

**Subcommittee to Study the Proposed
Accountability System for Principal Officials and Related issues**

**Resolution under Section 54A of the
Interpretation and General Clauses Ordinance**

Introduction

This paper seeks to explain why the Resolution under section 54A of Interpretation and General Clauses Ordinance (Cap. 1) is the appropriate legislative vehicle for effecting the necessary transfer of statutory functions arising from the implementation of the accountability system.

Background

2. At the House Committee meeting on 19 April 2002 and previous Subcommittee meetings, members asked the Administration to explain why the Resolution under section 54A of Cap. 1 is the proper and appropriate means to effect the implementation of the accountability system. This paper seeks to consolidate our responses on this matter given at previous meetings.

Reorganization of bureaux

3. The implementation of the accountability system will be accompanied by the reorganization of a number of policy bureaux. As explained in the paper on “The Constitutionality of the Accountability System”, this re-organization is consistent with the Basic Law, which does not specify the number, functions or names of policy bureaux. Neither does it require that the structure of the government should remain unchanged for 50 years.

4. Generally speaking, re-organization of government structure does not require legislation. It can be effected administratively. This is because the structure of the government is not provided for in either the

Basic Law or any local legislation. There is no provision in the Basic Law which requires that the government structure shall be prescribed by law. Similarly, the government structure is not set out in any local legislation. Previous re-organizations of government structure, both before and after Reunification, were achieved administratively.

Resolution under section 54A of Cap. 1

5. The Resolution under section 54A is not the legislation to provide for the re-organization of bureaux. The Resolution is consequential to the re-organization.

6. The re-organization of bureaux will involve a change in the public officers who are to exercise the relevant statutory functions. Legislative amendments are required to transfer relevant statutory power to the principal officials in charge of the relevant reorganized policy bureaux. A resolution under section 54A of Cap. 1 is the appropriate form of legislation to achieve this purpose.

7. Section 54A of Cap. 1 was enacted in 1975 and has been used on a number of occasions in the past to transfer statutory functions from a public officer to another public officer consequential to a re-organization of the government structure. The use of a resolution under section 54A of Cap. 1 for this purpose is therefore entirely consistent with past practice.

8. As a matter of legal policy, it is proper to achieve a legislative amendment by subsidiary legislation rather than primary legislation if this can be lawfully done. The use of the Resolution under section 54A of Cap. 1 in this particular case is fully in line with our established policy on legislation.

9. Members have also asked if the Resolution under section 54A is sufficient for the purpose of transferring statutory functions from the existing bureau secretaries to the principal officials under the accountability system. In this regard, it should be noted that section 54A provides for the transfer of statutory function from one public officer to another public officer. There is no doubt that principal officials under

the accountability system are within the meaning of “public officer” in Cap. 1. The relevant statutory powers are vested in certain public officers. The relevant legislation does not provide for the terms on which these public officers shall be employed. Nor does it provide whether the particular public officer is to be employed on civil service terms. Therefore, the fact that relevant principal officials will not be civil servants does not affect the legality or effectiveness of the Resolution under section 54A of Cap. 1.

Constitutional Affairs Bureau

6 May 2002

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

References to the Chief Executive in Council in the Laws of Hong Kong

Introduction

At the meeting of the Subcommittee on 29 April 2002, a member pointed out that there were 689 references to the Chief Executive (CE) in Council in the laws of Hong Kong and requested the Administration to explain how appeals against decisions of principal officials presently dealt with by CE in Council would in future be handled when principal officials under the accountability system would also be appointed as members of Executive Council. This paper sets out the Administration's response.

References to the CE in Council

2. We have examined the 689 references to the CE in Council in the laws of Hong Kong. We have found 53 references providing for appeals in particular situations. There are also 32 references relating to the approval of plans etc. by the CE in Council which may involve the consideration of public objections. The rest relate to the making of subsidiary legislation, amendment of schedules of primary legislation and miscellaneous matters such as giving directions, making appointments, etc.

Whether it is appropriate for CE in Council to consider appeals

3. Executive Council (ExCo) is now and always has been, part of the

administrative machinery of government. It does not purport to be an independent judicial or quasi-judicial body. This is recognized in s.64(4) of Cap. 1, which provides that, when considering any appeal or objection to him, the CE in Council shall act in an administrative or executive capacity and not in a judicial or quasi-judicial capacity. The fact that under the accountability system there will be more principal officials in ExCo does not change the nature of ExCo in this respect.

4. The question whether it is appropriate for ExCo to hear particular appeals or objections has been the subject of ongoing consideration for the past ten years or so. In 1993, when the Administrative Appeals Board was created, 28 types of appeals to the then Governor-in-Council were transferred to the Administrative Appeals Board. In 1995, the then Attorney General's Chambers reviewed all statutory appeals and objections to ExCo and, as a result of its recommendations, many more types of appeals were transferred to other bodies.

5. In deciding appropriateness, two guiding principles are applied-

(a) the need to relieve ExCo of minor decision-making e.g. granting of licences; and

(b) the need to comply with Bill of Rights Ordinance, Art 10.

Article 10 of the Bill of Rights Ordinance requires, among other things, that all persons shall be equal before the courts and tribunals. In the determination of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Such appeals should not be heard by

ExCo. However, not all appeals against administrative decisions involve determination of rights and obligations in a suit at law For example:

- (i) objections to draft plans under the Town Planning Ordinance etc;
- (ii) administrative decisions with high policy content such as approval of road works proposal; and
- (iii) appeals in respect of the exercise of a statutory discretion relating to immigration matters

do not involve such a determination. It is therefore lawful for such appeals to be heard by CE in Council both now and under the accountability system. The fact that, under the accountability system, there will be more principal officials in ExCo does not make any material difference to the criteria for appropriateness already applied.

Principal officials connected with an appeal

6 It has been suggested that problems may arise when an appeal goes to ExCo from the decision of a bureau or department, since the principal official who heads that bureau or department will now be a member of ExCo. We believe that the situation can be resolved by the current arrangement that legal advice is given to the principal official concerned as to whether he/she should stand down from the particular appeal.

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

Mckinsey Report

In early 1972, the McKinsey & Company, Inc. was requested by Governor MacLehose to conduct a brief examination of the machinery of government in Hong Kong. A number of problems that impaired the effectiveness of the machinery were identified. It also identified the underlying problem as "the Hong Kong Government's fundamental difficulty of trying to expand services in the face of a continuing decline in numbers of skilled and experienced staff, and the resulting dilution of their efforts."

2. Consequently, a substantive study was undertaken to identify and recommend ways of improving the machinery of Government so as to increase its capacity to expand with the limitations on the supply of skilled staff. Two reports were published in November 1972 and May 1973.

3. In brief, the McKinsey Reports recommended the following ways to address the problems identified -

- (a) Strengthening existing machinery -- standardising departmental submissions, delegating authority to departments, and expanding the applications of computers;
- (b) Introducing new machinery to ensure departmental activities would be conceived more in terms of results -- the establishment of long-term programme plans, annual operating plans and resource plans;
- (c) Improving personnel management to recruit more skilled staff and to develop the potential of those already in the service -- opening senior

positions to all grades and promotions should be based on merit rather than on length of service; and

- (d) Changing the organisational structure of government -- dividing the government into branches, which would be responsible for policy formulation, and departments, which would be concerned with implementation.

4. The McKinsey Summary Report (in English only) is attached for members' easy reference. Members who are interested to peruse the two full Reports may contact the Clerk to the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
6 May 2002

Strengthening the Machinery of Government

Summary

November 1972

STRENGTHENING THE MACHINERY

OF GOVERNMENT

SUMMARY

Measured in terms either of its population or of its economy, Hong Kong has one of the highest growth rates in the world - a situation that imposes heavy pressure on Government to expand the scale and scope of the services it provides. It must respond to the demand to increase the volume of existing services. It must satisfy the rising expectations of the population by improving the quality of these services and by introducing new ones. And because the services are becoming increasingly complex in themselves, Government may require increasingly sophisticated methods of providing them.

In addition to meeting the requirements of growth Government must continue to satisfy the normal criteria of public sector activities, both legislative and executive. In its legislative or policy-making role, for example, it must provide Hong Kong with a stable legal environment, it must ensure that all the implications of proposed Government action are considered and that all interests receive an equitable hearing, it must be seen to be fair and honest. In its executive role - for example, in building roads, educating children or running hospitals - it must satisfy in addition criteria that are more akin to those of a commercial undertaking, namely to respond rapidly to changing needs, to provide goods and services to the required standard at minimum cost, and to achieve increasing standards of efficiency and effectiveness.

Whether or not the Government satisfies the legislative criteria to a sufficient degree involves a qualitative judgement that is beyond our competence to make. However, on the question of whether or not the Government meets the criteria for its executive role, we were able to apply more factual measures.

We found a variety of problems, all of them symptoms of one underlying problem - the Hong Kong Government's fundamental difficulty of trying to expand services in the face of a continuing decline in numbers of skilled and experienced staff, and the resulting dilution of their efforts. Our task, therefore, was to identify and recommend ways of improving the machinery of Government so as to increase its capacity to expand with the present limitations on the supply of skilled staff. We were asked to advise on how these improvements could be achieved without, in the first instance, significantly changing the system - that is, without significantly changing organisational relationships, main areas of responsibility or constitutional requirements.

We believe that, within these limits, improvements can be achieved by adopting the three approaches described in the full report. Some further opportunities for improvement undoubtedly exist beyond the limits, and those that merit early attention are outlined at the end of the report. However, the issues they raise will require considerable study before changes can be demonstrated as being both desirable and feasible; it is intended that the more important of them shall be the subject of a further report.

The three approaches that can be adopted now are as follows:

1. Strengthen the existing machinery without making radical changes. This could give significant but limited improvements
2. Introduce new machinery so that executive activities, which are performed mainly by the decentralised Government departments, could be managed more in terms of the results they produce than, as at present, in terms of the resources they use. This change would allow greater central control to be exercised while substantially reducing the administrative load, and would give the Government a greater capability to deal with continuing growth
3. Improve personnel management so that more skilled staff are made available and the potential of those already in service is more fully developed.

Summary descriptions of these recommended approaches, and of the further opportunities for improvement, are given in the four sections that follow. The detailed findings and conclusions on which they are based are set out in full in the main report.

The three approaches are largely independent of each other, and could be tackled separately or together. Similarly, within each approach the individual recommendations are also largely independent and therefore leave Government considerable freedom to tackle them one at a time or all at once. Moreover, the activities of Government are so important to so many people that any fundamental change in its machinery should be introduced with caution. The more radical elements of the proposed new machinery should therefore be tested thoroughly in a limited area before any widespread implementation is contemplated. On the other hand, with Government activities expanding at their present rate, delay now would make change even more difficult later. For these reasons the plans to implement the recommendations will need continuing high-level involvement to ensure the adoption of the best options for change, and the most suitable balance of speed and risk.

Before we examine the proposals it is worth putting them into perspective. As advisers to Government on how to improve its machinery, we have had to focus our efforts on those areas where the potential for improvement is greatest; we cannot give corresponding weight to areas that are working well. Thus, we must dispel at the outset any impression the report may give that the Hong Kong Government is open to censure. This is not the case. The need for change in Government machinery stems primarily from growth. In the main we have found staff to be hard-working and dedicated administrators one has only to look out of the window at Hong Kong's prosperity and vitality to recognise their contribution - but they need to adopt some new attitudes and develop more managerial skills to cope with the expanding activities. Most have been open minded and have given us every cooperation in identifying the problems and in seeking new ways to overcome them.

1. STRENGTHENING EXISTING MACHINERY

By any standards the Hong Kong Government is a large and complex operation. The rapid growth rate of the Colony also means that a new dimension is added to the problem.

In a situation of this kind, the demands made on the machinery of Government - i. e., the day-to-day processes and procedures - are continually developing and changing, and, not surprisingly, improvements are possible at any point in time.

When we looked first for ways to strengthen Government machinery without making fundamental changes, five opportunities stood out as offering the most worthwhile benefits. However, to gain the full benefits, and to create an atmosphere where staff will be continuously looking for further improvements, some changes in the working environment will also be necessary.

Changes in Machinery

The five recommended changes are:

1. Standardise submissions. When departments wish to change Government policy, or when they need more resources, they send a submission to the Secretariat describing and justifying the proposal. At present, for a variety of reasons, the submissions are frequently incomplete. Excessive delays occur and effort is wasted while Secretariat and department staff resolve the difficulties. For the bulk of submissions a checklist can be provided - some are already being tested - that should largely resolve the problem.

2. Clarify the roles of departments and branches. Our experience in working with staff in the Secretariat and departments suggests that many of them are unclear about the scope and responsibilities of their own and others' jobs. As a result important tasks can be left undone; on other tasks staff overlap and duplicate each others' efforts, causing frustration and demoralisation,

We therefore recommend that the roles and responsibilities of branches and departments should be defined in terms of the end results required rather than purely in terms of broad areas of responsibility, as at present. The specific actions required can be completed fairly rapidly, but continuing long-term pressure from the top is required to ensure that staff observe the requirements,

3. Delegate authority even further. In theory the resolutions of Legislative Council and its committees require all decision-making powers to remain highly centralised. In practice, however, substantial decision making powers are delegated. The papers forwarded to committees for approval give only an outline of the proposal and, by implication, say that the Secretariat have investigated the case and believe it to be justified. The committees probe and cross-question, but they rarely reject a proposal. Rather than actually take the decisions they maintain a valuable pressure on Secretariat staff to get the decisions right. Further, the Secretariat staff have large negative decision powers in that they decide which proposals are put forward for committee approval.

In practice, therefore, the person who issues the papers to the committee takes the decision. As volume increases this responsibility is delegated down the organisation.

Further such de facto delegation will be inevitable as the volume and scale of Government activity increases. We believe that rather than be overtaken by events, Government should anticipate this requirement now so that senior staff can be relieved of some of their administrative load and can give higher priority than at present to more critical tasks.

The degree of further delegation must be left to the judgement of senior staff because the present machinery does not provide a means of controlling overall end results without examining individual items. To help these judgements, the decision levels of senior posts and committees should be analysed regularly and systematically. First trial attempts have revealed a lot of scope for delegation.

4. Control the progress of files. Many of the decisions taken by Government are extremely complex and require files of papers to be passed through large numbers of departments and branches. When top-level staff perceive a matter as urgent, the machinery of Government can respond with great rapidity and impressive effect. But top-level pressure

cannot be applied to every individual file and therefore for various reasons some substantial delays can occur on more routine matters.

To avoid such delays two steps are necessary. First there should be a systematic and routine measurement of the paperwork flow and, second the measure should be used by top-level staff to apply pressure or identify remedial action. Such steps are taken already in some instances.

We recommend that simple control systems should be introduced across the whole Secretariat and extended later to the departments.

5. Route in parallel rather than in series. In many cases files and papers are routed serially from person to person because at each stage the individual needs the total picture. At times, however, parallel routing and the consequent speeding up of processes become practical.

Many of these changes can be achieved only through 'managerial' observation and pressure, but for the more important processes some more systematic O. & M. analyses should be undertaken.

Changes in Environment

None of the ideas underlying the above recommendations are new many of them are already being applied in some areas; none of them require other than general skills to identify and implement - skills of an order that already exists within Government. The five changes described above will bring the best immediate benefits but other opportunities abound. An environment is therefore needed that actively encourages staff not merely to operate the machinery but also to improve it.

Specifically, the Government should:

1. Make available 20-30 per cent of D. C S. 's time for direct management of the Secretariat. We believe major benefits could be gained by freeing sufficient of the D C. S. 's time to spend about one day a week regularly visiting all parts of the central Secretariat, and ultimately other areas of Government, observing what is actually happening, identifying problem areas, training more junior staff and understanding their difficulties, and generally keeping the place on its toes. We believe that such action would highlight many minor but cumulatively important improvements.

The more immediate reason for needing an active top-level presence is to gain tangible benefits from the improvements recommended in this section and the others that will follow.

1. Given the present responsibilities of the D.C.S., freeing even one day a week would be extremely difficult. There seem to be two possible solutions: heavy delegation to branch heads, or the creation of a second post at D, C. S. level. Neither solution is perfect, and the choice must depend on a judgement of their relative merits.

2. Upgrade the A. C. S. (S. D.) post to P. A. C. S. level. To provide the D. C. S. with the necessary direct support to make the management role effective, the present A. C. S. (S. D.) post should be upgraded to P. A. C. S. level. In the short term the main task would be to oversee the implementation of the agreed recommendations in this report. Longer term, the emphasis would be on identifying and implementing further improvement opportunities. These responsibilities would be difficult to discharge unless the incumbent of the post is at least of equivalent status to most branch heads in the Secretariat.

2. INTRODUCING NEW MACHINERY

The end result of Government's complex processes is the implementation of a large number of programmes* ranging across diverse fields such as crime prevention, housing, education. Achieving the objectives of these programmes requires departments to carry out a mix of activities** and in turn each of these activities requires a mix of resources.

The interrelationships between the programmes, activities and resources are also complex, and for this reason issues and decisions have to be examined from several viewpoints. Thus planning, decision making and control in Government need to be conducted in several dimensions.

In addition to taking account of this complexity, the approach used to manage these activities must meet three basic criteria. First - and most important - it must allow the centre to hold the ultimate decision powers and to retain strong overall control of all facets of Government business. Second, the approach must enable top-level Secretariat staff to devote the full attention merited to the major issues facing Government. And finally, it must be operable by the numbers and skills of staff currently available.

* - A continuing service to the public, direct or indirect - e.g., Medical and Health Service

** - The tangible action taken to achieve programme objectives - e.g., keeping shops and offices under surveillance.

To meet these criteria Government needs to delegate to departments, in a controlled manner, responsibility for the operational or executive types of decision that represent the bulk of Government activity. The generally more difficult and more important policy-making or matter-of-judgement types of decision should be retained as a central responsibility.

The present machinery does not permit the departments actually to take many decisions, since it provides few means of ensuring that any delegated decision powers are properly exercised without individually checking each decision. As a consequence, large numbers of relatively unimportant decisions have to be taken centrally - for example, whether to buy a calculating machine, whether a new filing cabinet is warranted.

When the Government machine is small and most applications can be examined in depth by the few top-level staff, this approach can work well and be highly efficient. But as the size of operation grows, this approach can be maintained only by further fragmentation of responsibility for individual resources. It then becomes increasingly difficult to:

- Maintain or improve value for resources
- Allocate resources in a balanced manner
- Obtain good value from scarce experienced staff
- Achieve a rapid response for decisions and implementation
- Focus on problems as a whole.

What is needed, therefore, is a new approach for managing departmental activities that will permit the desired delegation. We believe that an approach that concentrates on planning and controlling departmental activities in terms of their end results or their output of goods and services rather than, as at present, in terms of the input or the individual resources used, will meet this requirement.

Although this recommended approach is very different from the one used at present, there is nothing novel about it. It is the kind of approach used by most large businesses with diverse operations; it is also being adopted progressively by central and local government, notably in Sweden, the United Kingdom and the United States.

To adopt this new approach the Government needs to make four changes in its machinery.

1. Introduce annual operating plans. These plans relate the use of resources to the required end results of an activity, and provide the basis for

- Ensuring that resources are allocated in a balanced manner
- Obtaining increasing value for resources
- Delegating executive decisions in a controlled manner so that the load on top-level staff is reduced.

This type of plan is often generated in Hong Kong when resources are required for implementing new policies, but typically not for the bulk of expenditure that relates to existing policies.

2. Formalise the process and extend the coverage of long-term programme plans. This type of plan relates activities to overall programmes. It provides an aid to top-level staff, first in determining and setting overall programme objectives, and second in identifying and then setting appropriate objectives for each departmental activity that contributes to the programme

Long-term programme plans have been drawn up for some areas, but typically efforts are sporadic and plans are not kept up to date on a rolling basis.

3. Formalise the process and extend the coverage of resource plans. This type of plan identifies total requirements, across the whole Government Service, for particular resources such as money, categories of staff, land, etc. It thus helps to identify potential shortfalls in time to take corrective action and to ensure that scarce resources are diverted to priority areas with minimum disturbance.

Again examples of these plans do exist, but they are insufficiently complete or up to date to achieve their full potential. The need to introduce such plans for key grades of staff is covered more fully in the next section.

4. Introduce processes for monitoring performance against plans. To gain the full benefits of any planning process it is necessary to monitor performance against plan to detect shortfalls while there is still time to take corrective action. The recommended new processes provide a reference against which performance can be monitored. At present, such controls as do exist are exercised in the form of limits. The main form of control is financial and is maintained by requiring formal application to be made before the approved vote on any category or sub-category of expenditure can be exceeded. This necessary control prevents

overspending, but it does little to ensure that money is well spent and nothing to prevent what may be equally damaging, namely under spending.

* * *

While we believe the new approach would be more effective than the present method of managing departments' activities, the difficulty of reeducating large numbers of senior staff to think in a new way, while they have to keep the Government machine operating, should not be underestimated. Further, given the size of Government, the change could not be achieved overnight; a practical period for full implementation would certainly be measured in years rather than months.

Although we believe from our limited assessment that the staff are capable of adapting to this new approach while dealing with current issues, at this point of time it is not certain whether all the difficulties of implementation can be overcome. Moreover Government should not embark on such radical change without a thorough evaluation and test. We have therefore recommended a cautious trial in one or two sample areas before embarking on full scale implementation. Such trials have the further invaluable advantage of allowing detailed development of the new processes in practical surroundings,

When the initial tests are completed around the end of March, 1973, Government should decide the priority for extending the implementation of the new processes,

3. IMPROVING PERSONNEL MANAGEMENT

To achieve the objective of personnel management - i.e., to meet the manpower requirements of each grade - four basic tasks must be carried out: recruiting people to fill vacancies; retaining people by providing a satisfying career package; developing people to fill more senior posts; deploying people to positions where they are most useful.

Measures of effectiveness applied to the present performance of these tasks suggest a number of problems. The overriding problem is the serious shortage of manpower in Government, overall and in key grades such as the Administrative Class or the Police. There is also evidence of problems in general morale; in the speed and effectiveness of response to changing personnel needs; and in the way resources are used in achieving personnel objectives.

These problems arise largely from the lack of coordination of the four tasks. Responsibility for their execution is spread both within the departments themselves, and between the various Establishment Branch divisions, P. S. C., etc. This distribution results from a number of factors, including statutory requirements, and the need for centralising certain functional activities and skills, and we recognise that it must remain largely the same. What is needed, we believe, is an approach to coordinating the various tasks of each class or grade that will ensure they are carried out effectively, and a clear assignment of responsibility for this coordination.

The recommended approach consists of the systematic development and regular revision of a Personnel Resource Plan. Application of the approach to the few sample grades we have examined suggests there may be many opportunities to improve performance of the four tasks, for example:

- Recruiting might be improved by (a) setting up a U.K. recruiting office; (b) exploring alternative recruiting sources; (c) transferring existing staff from professional grades to the Administrative Class.
- Retaining staff might be improved by (a) developing a compensation package that suitably balances the various elements - e. g., pay, pensions, housing; (b) changing the personnel management approach to a more sympathetic, positive style.
- Developing staff might be improved by applying more specific performance criteria so that individual development needs are identified more clearly.
- Deploying staff might be made more effective by wider use of formal job descriptions and increased tenure in postings.

Once agreed, the Personnel Resource Plan would provide clear guidelines within which to design short-term personnel activities and develop Annual Staff Estimates

4. CONSIDERING LONGER TERM CHANGES

We were asked in the first instance to recommend ways of improving Government machinery without fundamentally altering the present system. However, some further worthwhile improvements can undoubtedly be achieved if these limits are extended. This chapter outlines seven opportunities that we believe merit further consideration.

The changes implied by these opportunities would be fairly radical, and the issues they raise warrant a considerably wider and deeper analysis than we have given them in our study so far. We therefore only outline the problems here and suggest the form the solutions might take. On the more immediate of these problems we will be working with Government to reach more specific recommendations.

Reallocate Department Responsibilities

If Government is to get full benefit from the new approach recommended in Section 2 - to manage departments in terms of their results rather than the resources they use - responsibilities for each required result must be clearly identified. Some organisational adjustments will therefore be necessary,

The reorganisation could take a number of forms:

- Creating new departments as is being currently contemplated for Housing
- Merging department responsibilities, as has been done under the new Information Secretary
- Reorganising departments internally so that responsibilities reflect tasks more closely - for example, the recent reorganisation of U. S. D. on geographic rather than functional lines.

Group Departments Into Managerial Units

In the present organisation structure, the heads of some 40 or 50 departments and of the majority of Secretariat branches report directly to the C, S, or D. C. S., creating a span of control that makes effective management difficult. The span could be reduced by one of several alternatives - e, g., grouping departments under "super directors" as in P,W.D.; changing the role of Secretariat branch heads so that they become middle managers between department heads and D. C. S.; creating additional posts above Staff Grade A level to share the D. C. S. responsibilities,

Change Secretariat Policy Branch Responsibilities

The need to extend and formalise programme plans was discussed earlier. One of the difficulties associated with their development and effective implementation at present is that responsibility for a programme may span several branches and departments, and for many programmes no

single person, except at C. S. or F. S. level, is responsible for coordination.

We believe the problem could be solved by relating Secretariat policy branch responsibilities to groups of programmes rather than to groups of departments as at present.

Reorganise Secretariat Branches

The Secretariat branches divide into four main categories: policy branches, which advise on the type and standard of services Government should provide; resource branches, which advise on the overall allocation and control of a particular resource; adviser branches, whose special expertise is available to assist throughout Government; and support branches, which provide essential central services for other branches and departments. At present most Secretariat branches play more than one of these roles, which results in two main problems: a lack of clarity among staff as to what they are supposed to produce by way of results, and a possible misuse of scarce skills.

We believe improvements might be achieved by:

- Segregating the four categories of role so that each branch focuses on one type only
- Reorganising the branches so that similar managerial activities are grouped together. F. S. might take charge of all resource branches, while D C S. takes charge of policy and support branches.

Rationalise and Change the Roles of Advisory Committees

The number of advisory bodies is large and is growing. Clearly these bodies perform a valuable and essential function, but frequently the benefits they produce hardly seem to merit the demands they make on the time of top-level staff and busy private citizens. We believe that more benefits could be obtained, first by rationalising the roles of these committees and reducing their numbers; second by adapting the existing machinery and the proposed new machinery to give committees a more positive and more clearly defined role in policy formulation.

Hive Off Some Departments

Many Governments reduce the central administrative load by hiving off sections of activity to form separate agencies or nationalised industries. Government's role in the activity is then limited to setting overall standards and determining key factors such as prices; in all other respects the agencies are managed independently by their own Board and staff. In Hong Kong potential candidates for hiving off would include the airport, the railway, the Waterworks and the Post Office.

Increase Delegation From Finance Committee

The present machinery requires most decisions on the use of funds to go to Finance Committee or one of its sub-committees. The increase in scale of Government activity results in a corresponding increase in the numbers of committee items, and although steps are taken periodically to delegate authority to individuals the volume is still monumental.

The situation could be improved by greater statutory and other delegation, or by:

- Reducing supplementary papers by using operating plans as a basis for Annual Estimates
- Making greater use of block votes
- Reducing the number of heads and sub-heads in the Annual Estimates.

* * *

The introduction across the whole of Government of the recommended changes will entail a sizable additional work load, much of which will inevitably fall on senior staff who are already hard pressed with day-to-day administration. It may therefore prove to be necessary to tackle implementation over a period of years,

Tests to determine the desirability and feasibility of the recommended changes are now being carried out in pilot areas. When they are completed, Government will be able to decide more precisely on the timing of full implementation.

Whatever timing is decided, we have no doubt of the ultimate value of full implementation. Eventually, it should result in substantial savings in manpower and other resources. And it should considerably strengthen the Hong Kong Government's capability to meet the requirements of growth in the future.

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

Preserving the Integrity and Probity of the Civil Service

Purpose

A major pillar contributing to the stability and prosperity of Hong Kong is its efficient, professional, fair, politically neutral, clean and honest civil service. These qualities represent the heart of the core values upheld within the civil service. This paper describes the Administration's commitment to preserve, under the new accountability system for principal officials, the core values that have shaped the present culture of our civil service, values which the principal officials, the top echelon of Government, are expected to share and uphold.

Core values guiding the conduct of civil servants

2. The core values which all civil servants are expected to follow and uphold can be summed up as follows –

- (a) commitment to the rule of law;
- (b) honesty and integrity above private interests;
- (c) accountability in government decisions and actions;
- (d) political neutrality;
- (e) impartiality in the execution of public functions; and
- (f) dedication and diligence in serving the community.

3. At present, these values have been enshrined and elucidated in the regulations and guidelines governing the conduct of civil servants, covering such subjects as conflict of interest; acceptance of advantages and entertainment; declaration of private investments; use of information obtained in one's official capacity; and outside work, etc. To help ensure that the above values (as well as our commitment to uphold them) are well

understood within the civil service, we have published a guide-book on good practices for civil servants at all levels, as well as a handbook for senior managers highlighting the importance of leadership by example in nourishing and sustaining a culture of honesty and integrity in the civil service.

4. Our human resource management efforts are also structured in such a way that links functions including performance management and training to the entrenchment of the above core values.

5. Where a civil servant commits an act of misconduct or malpractice which involves a criminal element, he renders himself liable to prosecution. Where he fails to comply with the rules governing conduct, he renders himself liable to disciplinary action. There are well established disciplinary procedures for handling alleged misconduct including a hearing conducted in compliance with the principles of natural justice where an independent tribunal makes its determination after consideration of factual evidence adduced before it.

6. Where a civil servant comes across a corrupt or other criminal act in the discharge of his duties, he is duty bound to report it to the relevant law enforcement agency. In addition, there may be circumstances where a civil servant believes that he is being required by his superior to act in an improper, though not illegal, manner. There are established procedures^{Note 1} for him to pursue, within the service, a complaint about the way he has been treated under such circumstances. He may make representations to his Head of Department, the Secretary for Civil Service, the Chief Secretary for the Administration or the Chief Executive. In addition, he may also lodge a complaint with statutory watchdog bodies where the subject matter falls within their jurisdiction, for example, the Public Service Commission and The Ombudsman.

Code of Practice for Principal Officials

7. When addressing the Legislative Council on 17 April 2002, the Chief Executive emphasized that in introducing the accountability system, “we must ensure the continuity and stability of the civil service structure. Not

^{Note 1} Under the current central guidelines, whilst each department is given discretion to draw up procedures that best suit its operational requirements, it is expected to observe certain key rules: a civil servant may lodge his complaint orally or in written form to the Head of Department (HoD); the complaint will be dealt with in confidence, the identity of the complainant will not be revealed, without their consent, to anyone other than those involved in investigating the complaint; and an officer will not be penalized for a complaint made in good faith. On receipt of a complaint, the HoD will conduct an investigation which may include interviewing the complainant and other persons. The process must be completed and a reply issued to the complainant normally within three months after receipt of the complaint.

only do we achieve this, but through the introduction of the Accountability System, we must preserve and enhance the distinct qualities of the civil service system i.e. permanence, professionalism, political neutrality, and an uncorrupt administration”. To mark the importance placed on the civil service and the need to maintain its integrity, under the accountability system, the Secretary for the Civil Service will be one of the principal officials and will be selected from among serving civil servants. Apart from being responsible for civil service policy, the Secretary for Civil Service will be tasked to manage the civil service and to uphold the values of the civil service system.

8. In line with these objectives, the principal officials who represent the top echelon of Government, would be expected to take the lead in and contribute towards maintaining and building up a civil service which preserves the qualities described above.

9. The principal officials will be required, as part of their condition of employment, to observe a Code of Practice which will be drawn up on the premise that holders of public office have an obligation to perform their official duties and arrange their private affairs in a manner capable of standing up to the closest public scrutiny, an obligation the fulfillment of which goes beyond acting within the law. The Code of Practice will include provisions setting out their relationship with civil servants and cover –

- (a) the duty of principal officials to uphold and preserve the core values as well as the integrity and impartiality of the civil service, and not to require or influence civil servants to act in an improper manner which may conflict with his role as a civil servant;
- (b) the role of the Secretary for the Civil Service who, as a principal official, will be responsible to the Chief Executive for managing the civil service, including safeguarding the core values of the civil service; and
- (c) provisions which stress that civil servants will continue to be appointed, managed and promoted in accordance with the prevailing rules applicable to the civil service; and that they will continue to be subject to the prevailing civil service disciplinary mechanism, under which allegations of misconduct against individual civil servants are determined through an impartial process based on consideration of factual evidence.

The role and responsibilities of civil servants in relation to the principal officials

10. Under the proposed accountability system, civil servants are expected to continue as before to discharge their duties in accordance with the law. They should continue to offer advice without fear or favour, based on intellectual rigour, objective research and understanding of the nature of the interests of the public at large.

11. Under the present system, civil servants have to comply with Government regulations which include the Civil Service Regulations, which cover conduct and discipline, supplemented by civil service circulars issued from time to time covering specific issues. To ensure that civil servants clearly understand their role and responsibilities in relation to the principal officials, we will issue a composite circular on the subject.

The main provisions of the Civil Service Circular

12. The circular will set out the framework within which civil servants are to work to principal officials, including their obligation to give of their best in serving the principal officials and the Chief Executive of the day. We will enunciate the values and high standards of probity that civil servants are required to uphold in discharging their official duties (please see para. 10 above) including the need to maintain political neutrality and to give detailed and honest advice on policy options in the decision-making process; and that once a decision is made, they will implement the decision faithfully. The circular will also set out the procedures for managing situations where a civil servant believes that he is being asked to act in an improper manner which conflicts with his role as a civil servant (please also see para. 14 to 16 below).

13. Suitable emphasis will be placed, in the circular, on the importance of promoting a culture of open communication within government organizations so that issues and concerns could be readily dealt with in the normal interaction between principal officials and the civil servants working to them.

14. The circular will also make it clear that it is the responsibility of the civil service to support the implementation of the accountability system. At the same time, it is essential to foster a spirit of loyalty and trust between civil servants and the principal officials. To strengthen this corporate spirit, safeguards will be put in place to assure civil servants that they will not be put in an invidious position or one which may compromise their integrity, probity or impartiality.

15. First, where a civil servant believes that he is being asked to act in any way which conflicts with his role as a civil servant or with the civil service core values (see para. 2 above), he should report the matter through the procedures to be laid down in the composite circular, for appropriate follow-up action. These procedures will be similar to the existing arrangements described in paragraph 6 above.

16. Second, where the direction is made by a principal official, the matter will be brought to the personal attention of the Secretary for the Civil Service for appropriate action.

Conclusion

17. We believe that the arrangements outlined above will serve to preserve the integrity and probity of the civil service system. In addition, the Legislative Council, the ICAC, The Ombudsman, the Audit Commission, the Public Service Commission and the presence of our free and inquisitive media will provide additional checks against possible abuses.

18. It has taken many years of hard work to build up a civil service which is highly regarded for its integrity. We are determined to maintain this reputation. The Chief Executive has repeatedly stressed the need to maintain the stability of the civil service structure, preserve the principles of permanence and neutrality of the civil service, and maintain a highly efficient, professional and clean Government. These are the qualities which the Administration and the community would wish to preserve because public confidence in the integrity and probity of our civil service is essential to the good governance of the HKSAR.