, financial interests such as unincorporated businesses and real estate, also relevant non-financial private interests and previous relevant employment - Not only personal interests, but also those of spouses, children or closely associated persons	- Monitored by the <i>Advisory Committee on Business Appointments</i> - <i>Guidelines on the Acceptance of Appointments or Employment Outside Government by Former Ministers of the Crown</i>
US	- <i>The Ethics in Government Act of 1978 and Executive Order</i>	- <i>Public Financial Disclosure Report</i>	- Cover assets, transactions, liabilities, outside positions and compensation in excess of \$5,000 paid by one source, etc. - Spouses and dependent children are required to declare interests on assets, transactions, gifts and liabilities, etc.	- By legislative and executive means
Singapore	- <i>The Code of Conduct for Ministers</i>	- Declare in writing to the Prime Minister details of their personal assets and previous sources of incomes at the beginning of appointments	- Confidential and not available to the public	- No regulations
Hong Kong	- A declaration of Interests system for senior civil servants - <i>Civil Service Regulations</i> - A mechanism for Members of Executive Council to declare their interests in matters laid before the Council	- Make declaration to the Civil Service Bureau	- All investments in/or outside Hong Kong (annually) - Any investment transaction equivalent to or exceeding HK200,000 (within 7 days) - Register annually certain financial interests* for public inspection - Only required to report the occupation of their spouses, no need to declare financial interests of their spouses and children	- Required to seek prior approval from the Government within one year after completion of their agreements, before taking up any outside employment or engaging in any business the principal part of which is carried out in Hong Kong.

Remarks: \* including 1) land and building; 2) proprietorships or directorships of companies; and 3) shareholding of 1% or more of the issued share capital in any listed, public or private company.

**Table 14 - Removal of Senior Members of Government**

Country	Conditions	Role of Parliament	Removal Process
UK	<ul style="list-style-type: none"> <li>- When a whole government resigns</li> <li>- In a reshuffle</li> <li>- Fails to fulfil the requirements of collective responsibility</li> <li>- Breaches the requirements of individual responsibility</li> </ul>	<ul style="list-style-type: none"> <li>- Vote of confidence</li> </ul>	<ul style="list-style-type: none"> <li>- Hold office at the Queen's pleasure, their removal is determined by her on the Prime Minister's advice at any time</li> </ul>
US	<ul style="list-style-type: none"> <li>- By the President after notice and opportunity for public hearing for inefficiency, neglect of duty or malfeasance</li> <li>- By the Congress through impeachment for conviction of treason, bribery, or other high crimes and misdemeanors</li> </ul>	<ul style="list-style-type: none"> <li>- Impeachment</li> </ul>	<ul style="list-style-type: none"> <li>- The Constitution stipulates that the power to impeach is given to the House of Representatives, and cases of impeachment are tried before the Senate</li> </ul>
Singapore	<ul style="list-style-type: none"> <li>- Similar to the UK</li> <li>- The Cabinet of Singapore is, by Constitution, collectively responsible to Parliament</li> </ul>	<ul style="list-style-type: none"> <li>- Vote of confidence</li> </ul>	<ul style="list-style-type: none"> <li>- Only the President can declare the office of the Prime Minister vacant, or revoke the office of a Minister, acting on the advice of the Prime Minister</li> </ul>
Hong Kong*	<ul style="list-style-type: none"> <li>- Misconduct</li> <li>- Criminal conviction</li> <li>- Public interest</li> </ul>	<ul style="list-style-type: none"> <li>- No</li> </ul>	<ul style="list-style-type: none"> <li>- CE recommends to the central government to remove principal officials.</li> </ul>

Remark: \* Public Service (Administration) Order 1997.



## PART 6 - REFERENCE FOR HONG KONG

### Introduction

32.1 Based on the findings in this study, the followings are some issues which Members of the Panel on Constitutional Affairs may wish to consider regarding the appointment of principal officials under the proposed accountability system in the Hong Kong Special Administrative Region (HKSAR).

### Qualification – The Rule of Incompatibility

32.2 Among the countries studied, there are generally no specific criteria for a person to be eligible for ministerial posts, except for requirements concerning citizenship and allegiance. In Hong Kong, similar requirements are written into the Basic Law regarding the eligibility of principal officials.<sup>1</sup> In a parliamentary system of government, such as the UK and Singapore, persons who hold ministerial posts are required to possess parliamentary qualification.

32.3 In Hong Kong, Article 79 of the Basic Law provides that the President of the Legislative Council (LegCo) shall declare that a Member to be disqualified, among other conditions, when he or she accepts a *government appointment* and becomes a public servant.<sup>2</sup>

32.4 Although principal officials under the proposed accountability system would be appointed on terms different from those in the civil service, the Government's position is that they should be considered as public servants based on Article 101 of the Basic Law.<sup>3</sup>

### *Issue to be considered*

32.5 When a LegCo Member is appointed as a principal official, he or she becomes a public servant. However, since the appointment is made by the Central Government and not by the HKSAR Government, the applicability of Article 79 in that regard needs examination.<sup>4</sup>

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<sup>1</sup> Please see Articles 61 and 104 of the Basic Law. To be a principal official, an individual must be (1) a Chinese citizen; (2) a permanent resident of Hong Kong; (3) no right of abode in any foreign country; and (4) ordinarily resided in Hong Kong for a continuous period of not less than 15 years.

<sup>2</sup> Article 79 of the Basic Law has been integrated into Section 15 of the *Legislative Council Ordinance*. Article 99 of the Basic Law provides that "public servants serving in all government departments of the HKSAR must be permanent residents of the Region,...."

<sup>3</sup> Please see LegCo Paper CB(2)693/01-02(01).

<sup>4</sup> There are also legal restrictions on the participation of public officers in a LegCo election. Section 39 of the *Legislative Council Ordinance* stipulates that any person holding an office, whether permanent or temporary in a Government department or bureau and employed in the

### Appointment Process

32.6 In the US, appointment to a Cabinet office is undertaken only after the 'advice and consent' of the Senate have been obtained. A candidate's suitability will be severely tested by a detailed pre-checking process. In the UK and Singapore, ministerial appointment is entirely at the discretion of the Prime Minister based upon the personal and political reputation of a candidate. There is no pre-checking on a candidate's fitness for ministerial office.

32.7 In Hong Kong, the employment procedure of civil servants, including integrity checking, is applicable to principal officials. LegCo's Panel on Constitutional Affairs has expressed a concern regarding "*whether it is a matter of government policy for integrity checking of principal officials to be completed prior to the appointment by the Central Government.*"<sup>5</sup>

### *Issue to be considered*

32.8 In Hong Kong, if principal officials are to be drawn from a variety of sources, Members may wish to consider whether some form of pre-appointment vetting should be introduced.

### Levels of Payment

32.9 There is a big difference in ministerial salary levels among the countries covered in this study. Ministerial salaries in Singapore are at the higher end and are pegged with the private sector through a benchmark scheme. Ministerial salaries in both the UK and the US are kept at a more modest level.

32.10 There are different rationales behind the financial rewards to which Ministers are entitled in these selected countries. Singapore Government considers that ministerial salaries comparable to private sector levels<sup>6</sup> are essential to attract capable persons from the private sector to become Ministers and to minimize the financial sacrifice of their joining the Government.<sup>7</sup> The levels of salaries in both the UK and the US are aimed at providing a necessary barrier to possible corruption and an adequate compensation for Ministers to devote all their time to official duties without having recourse to other employment.

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department or bureau, is disqualified from being nominated as a candidate at a LegCo election, and from being elected as a LegCo Member.

<sup>5</sup> Please see LegCo Paper CB(2)1969/00-01.

<sup>6</sup> Please refer to Table 6 regarding the salaries of Ministers.

<sup>7</sup> The Prime Minister's Office, *White Paper on Competitive Salaries for Competent and Honest Government*, 1994, pp. 1-2.

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*Issues to be considered*

32.11 Members may wish to consider whether most of the posts of principal officials should be filled by individuals from the private sector and whether salaries would be the determining factor for persons to become principal officials under the proposed accountability system. Members may also wish to consider whether a comparatively low salary package for principal officials may become an obstacle to attract capable persons from the private sector to join the HKSAR Government.

32.12 In addition, Members may wish to compare the payment schedule for principal officials under the proposed accountability system with that for the existing Secretaries of Departments and Directors of Bureaux.

Specific Legislation to Govern Principal Officials' Salaries

32.13 Both the UK and the US have used specific legislation to govern the levels of salary payable to ministerial posts. Parliamentary approval is required for changes in payment levels.

32.14 In Hong Kong, LegCo can approve salary increases of government officials through the established legal mechanisms.

*Issue to be considered*

32.15 Members may wish to take reference from the cases of both the UK and the US in monitoring principal officials' salaries.

Conflicts of Interest

32.16 As regards the ways to avoid conflicts of interest, there is a fundamental difference among the countries covered in this study owing to the different systems of government adopted. The parliamentary system of government in both the UK and Singapore relies on codes of conduct to regulate Ministers' conflicts of interest. The presidential system of government in the US relies on statutory regulations.

32.17 Despite this difference, the two systems share a common pattern, which is, a detailed and open set of rules is formulated so as to provide clear guidelines to avoid possible conflicts of interest.

32.18 In both the UK and the US, the declaration of interests made by the Cabinet Ministers/Secretaries covers not only their own personal interests, but also those of their spouses and children.

32.19 In Hong Kong, there is a declaration of interests system for senior civil servants. In addition, there are separate rules and guidelines in the *Civil Service Regulations* governing civil servants' possible conflicts of interest.<sup>8</sup> Principal officials who are appointed on civil service agreement terms are required to seek prior approval from the Government within one year after completion of their agreements, before taking up any outside employment or engaging in any business the principal part of which is carried out in Hong Kong.

#### *Issues to be considered*

32.20 Under the proposed accountability system, principal officials would be appointed in terms different from those in the civil service.<sup>9</sup> Members may wish to consider whether a new system should be devised to monitor the possible conflicts of interest of principal officials appointed under the proposed accountability system, especially if some principal officials may be appointed from outside the civil service.

32.21 Members may also wish to consider whether the declaration of interests for principal officials under the proposed accountability system should cover not only their own personal interests, but also those of their spouses and children.

#### Terms of Appointment

32.22 In the UK, the US and Singapore, ministerial positions are different from civil service posts. Therefore, unlike civil servants, holders of ministerial posts do not have employment contracts. The relationship between the head of government and political appointees is political rather than contractual.

32.23 However, the Hong Kong Government has maintained that principal officials under the proposed accountability system will be appointed on specific terms. Their appointment contracts would clearly state their rights and obligations.<sup>10</sup> In particular, their term of office would not exceed that of the Chief Executive (CE) who nominates them.

32.24 The term of office of principal officials under the proposed accountability system is another important issue. The Basic Law has no provision on this aspect. While principal officials may be appointed by CE to be Members of the Executive Council, there is a provision in the Basic Law that the term of office of

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<sup>8</sup> For more detailed information, please refer to, "Declaration of Interests by Senior Civil Servants in Some Overseas Countries" Research and Library Division, Legislative Council Secretariat, March 2000 and LegCo paper CB(1)816/00-01(04).

<sup>9</sup> *The 2001 Policy Address*, HK: the Printing Department, 2001, para. 134.

<sup>10</sup> *Ibid.*

Members of the Executive Council does not exceed that of CE who appointed them.<sup>11</sup>

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<sup>11</sup> Article 55 of the Basic Law.

*Issues to be considered*

32.25 In view of the overseas practice, Members may wish to consider whether a contractual arrangement is appropriate for the relationship between CE and principal officials under the proposed accountability system.

32.26 If there will be appointment contracts for principal officials under the new accountability system, Members may wish to know whether those contracts represent agreements between CE and the principal officials or between the Central Government and the principal officials.

32.27 In addition, Members may wish to consider whether those rights and obligations in the appointment contracts should be publicized.

32.28 Since principal officials are appointed by the Central Government, Member may wish to consider whether employment contracts between CE and the principal officials can be used to define their term of office.

Removal of Principal Officials

32.29 In the UK, the US and Singapore, ministerial positions are held by politicians and can be removed for political reasons. Conditions of removal are regulated either by constitutional conventions as in the UK or by legal means as in the US. All legislatures in the three countries have played certain roles in the process of removal. Both the UK and Singapore rely on the vote of confidence, while the US relies on the impeachment mechanism.

32.30 In Hong Kong, Article 48(5) of the Basic Law stipulates that CE has the power to recommend to the Central People's Government the removal of the principal officials. The Basic Law has no provision for the legislature to remove a principal official through a vote of no confidence. Although LegCo is provided with the power to impeach CE<sup>12</sup>, principal officials are not accounted for. At the same time, the HKSAR Government is required to be accountable to LegCo.<sup>13</sup>

32.31 In 2000, LegCo's Panel on Constitutional Affairs published a report entitled "The Development of the Political System of Hong Kong Special Administrative Region." In the report, the Panel recommended, inter alia, the Government should

"Explore the feasibility of developing constitutional conventions under which principal officials shall voluntary resign as a result of having committed serious mistakes in the formulation or

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<sup>12</sup> Article 73(9) of the Basic Law.

<sup>13</sup> Article 64 of the Basic Law.

implementation of government policies.”

*Issues to be considered*

32.32 Under the proposed accountability system, principal officials are accountable to CE and take orders from him. CE alone has the power to recommend the removal of principal officials. Members may wish to consider what courses of actions can be taken if a principal official commits a serious policy mistake but CE refuses to recommend his removal.

32.33 Members may wish to consider whether LegCo should play a role in the process of removal of a principal official under the proposed accountability system.