

中山大學法律系香港同學會

(香港政府註冊慈善團體稅務局檔案號碼[91/3738])

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電話:2543-5341 傳真:2771-0089 網址:www.zsu-law.org.hk傳真號碼:2509 9055**致：立法會 — 主要官員問責制及相關事宜小組委員會**

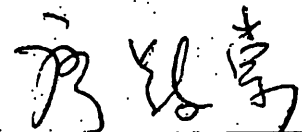
本同學會謹表達我們對特區政府建議的主要官員問責制的支持。

現時政府的司、局長官員，集制訂及執行政策一身。若政策出錯需要修改，官員便會今天的我打倒昨天的我。若制訂政策的官員與執行的官員分開，可避免這個尷尬局面。現時的司、局級官員都是公務員，即使該官員在其職權範圍內發生錯誤，礙於公務員的聘任條件，亦毋須因失誤而要接受離職等處分。從而加遽市民對政府的不滿。“問責制”能將政策的制訂者和執行人分開。制訂政策的問責官員需要為其重大的政策失誤承擔政治責任，嚴重者可即時終止合約，毋須受掣於公務員的聘任條件。同時，亦不影響執行政策的以常任秘書長為首的公務員隊伍的穩定性。

特區首長以政治任命主要官員，而各主要官員又是行政會議成員，與政府整體施政掛勾，增強政府施政的穩定性和效率。

問責官員，工作上要多接觸立法會、傳媒和市民大眾。換言之，他們除多接觸議員外，亦要多接觸市民大眾。這無形於有助政策制訂時，拓闊考慮的角度和層面。亦令市民大眾理解政府的政策。

中山大學法律系香港同學會



主席 廖敬棠

二零零二年五月三日

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立法會 CB(2)1854/01-02(02)號文件

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「立法會研究擬議主要官員問責制及相關事宜」**本會的意見與建議**

特區政府提出的高官問責制理念與架構方案，在社會上有了震撼性的回響。關於政制的改革，董特首多次在不同場合作出表示，也是幾年來施政對社會各階層的意見結晶，本會對董特首提出的高官問責制理念與架構方案深表鼓舞及支持。顧名思義，推行高官問責制方案的目的就是高官必須與行政長官的施政理念一致，配合特首治港，提高施政效率，積極勇於開拓新思維，促使高官用人唯才，增強政府在各方面的應變能力，順利落實施政方針，體現民意，履行對市民的責任，確保香港社會與時俱進。

香港特區政府在過去五年遇到了施政的最人困擾，高官有權無責，在落實政策上議而不決，不用為政策上的失誤承擔責任，有些對特首的施政陽奉陰違，工作不力，高薪照領，形成了有責任全盤由特首承擔，職權則由高官各行其是。有人認為推行高官問責制是特首獨攬大權，這種說法是不合邏輯的，特首是特區首長，是十八萬公務員之首，高官的權力源於特首，高官問責制又與『基本法』賦予特首的權力規定的行政長官指導政府是一致的。現在只有同舟共濟，團結一致，紮紮實實地改革阻礙香港發展的東西，再創造香港的輝煌。

特函 秘書處向立法會全體議員表達本會的意願，期望盡快落實高官問責制方案，不應拖慢整個審議程序，或故意違反『基本法』「重新立法」去延誤、阻撓高官問責制的實施。

此致

立法會研究擬議主要官員問責制及相關事宜
小組委員會秘書



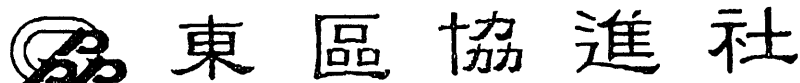
汕尾市海陸豐同鄉會有限公司

2002年5月2日

立法會 CB(2)1854/01-02(03)號文件

**西貢區議會議員
對擬議主要官員問責制的意見**

議員姓名	意見
范國威	建議中的高官只向特首一人負責，而特首卻由欠缺認受性的八百人選舉團選出，故本人對建議不表贊同。
樓曾瑞	<ul style="list-style-type: none">- 文件 24 段，是否每任主要官員都可檢討決策局的人手分配及架構，以及決策局和屬下執行部門之間的工作關係？- 文件 20 段，常任秘書長的工作比現任局長少，責任也減輕，故薪酬應相應減低。- 文件 24 段，政制事務局的工作應由政務司司長負責；環境及衛生福利局及教育局應重組為環境及衛生局以及教育及福利局。
劉慶基	本人認為高官問責是向民主之路邁了更大的一步，不過有幾點要注意： <ul style="list-style-type: none">- 高官與秘書長之職權必須界定；- 高官如何與立法會及區議會溝通；- 委任高官之前是否要經過諮詢過程；- 任免之高官是否可以委任其他公職。
溫悅球	<ul style="list-style-type: none">- 真問責，不是假問責，要有問責官員因犯錯而辭職的機制；- 應有過半非公務員人士出任問責官員。
林咏然	希望有關事項能盡快諮詢各區區議會。



東區協進社

THE SOCIETY FOR THE COORDINATION & PROMOTION OF EASTERN DISTRICT

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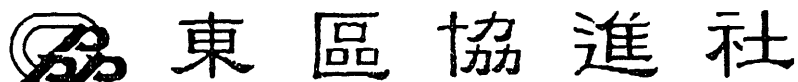
主要官員問責制 有利特區政府施政

最近，行政長官董建華先生正式提出了“高官問責制”的方案，在社會各界引起廣泛關注。本社認為，“高官問責制”的提出，是從香港實際需要出發的創新思維和戰略舉措。總體上看，有利於香港的長遠發展，有利於特區政府的有效施政，有利於《基本法》的落實和“一國兩制，港人治港”“高度自治”，有利於保障香港的根本利益，對香港的未來將產生積極、深刻的影響，本社對此極表認同和支持。

“高官問責制”，政府主要官員的職責更加明確，權責掛鉤，政策制訂者對政策執行的結果負責。這樣，就要求制訂政策時，有更廣泛和堅實的民意基礎，能夠切合民眾的需求，符合實際的情況，使政策的制訂和決策更民主更科學。

“高官問責制”方案，對現有的政策局進行重組，使部門的分工及資源的配置更趨合理。問責制主要官員進入行政會議，加強了行政會議協調各部門工作的作用，使政策局的政策與特區政府的整體政策相融合，並且能夠更加快捷有效地貫徹。

實行“高官問責制”，有利於強化特區政府的施政功能，強化行政長官在制訂、統籌、執行政策，調配人力、資源等方面的權力，減少和避免政出多門，改變公務員無須向特首負責，片面強調所謂“中立”的不正常現象，使特區政府的施政意圖能夠準確、順暢地推行。



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香港在“一國兩制”的條件下，現時公眾和傳媒對高官的監督，立法機關等對高官的制衡是充分的，我們不相信會因為實行“高官問責制”而使現有的制衡機制有所削弱或減少，也不相信會出現所謂“大權獨攬”的情況，相反，由於決策透明度的提高而更加有效。

我們認為，“高官問責制”的提出，充分表明董特首所率領的政府團隊，是負責任的政府，對香港是有承擔的，符合市民的期望。我們期待看到一個有信心和能力、廉潔高效，能夠率領香港走出困境，為市民提供更優質服務的強勢政府團隊。



東區協進社

社長:曾向群

2002年5月4日



油尖旺社團聯會

YAU TSIM MONG FEDERATION OF ASSOCIATION

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主要官員問責制意見書

特區首長董建華先生早前提出了主要官員問責制的構想，即坊間所說的「高官問責制」，並向社會大眾進行諮詢。作為一個關心社會的地區團體，本會對此等關係到香港將來的重大政策，有下列的意見：

一、有助提供施政質素與效率

特區成立五年以來，政府的高層官員雖然經歷了數次更替，但特首仍未能建立自己的「班底」，主要原因是公務員的升遷有一套故有制度，又不能吸納外界人材成為高層官員。高官的政治中立，變成對政策的既不反對也不支持，阻礙了特首的政令暢通，成為「議而不決，決而不行」，而且高官亦未能配合特首的施政，最明顯的例子是早年特首宣佈「八萬五」的房屋政策不復存在，而其他的主要官員却發表不同的言論。因此我們相信，特首有必要成立一套能配合自己，理念一致的領導班子，使特首的施政能真正有效率地實施。

二、引入新思維

無可否認，香港的高級政務官是精英中的精英，他們經過嚴格的挑選才能進入政務官的體系，經歷了不少風雨才晉升到高官之位。唯他們在政務官保守安穩的制度數十年的歷煉下，難免會變得保守因循，危機感薄弱，不能處理現今複雜多變的社會問題。高官問責制一大特色是引入外界專材，在新思維的衝擊下，我們相信政府的施政會有好的變化。

三、加強問責

主要官員問責制的另一特色是，官員需要為自己的施政負責，改變過去有權無責的情況。由於公務員的體系有「鐵飯碗」的保護，高官往往不需要為自己的施政失誤負責，最經典的例子是新機場啓用時出現大混亂，成為國際笑話，但當時的機場管理局領導人，竟仍能安座其位。我們希望實施問責制後，高官在有下台機會的壓力下，提高政策的質素及施政的效率。

四、加強與市民溝通

正如前文所說，高級政務官是香港的精英份子，在過去亦有效地管治香港，但他們往往會有高高在上的感覺，缺乏與市民溝通，唯市民對政府施政及官員的要求日益提高，官員只管做事，而不與市民溝通的方法已經不能應付社

會的需求。我們認為在新制度下，高官應放下身段，主動接觸市民，了解吸納民意，制定合乎時宜的有關政策，並向市民解釋，使政府的施政能順利推行。

五、新制度需附合《基本法》

特首提出的主要官員問責制原則上附合《基本法》，但部分立法會議員要求立法會有權罷免新的高官，這便違反了《基本法》，因為《基本法》規定特區的主要官員的任免權在中央，而且在香港實施行政主導，若立法會有權罷免官員，便變成了立法主導，違反了《基本法》。因此立法會不應有權罷免官員。

總的來說，我們贊成特首提出的主要官員問責制，可以提高政府施政的質素，改變過往有權無責的情況，帶領香港走出困局。



油尖旺社團聯會
2002年5月7日



BUSINESS AND PROFESSIONALS FEDERATION OF HONG KONG
香港工商專業聯會

BUSINESS AND PROFESSIONALS FEDERATION OF HONG KONG

OPINION ON THE GOVERNMENT REFORMS

The Business and Professionals Federation of Hong Kong wholeheartedly supports the Chief Executive's package of Government reforms which have been called the "accountability" system. This only partly describes the fundamental nature of the reforms which are to take place. The changes proposed are a welcome filling in of a vacant space in the Basic Law and give a specific role to members. This overhaul is long overdue.

The changes will complete reforms which began with the removal of the Urban and Regional Councils and will result in the role of the three levels of Government from the Chief Executive down to the District Councils being defined. Executive Councillors whose individual role in the Government system is now not clearly defined are not only restored to their place and importance in the Government hierarchy, which the dictionary perceptively defines as the three divisions of angels, but are given specific responsibilities and are to be made accountable. This will be a vast improvement on the present mysterious situation where Executive Councillors are so rarely seen and scarcely heard that they are almost invisible!

In future Executive Councillors, not civil servants, will have to explain personally their policies and plans to the Legislative Council, to the public and to the local and international media and be accountable for them. Executive Councillors will now become much more visible and approachable. And they will be able formally to represent Hong Kong SAR when they travel abroad, meet visiting dignitaries and generally front-up for government.

Where work straddles different policy Bureaux it will be coordinated by the Chief, or Financial Secretary and presumably disagreements between Bureaux will be decisively dealt with at that level. This coordination and settling of differences if it is instituted will be a vast difference from the present frequently heard criticism that the public is shunted from pillar to post between Bureaux and Departments and that crisp decisions are hard to come by a sort of superior version of the long running saga of liquor licences.

It is a requirement of the Basic Law that important policies are discussed by Executive Council and, incidentally, that the Chief Executive has to put it on record if he disagrees



with the advice he is given. In future all the Heads of Bureaux will be present for these discussions and there will be a further opportunity for interaction between them and if necessary modifications can be made in the light of this further discussion.

Policies once decided will carry the collective responsibility of the “cabinet” and every member will be expected to, and must support them. There should be no more contradictory statements emerging and no system dysfunctioning. Members of the “cabinet”, the Executive Council, will be chosen from the best talent available, some will be former civil servants, some will come from the private sector, one or more will come from the Legislative Council but they will all have to speak with one heart and one voice, supported by the civil service as the governing team, and give strong and effective leadership.

Policy formulation will derive from a number of sources and means. Some, but by no means all, will be to remedy malfunction or deficiencies and loopholes in the working of Government and will be bottom-up, some will be generated in the policy advisory Committees, some will be top down from the Chief Executive himself, some will be the result of a bright idea. Bright ideas may come from anywhere. Some may be the turning of a vision into reality. There is now no shortage of visions but often a lack of reality.

There will be a welcome shrinking of the number of policy Bureaux which have proliferated since they were introduced by the McKinsey changes in 1973. We should understand that this will involve some hard decisions to be made affecting senior officials, some will be chosen for advancement some will not, some may no longer enjoy the perks of their present position and will be disappointed this is hard but unavoidable. “Change” as Dr Johnson and “is not made without inconvenience even from worse to better”.

It may be that this shuffling of the pack will require some finetuning now or later. For example the environment is something of an orphan and does not sit comfortably anywhere and yet is everywhere. Perhaps environment should have a nest in every Permanent Secretaries office ready to chirp up when in danger.

One other favourable outcome of the reforms is that the civil service will now be able to get on with the work of their departments with more confidence knowing that they have a Principal Official, a Head of Bureau, a member of Executive Council and the “cabinet”



to speak for them and, closer to hand, a Permanent Secretary to look for leadership.

The BPF welcomes, in particular, the promised overhaul of advisory committees which have tended to become dominated by civil servants with the field of participation narrowed to a few overworked and over-employed advisors who each have a pack of committees to attend to. The committees seem to have ceased to perform a valuable supporting role for the Government and what they do in their committees is little known. This is an opportunity to bring in more experienced and knowledgeable participants and highly placed academics and to link the committees more closely with the Heads of Bureaux and with the Legislative Council. Advisory Committees serve a useful role as a sounding board so that the public and the Legislature's reaction to new initiatives can be revealed and incorporated early in the process of policy making. This overhaul of the advisory system, for it is an integral part of the Hong Kong polity, will hopefully reinforce the work of the Heads of Bureaux and the Executive Council.

There are some cynics who have said that when the dust settles it will be Government as before. This springs from a lack of understanding about the fundamental nature of the changes which are to take place. Hong Kong in the past has never had a fully developed relationship of members of Executive Council with specific functional responsibilities and accountable for them. These changes represent a big and hopeful step towards a greater democracy which deserve the full support of us all.

April 2002



高官問責制開創政治新局面

香港工商專業聯會

四月中，行政長官董建華先生在立法會正式公佈主要官員問責制的未來框架和實施詳情，在政界內外和社會上下皆掀起一片討論熱潮。高官問責制的實行，意味著本港未來施政的重大變更，影響深遠，因為不僅百多年來港英殖民地政府統治時期行之有效的官僚執政體制面臨革命性的轉變，本港的民主化進程亦將會出現飛躍的發展，可說是落實「港人治港」的一個里程碑。

高官問責制實施後，不但可以提高施政的效率、精簡政府架構、加強行政機關的問責性，更重要的是有利改善現行的行政立法關係，並可重新恢復傳統優良諮詢組織制度的活力，吸納社會各界精英，同心協力，共同促進香港的穩定繁榮。

對於董建華先生勵精圖治的改革決心，香港工商專業聯會深表支持，更全心全意支持主要官員問責制的落實。因為隨著新制度的實行，行政會議及其成員的角色將會明確下來，各司其職、各有負責的政策範圍，大大有利政府在各個層面上加強施政管治的能力，有利政府政策的制定和推行。

不少批評都把著眼點集中在高官問責的對象身上，認為新制度只會令行政長官的權力更加集中，形成所謂「大權獨攬」的局面。殊不知大謬不然，而且也不公平，因為基本法早已規定香港特區政府由行政主導，賦予行政長官最高權力，董建華本就有向中央推薦任命主要官員的權力，犯不著多此一舉。反之，高官問責制實行後，主要官員不僅須就行政長官所指派範疇內的政策成敗向行政長官負責，更須承擔全部政治責任，為其嚴重的政策失誤或落實政策時出現的嚴重錯失下台。最重要的是，由於身為行政會議成員的主要官員再非公務員身份，他們出席立法會解釋政府政策，爭取立法會議員對政策及其他建議的支持時，就更須著力改善行政立法關係，加強兩會議員的緊密合作。此外，新制度還規定，主要官員須親自與市民大眾接觸，與傳媒、評論員、學者及其他論政者交流，換言之，行政會議成員再不能如過去一樣，高高在上、隱形不見，而是必須走向社會、面向大



承擔問責、公開公正、坦誠忠實，以及具備領導才能。

回歸五年，香港經歷多番風雨，社會整體自我形象空前低落，信心大受動搖，亟待有識之士貢獻所長，共同協力，重建社會未來。董建華先生提出的政治改革，正是切中時弊的劃時代創舉，影響無遠弗屆，肯定會徹底改變一直以來的政治生態，為廣大市民提供更多參與政府事務的機會。只要是有心為香港服務、願意加入政府工作的人，都可把握當前的契機，貢獻出自己一分的力量。退而求其次，我們亦應該做好公民的本份，爭取每個機會，在不同層面上向未來主要問責官員提出意見，並且監察他們的工作，共同為香港的未來作出努力。

* * *

二〇〇二年四月



香港中華總商會

The Chinese General Chamber of Commerce

於香港註冊成立的擔保有限公司

Incorporated in Hong Kong and limited by guarantee

立法會 CB(2)1854/01-02(07)號文件

香港干諾道中 24-25 號 4 字樓

4/F, 24-25 Connaught Road, Central, Hong Kong

Tel : 2525 6385 Fax : 2845 2610

E-mail : cgcc@cgcc.org.hk Web Site : <http://www.cgcc.org.hk>

編號：RM(2002)5-2

敬啟者：

本會支持“主要官員問責制”及有關之擬議制度

爲了提高特區政府行政架構的功能，使主要官員能更有效地協助行政長官施政，向市民提供更好的服務，特區政府將於 2002 年 7 月 1 日起推行“主要官員問責制”，對此本會深表支持。特區政府經過周詳考慮及醞釀，以及與各主要官員反覆商討後提出了擬議制度。本會認爲此制度方向正確，構思切合實際，特奉專函以表支持。

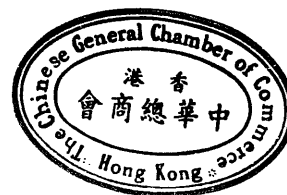
根據“主要官員問責制”，政府重新組織行政架構，有助避免以前出現的架構重疊和問責欠缺的現象。在新的安排下，各主要官員必需對所管轄範疇內的政策直接向行政長官負責，使各局長對份內的工作直接承擔責任，有助政府改善工作效率和辦事作風。尤其在本港面對經濟轉型，政府行政架構功能極需調整的情況下，“問責制”將賦予各主要官員高度的使命感和責任心，促使各主要官員努力按照時局和社會的需求，制定準確、可行的政策。

與此同時，爲了使其制定的政策更富代表性，更能平衡社會多方面的利益，並能得到社會的廣泛認可和推行，各主要官員需要比先前更自覺和更直接地與市民大眾接觸，深入社會，了解民意。透過反覆的社會諮詢與實踐，“問責制”將有利行政長官的施政理念得以順暢體現和貫徹，大大減少過去落實政策所遇到的不必要障礙，效果亦會比先前顯著。

本會認爲，“問責制”是香港的首次嘗試，爲了減少和避免失誤，希望政府能訂立制度，在實施的過程中不斷檢討其效果，不斷完善，努力提高行政效率，爲民造福。

此致

立法會研究擬議主要官員問責制
及相關事宜小組委員會



香港中華總商會

2002 年 5 月 4 日

研究擬議主要官員问责制及相關事宜小組委員會

華國謙主席:

就“主要官員问责制”的問題，本人表達下列一些意見。

首先，本人完全支持“主要官員问责制”的原則，主要官員问责制——即高官问责制的主要目的，是將有變化一批認同他的治政觀念的香港精英，在其領導下，共同承擔政治責任、服務香港，使行政效率得以提高，解決議而不決、決而不行及高官有權無責的弊端。這樣的改革是因應特區政府成立五年來所面對的弊端而作出的。本人認為：這樣的改革對香港是有利的，絕不是倒退。

有人批評高官问责制是使將有變化一批所謂的女才為高官，是鼓勵“擦鞋文化”，從而从根本上否定高官问责制。難道要將有變化一批整天為他頂半的人為高官，才算良知的體驗？本人相信標榜民主的西方國家的政府首長都不會這樣。

其次，本人希望將有變化一批有理想、對香港社會有承擔、對社會各方面有深刻了解、熱愛祖國、堅決理解“一國兩制，港人治港”的方針並堅決將之貫徹落實的精英，一起肩起治港的責任。

第三，對收時的官員问责制是否已經很完善了，這可以提出討論。但高官问责制方向正確，應落實推行，並在推行實

过程中逐步加以完善。

香港海事处联合总会

秘书长：何树代

7-5-02

立法會 CB(2)1854/01-02(09)號文件



香港仔居民聯合會

ABERDEEN INHABITANTS UNION ASSOCIATION LTD.

香港仔湖南街 8 號 1 字樓 電話 :25521270 傳真 :25546502

1/F 8 WU NAM STREET, ABERDEEN, HONGKONG

致：“小組委員會”

本會對行政長官董建華先生，於 4 月 17 日在立法會介紹的“主要官員問責制”表示支持。理據如下：

- (一) “高官問責制”容易形成一個方向明確，理念清晰，目標鮮明，團結高效的行政核心。施政方面，更能與時並進，更能反映市民的訴求，這都是大眾市民所樂見。
- (二) 職權責分明，做到有職，有權，有責，主要高官再不是公務員，而變成政治任命合約制官員，每個司局長的施政理念都能夠同行政長官保持一致，在自己負責的政策範疇內聽取民意，研究制定政策，做到有所發揮，亦做到集中領導分工負責的制度，有高官之職，有承擔責任的義務，有權督促自己主管的行政部門的各種工作，有助落實政策，提高效率，對廣大市民都有莫大裨益。
- (三) “高官問責制”使政府高層架構，更加精簡，將 16 個政策局重組及合併成 11 個政策局，一改舊有行政體制的架床疊屋。各自為政的局面，更明確主要官員的職責，要求掌握民意，在服務社會時考慮到市民大眾的意見，更着重服務與效率，確保政策能落實，有民意基礎，就能確保政策順利推行，機制建全，必然得到廣市民的支持。

另外： 問責制的細則問題；如：

- (1) 各局詳細的分工情況；
- (2) 高官的工作守則及免職程序；
- (3) 各政策局間如何取得協調……等問題，都是我們所關注的。

順祝貴會工作順利！

香港仔居民聯合會

黃玉明

(副主席)

3-5-2002

立法會 CB(2)1854/01-02(10)號文件

香港汕尾市社團聯會

地址：香港灣仔莊士敦道164號5字樓

電話：25750574 傳真：28387939

「立法會研究擬議主要官員問責制及相關事宜」

本會的意見與建議

許多實行與香港公務員制度相似的地區，已經不斷地行了改革。為適應目前香港要面對的嚴峻挑戰環境，極有必要加速政制的檢討和改革，使到公務員架構健全穩定，體現良性競爭的新思維，與時俱進，發揮更好的施政訣效率，使到政令能夠暢順推行，拉近政府與市民的距離，消除隔膜，為支持香港實現經濟轉型而發揮重要作用，復甦香港經濟，建設更加美好的香港。

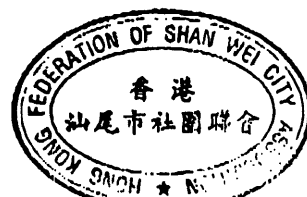
草擬中關於政制改革所要推行的高官問責制架構方案，經過行政長官、政制事務局局長、政務司司長等多次在公開場合中作出回應和詳加解釋。表明政改是根據『基本法』清晰明確的規定內進行，並無違反『基本法』，更不存在行政長官可以通過改制的新安排攬權，不受約束而進行獨裁統治。相反的是行政長官將權力和責任下放予問責官員，「分享共同目標和理念」，廣納專才、唯才是用，要他們為自己施政範疇承擔責任。客觀、詳盡而公開的闡釋，有助消滅社會人士對高官問責制的種種影響和疑慮，明白到順利施政為對於香港目前和日後的安定繁榮，政治穩定，經濟發展的新動力。

本會十六個社團屬會的會員與家屬，絕大部份認為實行高官問責制是必需和急需的、是符合社會整體利益的、是香港市民應該支持的。

特函 秘書處向全體立法會議員傳達我們的意願和意見，期望盡快將問責制方案安排深入討論，不應拖慢整個審議程序，或故意以有違『基本法』的「重新立法」去延誤時間、延擱問責制的實施。

此致

立法會研究擬議主要官員問責制及相關事宜
小組委員會秘書



香港汕尾市社團聯會
2002年5月2日

致

立法會

研究擬議主要官員問責制及相關事宜小組委員會

特首董建華已公布擬議主要官員問責制的框架，並希望由第二任行政長官於今年七月一日開始任期時推行。本會認為現在是推行實現特首強勢領導的高官問責制的適當時候了，故歡迎並支持作為特區行政機關內部一項重大改革的高官問責制如期推行。

本會認為：

- (一) 高官問責制不會導致有人所說的「獨裁統治」、「大權獨攬」或「擴權」，因為《基本法》規定了行政長官的權力。行政長官的權力，已由《基本法》全部賦予；而特區政府所有官員的權力，均源於行政長官。特區行政長官依照《基本法》的規定，對中央人民政府和香港特別行政區負責；由行政長官提名並報請中央政府任命的主要官員，當然要向特首負責、向全體市民問責。
- (二) 行政主導的行政管理權，是香港特區所享有高度自治權的重要標誌，而高官問責制則是行政主導重要體現。行政長官既是香港特區最高地方長官，又是地方政府首長，自然是全體公務員(包括接受中央政府任命的主要官員)之首，擁有廣泛的人事決定權的建議權。
- (三) 以往政府公務員只是負責執行政策，而今後實行問責制的高官必須親身接觸和諮詢有關人士和市民，要在決策過程中更好掌握民意，加快政策的制定和推行步伐，提高施政效率。
- (四) 確定高官問責制及將之制度化，可以針對時弊，對症下藥，促進施政，應予以肯定，但能否成功實施的關鍵在於能否找到真正對香港有承擔、能為市民謀利益的人才。
- (五) 高官問責制是新生事物，剛剛起步，不免有不足之處，需要在今後推行過程中按照《基本法》的有關規定，不斷加以完善。例如，根據目前的高官問責制框架，只有三司十一局共十四位主要官員直接參加問責，但《基本法》第四十八條第(五)項規定由行政長官「提名並報請中央人民政府任命」的主要官員，除了各司、局

長及海關關長等政府部門之首，這些官員卻被排除在「問責官員」之外，似不當。

本會強調：

高官問責制的確定與推行，總體是在《基本法》規定的原有框架內進行的，將會為特區政府施政帶來一個與時並進的局面，為本港市民及社會提供更為優質、更具效率的服務。所以，作為特區立法機關的立法會，應從香港大局出發，積極討論和支持民意強烈要求的高官問責制，對有關問責制在官員權力轉移的法例修例以及撥款申請等方面，及早對政府的議案予以審議、通過，以配合新制如期落實執行。

本會同社會各界一樣，期望高官問責制可以在七月一日特區第二屆政府正式履任時啟動，如果立法會議員不顧大局，故意製造麻煩，誓必影響第二屆特區政府的正常運作，這是廣大市民不願意見到的。社會將拭目以待。

香港政治經濟文化學會

二〇〇二年五月三日

立法會 CB(2)1854/01-02(12)號文件



香港南區婦女會

Hong Kong Southern District Women's Association

香港仔成都道 14-18 號茂盛大廈四樓 B 座

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Tel: (852) 2553 7121 Fax: (852) 2553 9345

致立法會 研究擬議主要官員問責制及相關事宜小組委員會

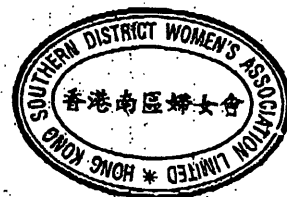
2002 年 4 月 17 日行政長官向社會公布實行高官問責制的方案和構思，香港南區婦女會全力支持高官問責制方案的實行。

香港回歸祖國已經五年，五年前原有政府高官「原班過渡」，特區政府只是「換了一個港督」，原有公務員架構和理念還是一個殖民管治政府沒有改變，從本質上來講，他們是不適應回歸後「一國兩制」「港人治港」，我們看到不相適應的問題，主要集中體現在特區首長的權力和領導上。特區首長只是「孤家寡人」施政舉步維艱。

香港推行高官問責制，行政部門的首長就要全力解決就業和民生問題，改革一些過時的束縛，舊政策舊規章。我們希望高官問責制實施之後，高級官員能夠勇于承擔責任，公平公正，關心民眾患苦，想方設法，令到香港經濟得以盡早復甦。

本會祈望高官問責制得以順利推行。

順祝金安



香港南區婦女會

主席：林玉珍

二零零二年五月三日

立法會 CB(2)1854/01-02(13)號文件



食品及飲品業僱員總會

Food and Beverage Industry Employees General Union

香港灣仔駱克道368-374號百玲大廈二樓
1/F., 368-374, LOCKHART ROAD, HONG KONG

電話/TEL: 2832 9181
傳真/FAX: 2834 0586

立法會研究擬議主要官員問責制及相關事宜小組委員會：

特區行政長官董建華先生於本年4月17日，出席立法會會議，親自向議員和社會宣佈了實行高官問責制整個方案和構想，對此本人全力支持。

高官問責制將是特區政府成立五年來一項政治改革，高官問責制推行，是完全符合特區政府當前發展需要的。社會上各方面的精英人才，匯聚到董特首的身邊，成為一個高能的，強而有力的班子。而更重要的是這班精英問責高官。不是「中立」的，他們必須具有對「一國兩制」的高度認識，熱愛祖國，尊重中央，以身為中國人為榮，對建設特區有崇高使命感，與特首建立強烈的共識，處事公平公正，工作積極，勇於承擔責任感，拍了板的政策就一定要同心同德去做，特區政府就會形成一個方向明確，理念清晰，目標鮮明，團結高效的精英「港人治港」政府，政策得到落實，提高效率，相信全港市民將會因此而得益。

為香港能平穩過渡，在九七回歸時，原有高官原班保留是當初必需的，但政府原有的公務員架構理念，是一個殖民管治政府的架構和理念。回歸後，既實行「港人治港」是特區政府需要的。五年來，公務員高官事事「中立」，甚至一些官員連對特首的施政理念，對「一國兩制」的原則，對基本法的施行都「中立」，則這種「中立」也就與「放軟手腳」差不多矣。因此，際此發展的關鍵時刻，首要之事就是進一步明確，強化特首領導特區政府的地位和功能。明確特首是向中央負責，向特區負責的，他必需要有一個團結齊心步伐，核心高官班子，認同他的理念，服膺他的領導，有效地協助，輔導他的施政，而不是令特首變成「孤家寡人」，施政舉步維艱。

張志雄（食品及飲品業僱員總會理事長）

張志雄

2002年5月6日

保健體育會

PO KIN ATHLETIC SOCIETY

九龍廣東道 542—544 號六樓 電話：27800462

[立法會研究擬議主要官員問責制及相關事宜]

本會的意見與建議

回歸以來，香港社會經歷過幾次政策失誤，但並無政府官員要為此負上責任。主要官員[有權無責]的問題，嚴重影響香港今後的發展。香港市民亦意識到要符合社會整體利益，政制需要有所變革，而且是必需和急需的。許多實行與香港公務員制度相似的地區，已經不斷地進行了改革。為適應目前香港要面對的嚴峻挑戰環境，極有必要加速政制的檢討和改革，使到公務員架構健全穩定，體現良性競爭的新思維，與時俱進，發揮更好的施政效率，使到政令能夠暢順推行，拉近政府與市民的距離，消除隔膜，為支持香港實現經濟轉型而發揮重要作用，復蘇香港經濟，建設更加美好的香港。

行政長官、政制事務局局長、政務司司長等多次在公開場合中，回應和詳加解釋草擬中關於政制改革所要推行的高官問責制架構方案，表明政改是跟據基本法清晰明確的規定內進行，並無違反基本法，更不存在行政長官可以通過改制的新安排攬權，不受約束而進行獨裁統治，相反的是行政長官將權力和責任下放予各問責官員，[分享共同目標和理念]，廣納專才、唯才是用，要他們為自己施政範疇承擔責任。客觀、詳盡而公開的闡釋，有助消滅社會人士對高官問責制的種種影響和疑慮，明白到順利施政為對於香港目前和日後的安定繁榮，治政穩定，經濟發展的新動力。

本會會員與家屬，支持草擬中高官問責制架構方案，特函 秘書處向全體立法會議員傳達我們的意願和意見，期望盡快將問責制方案安排深入討論 不應拖慢整個審議程序，或故意以有違基本法的[重新立法]去延誤、阻撓問責制的實施時間。

此致

立法會研究擬議主要官員問責制及相關事宜小組委員會秘書



香港保健體育會

2002年5月3日

立法會 CB(2)1854/01-02(15)號文件

港九勞工教育促進會

THE EDUCATION ADVANCEMENT SOCIETY FOR WORKERS
IN HONG KONG & KOWLOON

香港灣仔軒尼詩道 209 號金軒商業大廈三樓 A 座
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立法會研究擬議主要官員問責制及相關事宜小組委員會

特區行政長官董建華先生於本年 4 月 17 日於立法會親自向議員和社會宣佈了實行高官問責制的整個方案和構想。對此本人全力支持。

九七回歸，五十年不變，原有高官原班過渡，是回歸當初所初必需。但是，政府原有的公務員架構和理念，是一個殖民管治政府的架構和理念，從本質上說，它不適應回歸後「港人治港」特區政府的需要。這種「不相適應」主要集中表現在特首的權力、工作和領導上。

因此，在今天香港正處於發展的關鍵時刻，最重要的改革，就是要進一步明確和強化特首領導特區和特區政府的地位和功能，明確特首向中央負責、向特區政府負責的地位和功能。因此，他必須要有一個團結齊心的高官班子，認同他的理念和領導，協助和輔導他的施政。高官問責制的推行，就是完全符合當前特區和特區政府發展的需要。

高官問責制是特區政府成立五年來的一項重大政治改革，推行高官問責制並不涉及特區憲制的改變，完全符合基本法的規定。高官問責制更有利於香港執行「行政長官負責制」，但立法會仍然享有基本法賦予的監察特區政府的權利。

推行高官問責制對普通公務員的聘用、升遷、福利和前途等方面並無任何重大影響，相反高官問責制對 3 位司長和 11 位局長定下了任期，行政長官直接向司局長放權，讓他們有更多的權力去制訂和落實政策，承擔更大的責任。問責制要求問責高官要更快更全面地回應社會的訴求和切合市民的需要，政策和措施要爭取市民大眾的支持，並且為其政績

成敗負責。如果政績差劣，或者失職，司局長就要承擔責任，甚至下台。在這種情況下，司局長必須全力做好自己責任內之事，要同立法會內的多數議員進行良好的溝通，要經常下區和群眾團體溝通，落實政策，提高效率。相信全港市民將會因此得益。

爲此，香港市民有權要求立法會順應民意，支持高官問責制，並能如期實施。

港九勞工教育促進會

義務秘書

蘇萬興

2002 年 5 月 4 日

華富邨婦女聯合會

WAH FU ESTATE WOMAN'S ASSOCIATION

高官問責制好得很還是糟得很？

行政長官董建華在立法會介紹了高官問責制方案，其實是香港政治體制的一次重要的改革。早在二〇〇〇年的施政報告中，董特首提出要研究建立更完善的問責制度，以加強主要官員在不同政策範疇承擔的責任，確保政府更好地回應社會的新需求，有效地落實政策並提供優質的公共服務。

在問責制下，三司十一局共十四位主要的負責官員將直接向行政長官負責，可以講問責制是嚴格按照《基本法》辦事，《基本法》有關行政主導的規定，最為重要的，就是行政長官的權力，也由《基本法》全部賦予；而特區政府所有官員的權力，均源於行政長官。

亂港回歸以來，特區政府在五年遇到最大的困擾，是高級官員無責，不用為政策失誤乃至平庸表現承擔政治責任，這導致了特區政府一度出現某些政令不明，效率低下，相互扯皮等現象，令特首施政方針和目標難以貫徹落實。

令人遺憾的是，惟「民主派」人士仍堅持「逢董必反」的立場，不支持高官問責制，還散佈董建華「大權獨攬、用人唯親」，把他影射為封建皇帝，這是漠視基本法存在的、不公平的評論。

我們華富邨婦女聯合會認為實施高官問責制是好得很，正如曾蔭權所說：「高官問責制是『重大、深遠、迫切』的施政改革」，概念精簡，易於立法，並保障了公務員制度的優越性。

香港華富邨華富閣 2字樓3室

Court Shopping Center, 4 Wah Lok Path, Wah Fu Est, H.K.

電話：2550 6011 傳真：2875 6411

華富邨婦女聯合會



筲箕灣柴灣坊眾會

SHAUKIWAN AND CHAIWAN RESIDENTS FRATERNAL ASSOCIATION

筲箕灣道195-201號都會大樓1字樓C&D座

BLK., C&D, 1/F., CAPITAL BLDG., 195-201 SHAUKI WANROAD, HONG KONG.

TEL: 2560 2730

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主席先生:

行政長官董建華先生推出的“高官問責制”將要在7月1日實施，近期成為關心本港社會人士討論的焦點，本會社會研究組亦就“高官問責制”展開一次研討會。小組成員一致認為：“高官問責制”確有必要推行，作為一個負責任的政府首長在制定政策時必須以港人利益為依歸，以“一國兩制，港人治港”為原則。因此，除特首之外，以他所組成的領導班子亦必須要有共同的治港理念，才能作出最大的承擔，而決不能起用那些放軟手腳，事事搞所謂政治中立的人，要治理好香港，豈能只靠特首個人孤軍作戰呢？香港人才輩出，精英盡顯，關鍵是能否團結一班志同道合，為香港長遠利益而獻身的高官。

時代在轉變，形勢不斷發展，不論任何人都必須隨着社會的變革而改革，對過去港英時代遺留下來的不適時的政府架構，不可能死抓不放，如果要使第二屆行政長官實行有效地管治香港，必須使高官有職有責，積極向市民推介政府政策，爭取市民理解支持，如決策不當，推行不力，高官應付一定責任，才能提高政府運作效率。因此，推行高官問責制，本會表示全力支持！

筲箕灣柴灣坊眾會

二〇〇二年五月四日



鯪魚涌居民協會

QUARRY BAY RESIDENT'S ASSOCIATION

高官問責制 符合基本法

特區行政長官向社會宣佈了高官問責制的整個方案後，社會上議論紛紛。我們認為，高官問責制的整個構思，是以基本法為依據，其辦法和目的也是完全符合基本法的。

推行高官問責制，可以令特首更好地實現治港理念。忠實執行「一國兩制」和落實「基本法」。特區政府的高官領導班子成員，應該團結在特首周圍，落實「基本法」，以服務港人為最高的共同理想和準則。

高官問責制將明確職能，職、權、責、事事須向特首負責，向廣大的市民負責。同心同德，理念一致，共同為香港繁榮穩定，更加有效地落實「港人治港」方針。

特區成立五年來，雖然實行了「港人治港」，行政長官由選舉產生，但舊有行政體制架床疊屋，政出多門，導致「議而不決，決而不行」低效率的局面。事實上回歸以來，一小部份亂港勢力、政客的所作所為之目的，就是想限制、削弱特首的權力，千方百計要縮小其影響。

而高官問責制的推行，是完全符合特區政府當前發展的需要，未來的政府高官必須是精英人才，包括原有建制內的精英，社會上各方面的精英，都將匯聚到特區政府和特首身邊，組成一個高能強有力的

精英班子。在特首的領導下，更有效地落實「一國兩制」政策。

「基本法」第四十八條 香港特別行政區行政長官行使下列職權：(五)、(八) 明確指明。因此，我們認為，高官問責制的整個構思，是完全符合基本法的。



鯪魚涌居民協會

2002 年 5 月 6 日



香港浸會大學
HONG KONG BAPTIST UNIVERSITY

社會科學院
FACULTY OF SOCIAL SCIENCES

院長：傅浩堅教授
Frank H. Fu
Dean & Chair Professor

2nd May, 2002.

Mrs. Percy Ma
Legislative Council
Hong Kong Special Administrative Region of
The People's Republic of China
Legislative Council Building
8 Jackson Road,
Central, Hong Kong

Re: Proposed Accountability System of Principal Officials and Related Issues

Dear Mrs. Ma:

I shall not attend the meetings on the captioned on 11th and 18th of May, 2002. However, I would like to submit the following observations/recommendations for the Subcommittee to consider (in additional to my earlier submission on 19th February, 2001):

A. Underpinning assumptions of the Proposal

1. The Executive Council (EXCO) remains to be the Advisory Body to the Chief Executive (CE).
2. The Principal Officials (POs) reports to the CE and are held accountable to him. Since their appointments have to be endorsed by the Central People's Government (CPG), their dismissal though being initiated and recommended by the CE would also have to be approved by the CPG.
3. The performance of POs can be assessed by the CE in the following five areas:
 - a. Overseeing the implementation of policies.
 - b. Monitoring the delivery of services by the executive departments.
 - c. Exercising various statutory and administrative functions.
 - d. Relationship with LEGCO.
 - e. Relationship with the media and the community at large.
4. The EXCO and its POs are not politically neutral. Their primary role is to support and assist the CE in the overall drafting and implementation of policies and to offer (or seek) advice whenever necessary.

B. Recommendations

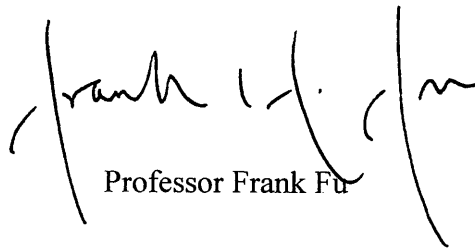
1. **The role of EXCO should be more than advisory in nature.** Since the majority of its membership (the POs) have to be held accountable to the CE (the Chairman of EXCO), the decision of EXCO should be binding on the CE and the POs. EXCO should be held accountable for the drafting, approval

and implementation of policies and indirect supervision of the POs. The status of EXCO should be **confirmed** by CPG.

2. **EXCO should be recognized as the Cabinet of the CE and thus act as his executive arm.** EXCO can further **devolves** its authority to an “**Inner Cabinet**” that consists of the CE, CS,, FS and SJ. The “**Inner Cabinet**” works directly with the POs on the day-to-day operation of the SAR Government.
3. **Thus a two-tier accountability system is required:** 1. POs to the CE ; and 2. The **Inner Cabinet** [CE and three Secretaries of Departments (CS, FS, and SJ)] to the EXCO.
4. The working relationship between the bureaux (the POs) and their departments (and in the case of the three Secretaries, the POs) should be an additional area considered in the assessment of the POs. **Some forms of peer/staff feedback should be adopted. (area f)**
5. The assessment of POs by the CE needs to be **more transparent**, especially if the performance of the POs **is challenged** by the community at large (the public), LEGCO and/of their peers/colleagues. (areas d, e & f)
6. The **role** of other related advisory or statutory bodies and their relationship to EXCO should be **further defined**.

FHF/

Sincerely Yours,



Professor Frank Fu

立法會 CB(2) 1854/01-02(20)號文件**Suggested Measures to Maintain the Political Neutrality of Higher Civil Servants****Views on The Principal Officials Accountability System**

submitted by

Eliza W.Y. Lee

Associate Professor

Department of Government & Public Administration


The Chinese University of Hong Kong

May 6, 2002

From a comparative perspective, there are two approaches to the institutional arrangement on executive-bureaucratic relationship in liberal democracies today. The first one can be called the "neutral competence" approach, which emphasizes the ability of higher civil servants to give impartial and professional policy advice to the politically appointed ministers. This approach is best exemplified in the so-called Whitehall model of the British system. The second approach can be called the "political loyalty" approach, which values the sympathy and political loyalty of the higher civil servants toward the political cause of the ruling government. The United States is a representative example of this approach, while the French and German systems have embodied this approach to a certain extent also. The higher civil service in Hong Kong has operated under the "neutral competence" approach for a long time. I believe that at least for the time being, it is still in the best interest of Hong Kong to maintain this practice.

The recognized advantage of neutral competence is that higher civil servants can "speak truth to power," i.e. they can give impartial advice to political officials based on their professional judgment without the fear of jeopardizing their career. **Neutral competence, however, can only be preserved through strong institutional protection of political neutrality.** In order to achieve this aim, the following measures should be adopted:

- the role of the Public Service Commission in merit system protection should be maintained and fortified, including their role in offering independent advice on appointment, promotion and disciplinary matters.
- policy secretaries and the chief executive should follow the tradition of accepting the advice of the Civil Service Commission, and should refrain from making a decision in the promotion of civil servants, including D8 officials.
- there should be a code of conduct for politically appointed officials that will, among other things, give clearer indication of the boundary of work of civil servants against encroachment by undue political demands. The British Ministerial Code of Conduct can be taken as reference. Similarly, there should be a civil service code of conduct that embraces the value of neutral competence.
- policy secretaries should not be allowed to bring people in from the outside as their permanent secretaries. They should only be allowed to select their permanent secretaries from the present pool of D8 officials.



ACCOUNTABILITY AND THE SENIOR CIVIL SERVICE IN THE HKSAR

John P. Burns
The University of Hong Kong

Introduction

The Asian financial crisis and policy blunders committed by the Hong Kong government have exposed weaknesses in the Special Administrative Region's (SAR's) system of political accountability. In spite of the fact that the Basic Law calls for 'the government' to be accountable to the legislature, Hong Kong's political system has provided no mechanisms for the legislature to sanction the government other than by taking the extreme steps of either impeaching the Chief Executive or forcing him to resign. On three occasions since 1998 an increasingly assertive legislature has attempted to hold senior officials politically accountable for policy blunders. Not surprisingly on each occasion the legislature has failed to impose sanctions. The legislative activism has, however, forced the Chief Executive to acknowledge the shortcomings of Hong Kong's system of accountability. The government has now unveiled a plan to remove the most senior government posts from the protection of 'the civil service' to make them more politically accountable. These changes are likely to strengthen the hold of the Chief Executive over the government, however, and leave the problematic relationship between the executive and the legislature untouched.

Accountability and the HKSAR Government

Because of its centrality to public administration, much has been written about the concept of accountability (See Peters, 2001; Romzek and Dubnick, 1987; Thynne and Goldring, 1987). In this paper we use accountability in the original core sense of the word to mean 'a process of being called to account to some authority for one's actions' (Mulgan, 2000; 555), a process that involves both answerability and taking responsibility. Those being held to account must justify their action and, as part of taking responsibility, accept sanctions for making mistakes (Mulgan, 2000; 557). As Mulgan points out, accountability is external to the person or institution being held

accountable. Those seeking to hold someone accountable want answers and rectification from those who are being held to account, who in turn respond and accept sanctions or rewards. Accountability implies *rights of authority* in the sense that ‘those calling for an account are asserting rights of superior authority over those who are accountable, including the rights to demand answers and to impose sanctions’ (Mulgan, 2000; 555). Accepting sanctions or punishment is an integral part of exercising control. This is the essence of being held accountable.

The Basic Law, the constitution for the Hong Kong Special Administrative Region (HKSAR), clearly sets out Hong Kong’s system of accountability. First, the Chief Executive (CE) of the Hong Kong government is accountable to the central government (Art 43). The central government (through the State Council) appoints the CE (Art 45) and it is to the State Council in the form of the President of the People’s Republic of China and the Premier that he is accountable. The power to appoint implies the power to remove. Accordingly, the State Council has the power to remove the CE, that is, the power to sanction. This means that he must answer questions from the central government, provide justification for his actions, and accept any punishment or sanctions decided on by the central government for wrongdoing or mistakes. Thus, the CE is accountable to the central government in both senses of the term, that is, answerability and the acceptance of sanctions. Acceptance of sanctions might involve taking remedial action and/or possibly resigning from office.

Second, the Basic Law lays down that the CE ‘shall be accountable ... to the HKSAR’ (Art 43) of which he is also Head. No mechanism, however, is provided for the HKSAR (an administrative unit) to hold its Head (the CE) accountable. Although the CE is ‘selected by election or through consultations held locally (Art 45 and Annex I), he is appointed by the Central government. The Basic Law provides for the CE to be elected by an 800-member ‘broadly representative Election Committee’ organized along functional constituency lines (Annex I). That is the CE is not popularly elected by universal suffrage.¹ The Election Committee could sanction a serving CE who was seeking a second term by failing to select him, but the Central government is not obliged to appoint as CE the individual chosen by the Election Committee although the Basic Law anticipates that the Central government would normally do so. Thus, the Election Committee has no power to hold the CE accountable. No other mechanism is provided for in the Basic Law to hold the CE accountable to the HKSAR.

Third, the Basic Law lays down that the government of the HKSAR must be accountable to the Legislative Council (Art 64). The government is clearly identified as the Chief Executive (who is the head of the government [Art. 60]) and ‘the executive authorities of the region’ (Art. 59). These arrangements follow those first articulated in the Annex to the Sino-British Joint Declaration which required ‘the executive authorities’ to be accountable to the legislature.² Article 15 of the Basic Law identifies ‘the executive authorities’ as the CE and the 27 or so principal officials who are appointed by the central government (Art. 15). Article 48 (5) identifies the principal officials as ‘secretaries and deputy secretaries of departments, directors of bureaus’, and a number of other posts.³ Finally, Article 99 requires ‘public servants [... to] be responsible to the government of the HKSAR.’ In this context, ‘public servants’ means ‘civil servants’ or *gongwu renyuán*.

The Basic Law lays down several mechanisms through which the government (that is, ‘the executive authorities’) must be accountable to the Legislative Council: 1) the government must implement laws passed by the Council; 2) it must present a regular policy address to the Council; 3) it must answer questions raised by the Council; and 4) the government must obtain the approval of the Council for taxation and public expenditure (Art 64). Although these provisions appear to address the ‘answerability’ component of accountability, they provide only limited mechanisms to hold the government responsible. First, under some conditions, the legislature may punish the CE by forcing him to resign. For example, the legislature may refuse to pass laws, taxation, and public expenditure measures put to it by the government. In such cases the CE may dissolve the Council. If a new Council repeatedly refuses to pass the budget or other ‘important bill’ (Article 52 (3)) or repeatedly passes a bill that the CE refuses to sign (Article 52 (2)),⁴ the CE must resign. Second, under certain circumstances (e.g., when the Legislative Council charges the CE with committing ‘serious breaches of law or dereliction of duty and he refuses to resign’) the legislature may impeach the CE and report its action to the central government ‘for decision’ (Art 73 [9]). The Basic Law thus provides that the legislature may sanction the CE in only two relatively extreme situations. No other sanctions of either the CE or the government are provided for in the Basic Law. Moreover, in the short time that the Basic Law has been in force (since July 1, 1997) no constitutional convention has emerged that requires members of the Hong Kong government to resign to take responsibility for policy blunders or other implementation failures.

Hong Kong's constitution provides for some elements of a separation of powers system (See Ghai, 1999; 262-264). Under certain conditions the CE may dissolve the legislature and call for new Legco elections. The legislature also can force the resignation of the CE. Yet the constitution also provides for a weak legislature to accommodate 'executive-led' government or rule by the bureaucracy. Private members bills, for example, may only be introduced under very restrictive conditions and, unlike bills introduced by the government which pass by majority vote, must be passed by majorities of representatives from both functional and non-functional constituencies (Basic Law, Annex II). Moreover, the legislature plays no role in the formation of the government. Neither the CE nor the principal officials are popularly elected not are they endorsed or approved by the legislature. Consequently, the issue of the accountability of the executive has become even more critical.

The composition and method of selection of the legislature have weakened its capacity to represent the interests of the community and, as a consequence, have undermined its legitimacy. Citizens of the HKSAR elect by universal suffrage 24 members of the 60-member Legislative Council. Another 30 members are returned by functional constituencies that represent employers, labor, and professional groups and that could have as few as 100 electors. These groups heavily over represent business interests (See Table 1). Because majority support of functional constituencies is constitutionally required to pass bills in the legislature (Basic Law, Annex II, Section II), these groups effectively exercise veto power. An additional six members are currently selected by an 800-member Election Committee,⁵ a practice that will cease in 2004 when the number of elected non-functional constituency Legco members will increase to 30 (Basic Law, Annex II, Section I (1)). The peculiar composition and method of selecting Hong Kong's legislature is the product of the central government's preference for executive-led (that is, weak legislative) government, the preferences of the HKSAR's business elite, and the territory's colonial past.

Table 1
LEGISLATIVE COUNCIL FUNCTIONAL CONSTITUENCIES, 2000

Number	Name	Number	Name
1	Heung Yee Kuk	15	Tourism
2	Agriculture and Fisheries	16	Commercial (First)
3	Insurance	17	Commercial (Second)
4	Transport	18	Industrial (First)

5	Education	19	Industrial (Second)
6	Legal	20	Finance
7	Accountancy	21	Financial Services
8	Medical	22	Sports, Performing Arts, Culture and Publication
9	Health Services	23	Import and Export
10	Engineering	24	Textiles and Garment
11	Architectural, Surveying and Planning	25	Wholesale and Retail
12	Labor (3 seats)	26	Information Technology
13	Social Welfare	27	Catering
14	Real Estate and Construction	28	District Council

Source: Electoral Affairs Commission (<http://www.info.gov.hk/eac>) December 15, 2001.

The Senior Civil Service

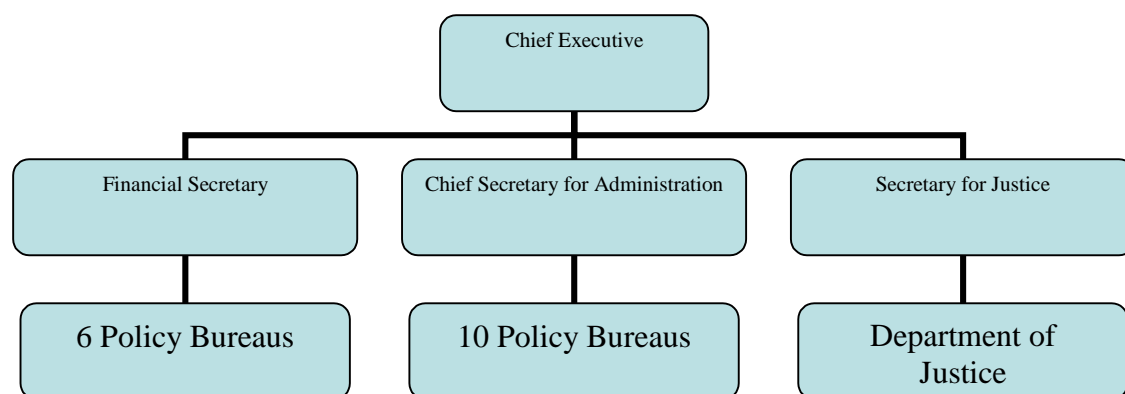
The senior civil service in Hong Kong is composed of all directorate-level officials, who in 2001 numbered approximately 1,200 people, or about one percent of the total civil service (CSB, 2001; 7). The directorate is composed of two types of civil servants: general grades officers (such as the elite Administrative Officers [AOs]) and departmental grade officers, such as engineers, surveyors, lawyers, and other professionals. AOs in the directorate number about 250 people. Of these, about 35 percent are women, and 91.3 percent are employed on local terms of service (CSB, 2001; 7). That is, the directorate is made up overwhelmingly of local males who are professionals and other specialists.

The principal officials identified in the Basic Law as ‘the executive authorities’ have been appointed mostly from among the civil service on ‘civil service’ terms of service. They are nominated by the Chief Executive and appointed by the central government. The Basic Law identifies the three top positions as the Chief Secretary for Administration, Financial Secretary and Secretary for Justice. The Chief Secretary and the Financial Secretary lead 14 policy and two resource bureaus. Below them range more than 70 departments and agencies. Senior policy making positions are mostly held by Administrative Officers, all career civil servants. In 2001 only three of 19 individuals holding Secretary-level positions were *not* members of the Administrative Service (the Financial Secretary, the Secretary for Justice, and the Secretary for Health and Welfare). They were, nonetheless, appointed on civil service terms of service. The ‘executive authorities’ also included the head of the ICAC, the

Director of Audit, the Commissioner of Police, the Director of Immigration and the Commissioner of Customs and Excise (Art. 48 [5]).

In the absence of political appointees, the executive authorities (that is, the policy secretaries) have played both administrative and political roles, a position recognized by the government which describes the role of policy Secretaries as being different from that of other civil servants. ‘They are not only responsible for putting forward policy options and analyzing their implications. They also play an active and important role in the policy making process and they are expected to garner the support of the community by explaining, promoting, and defending policies in public. In addition, they have to steer legislative proposals through the Legislative Council’ (Constitutional Affairs Bureau, 2001).

Figure 1



Ambiguities in the Basic Law have permitted Hong Kong’s principal officials to evade responsibility. As the ‘executive authorities’ they are responsible to Legco and should be held to account. However, because they are also ‘public servants’ they are responsible to the Government of the HKSAR’ (Art. 99), that is to themselves. This arrangement is entirely contrary to the notion of accountability which requires that the entity holding the person or institution to account be external to that person or institution.

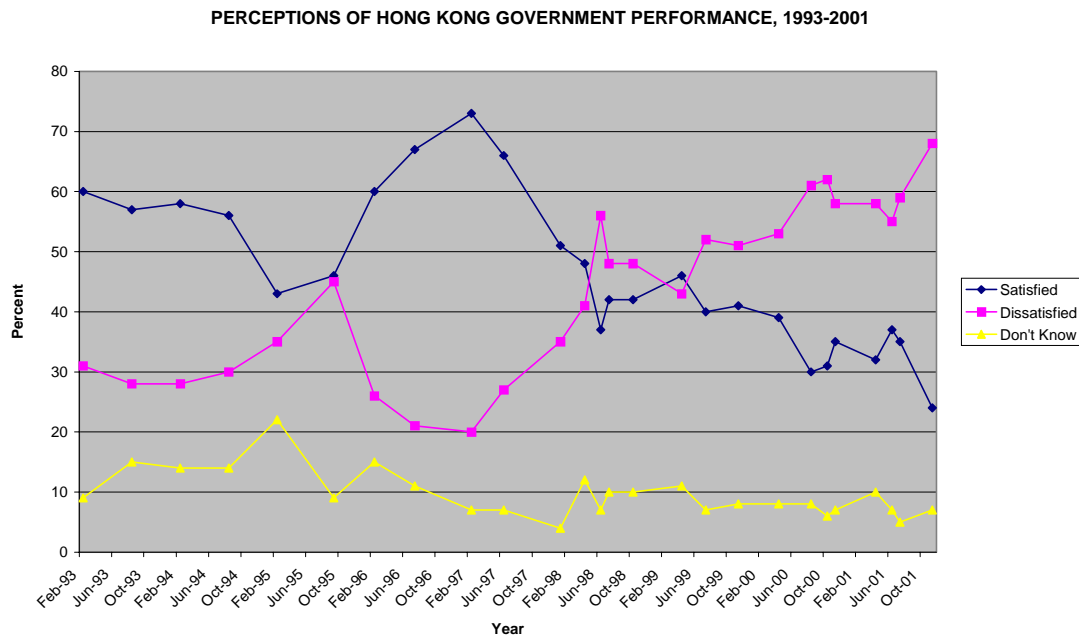
Moreover, the government has maintained that because they are civil servants, they ‘have a reasonable expectation to remain in service until normal retirement’ (Constitutional Affairs Bureau, 2001). In the government’s view they may not be removed from office to take responsibility for policy blunders. They may only be

removed from office for misconduct or poor performance on their part and not because of any perceived failure of government policy or its outcome (Constitutional Affairs Bureau, 2001). (The dismissal of former Director of Immigration, Leung Min-yin, a principal official under the Basic Law, is a case in point of a dismissal for misconduct.) Thus, principal officials as the executive authorities are accountable to Legco and should take responsibility for policy blunders, yet because they are civil servants they may not be sanctioned by Legco. The system of accountability is, then, fundamentally flawed.

The issue of the accountability of the HKSAR government has gained increasing salience in the wake of the Asian Financial crisis (1997-1998). During the crisis Hong Kong's economy contracted (GDP grew by -5.1 percent from 1998-99), unemployment rose to record levels (over six percent), salaries were frozen or cut, and prices fell. Indeed, by the end of 2001 Hong Kong had witnessed 35 months of continuous deflation. Economic hard times and a series of high profile policy blunders (the chaotic opening of Hong Kong's new international airport, the government's mishandling of a deadly outbreak of avian flu, scandals in the management of public housing, and so forth) have seen the public's satisfaction with the performance of government plunge (See Figure 2). This discontent has translated into dissatisfaction with the political system more generally and has included calls from academics, politicians, and the media for more politically accountable government (See Legislative Council Panel on Constitutional Affairs, 2000; *SCMP* June 27, 2000).

Not surprisingly, senior civil servants have been less critical of the performance of the government. While opinion polls showed that more than half of the public was dissatisfied with government performance in late 1999 (See Figure 2), only about a third of senior government officials who responded to our survey conducted in late 1999 thought that the government's performance had declined since 1997.⁶ Still, senior official respondents also perceived that there were problems with the political system. Thus, only 17.9 percent of senior official respondents agreed that Hong Kong's political system was then 'working well'. Overwhelmingly (69 percent) senior officials perceived that a lack of support in Legco for government policy was undermining the smooth functioning of the political system.

Figure 2



Source: Hong Kong Transition Project (2001) 'Winter of Despair: Confidence and Legitimacy in Crisis in the Hong Kong SAR' (December) Hong Kong: Baptist University, mimeo.

Although the Basic Law calls for the government (that is, 'the executive authorities') to be accountable to Legco, not surprisingly less than half (44.5 percent) of senior official respondents believed that 'the civil service' should be accountable to Legco. (Indeed, the Basic Law requires civil servants to be responsible to the Government of the HKSAR, that is, 'the executive authorities' (Art 99), and not to Legco.) As one would expect the more politically attuned AOs believed in larger numbers among our respondents that they should be accountable to Legco. Thus, 52.6 percent of directorate-level AO respondents thought they should be accountable compared to 43 percent of the directorate as a whole. This result is somewhat surprising, given that the Basic Law requires only that the most senior officials ('the executive authorities') to be accountable to Legco. Still most senior officials (51.4 percent of respondents) believed that being accountable did *not* mean that they should resign to take responsibility for policy errors, which reflects the government's official position (See *SCMP* January 20, 2000). Indeed they believed (58.9 percent) that executive-led government means that the government may implement policy that has not first been approved by the Legislative Council. These findings are entirely consistent with the Basic Law which focuses mostly on accountability as

answerability and as currently interpreted provides virtually no mechanisms to sanction the government.

Accountability in Practice

Legislatures generally hold governments accountable through a variety of means: Ministerial responsibility (in parliamentary systems); control over funding; the power of investigation (including administrative redress such as an ombudsman); providing constituency service; reviewing secondary legislation (regulation); and post-audit procedures such as ‘value for money’ studies (Peters, 2001; 315-323). Recent trends in some OECD parliamentary democracies that have separated policy making departments from policy implementing executive agencies (such as under the UK’s ‘Next Steps’ program) have ‘blurred lines of accountability’ with ministers forcing chief executives of agencies to take responsibility for blunders committed by the agencies (Dargie and Locke, 1999; 199). In some countries ministers have become increasingly reluctant to take responsibility for what they claim are operational or implementation blunders committed by the agencies. Thus in the UK, Derek Lewis, the Director General of the Prisons Service was sacked rather than Michael Howard, the Home Secretary, for a series of high profile escapes from the country’s prisons. What was ‘policy’ for Derek Lewis was ‘operations’ for Michael Howard and Lewis had to go (Dargie and Locke, 1999; 199). Nor is this an isolated case. Also in the UK, the government fired the head of the Child Support Agency, to take responsibility for ‘operational’ blunders committed there (Dargie and Locke, 1999; 199).

As we have seen, Hong Kong’s political arrangements have thus far held the executive authorities only weakly accountable (essentially answerable but not subject to sanctions) to the legislature. In spite of these weaknesses, on at least three occasions since 1998 legislators in Hong Kong have attempted to hold senior civil servants (including in two cases, ‘the executive authorities’) responsible for policy blunders and in each case they have failed. In two cases Legco demanded that the Chief Secretary for Administration and the Secretary for Justice respectively take responsibility for blunders. In the first case, the Chief Secretary accepted that she was responsible but refused to be sanctioned. In the second case, under tremendous pressure from the executive the legislature failed to pass a vote of no confidence in the Secretary for Justice. In the third case, Legco’s ire was directed at very senior public figures who were, nonetheless, not officially part of ‘the executive authorities’

(the Head of the Housing Authority (who was concurrently an Executive Councillor) and the Director of the Housing Department). In two of the cases, the government could claim that 'the executive' authorities concerned were civil servants and, thus, should not resign to take responsibility. Moreover, following trends overseas, in all three cases the government could claim that the blunders were 'operational' matters not matters of policy. Consequently, no one from among the executive authorities should resign to take responsibility.

Opening of the New Hong Kong International Airport

On July 6, 1998 Hong Kong's new International Airport was officially opened amid scenes of chaos (See Lee, 2000). The computer information system failed leaving passengers stranded. The baggage systems did not work properly and the cargo handling system completely collapsed. A huge public outcry prompted authorities to undertake three separate investigations of the matter, one each by a Legislative Council Select Committee, a Commission of Inquiry appointed by the Chief Executive, and the Ombudsman. All three investigations found instances of maladministration and other problems and two of the investigations identified particular individuals who should be held responsible for the chaos (Ombudsman, 1999). The Commission of Inquiry laid most of the responsibility on officials of the Airport Authority, accusing it of misleading the high-level Airport Development Steering Committee [ADSC] headed by the Chief Secretary (Report of the Commission of Inquiry on the New Airport, 1999, I-XI).

The Legco Select Committee, however, dwelt at length on the responsibility of the executive authorities, that is the Chief Secretary for Administration and the Secretary for Works, Kwong Hon-sang (Report, 1999; 187-191). The Select Committee was scathing in its criticism of the Chief Secretary, who the Select Committee said, should 'shoulder special personal responsibility' for the chaotic opening. Because she failed to lead the ADSC in assessing the readiness of the airport for opening and because she failed to ensure that all signs of risk were considered, she 'remains responsible' (Report, 1999; 188). The Select Committee also criticized the Secretary for Works Kwong Hon-sang for misleading the ADSC and failing as a professional advisor. His assessment of the FIDS computer information system, the failure of which caused much of the chaos, 'border[ed] on being irresponsible,' the Committee concluded (Report, 1999; 189). In spite of his acknowledged lack of

expertise in IT, 'he made sweeping and, as it turned out, unfounded and mistaken statements on the airport systems' to the ADSC. The Select Committee also criticized the directors of the New Airport Project Coordinating Office for failing to act as the government's watchdog, 'dangerously misunderstanding the situation' and having little appreciation of their duties (Report, 1999; 192-196; *SCMP* January 28, 1999).

Organizing its report as it did with special sections detailing the responsibilities and failings of the most senior government officials, the Select Committee hoped to hold the officials personally responsible. Their object was frustrated by the Chief Executive, however. Although the Chief Executive offered an apology to the people of Hong Kong, he concluded that there was 'no *prima facie* evidence to support disciplinary action against any of the officers concerned since there was clearly no question of misconduct.' 'The officers concerned,' he said, 'have all acted in good faith and performed their duties with due diligence' (*SCMP* January 28, 1999 and Economic Services Bureau et al, 1999). That is, because they were both civil servants, they could not be removed for policy blunders. As a result, Legco's attempt to hold the executive authorities personally responsible failed.

The Decision Not to Prosecute Sally Aw Sian

In a second case, members of the legislature attempted to hold the Secretary for Justice responsible for a decision she made not to prosecute a prominent businesswoman in Hong Kong. Based on information it received in 1996, the Independent Commission Against Corruption (ICAC) investigated the *Hong Kong Standard* group of newspapers, owned by Sally Aw Sian, for fraudulently inflating the number of newspapers it sold, thereby defrauding advertisers. In 1998 the Department of Justice charged So Shuk-wa, general manager, Wong Wai-shing, circulation director and Tang Cheong-shing, finance manager with conspiracy to defraud. Sally Aw Sian, the owner of the newspaper, was also named as a co-conspirator. In the event So, Wong, and Tang were tried and convicted of conspiracy. Sally Aw Sian, although named, was not charged (*SCMP* February 5, 1999). The Legislative Council demanded to know why the government did not prosecute Sally Aw Sian.

When she appeared before the Legco Panel on Administration of Justice and Legal Services, the Secretary for Justice Elsie Leung Oi-sie defended her action not to prosecute Sally Aw. She argued that the main reason for failing to prosecute was a lack of evidence against Aw but that she had also taken into account the 'public

interest'. She noted that the Aw's Singtao Group, which owned the *Hong Kong Standard*, was facing financial difficulties and was negotiating with banks to restructure. The Secretary for Justice reasoned: 'If Aw Sian was prosecuted, it would be a serious obstacle for restructuring. If the [Singtao] group should collapse, its newspapers would be compelled to cease operation. Apart from the staff losing employment, the failure of a well-established important media group at that time could have sent a very bad message to the international community' (*SCMP* February 5, 1999). Although Aw Sian was a member of the Beijing-appointed Chinese People's Political Consultative Conference and the CE was a former director of the Singtao Group, the Secretary for Justice insisted that failing to prosecute Aw Sian had nothing to do with these matters. 'At no point was any consideration given to the political or personal status of Aw Sian,' she said (*SCMP* February 5, 1999). The Secretary explained to the Panel that she had decided to give a 'frank and detailed' account of her decision. 'Different factors have been considered as a whole,' she said. 'They are reasonable factors...if I only gave the evidence reason [to the Panel], people will say I'm dishonest. As that [the public interest] is a fact, I don't want to hide it from the public' (*SCMP* February 5, 1999).

The Secretary for Justice's admission that she considered the damage prosecuting Aw Sian might have on Aw's businesses was met with disbelief and outrage by the legal community, politicians, the media, and members of the public (See *SCMP* February 6, February 11, 1999). As HKU Law Professor Yash Ghai said: 'I am amazed by this reasoning. It does not show proper understanding by the Department of Justice of what the rule of law means.' The Bar Association was equally scathing. In February Legco member Margaret Ng Ngoi-yee, representative of the legal functional constituency, proposed a motion of no confidence in the Secretary for Justice (*SCMP* February 7, 1999). Both the Democratic Party and the Liberal Party, organized to represent business interests, vowed publicly to vote for the motion. The Democratic Alliance for Betterment of Hong Kong (DAB) and the Hong Kong Progressive Alliance supported the Secretary, however (*SCMP* February 7, 1999).

The government, especially the office of the CE, put tremendous pressure on the Liberal Party to abstain or vote against the motion and the Party eventually relented (*SCMP* March 10, March 11, March 17, 1999). As the head of the Liberal Party said, the government's pressure on the Party 'was a problem...There's nothing wrong with them [the government] lobbying us. But when they found they could not

convince us [the Liberal Party], they turned to our constituents’ which Party leaders found unacceptable (*SCMP* March 17, 1999). The CE appealed directly to ‘property tycoons and business leaders’ to influence the outcome (See ‘Officials Admit Lobbying Fiercely,’ *SCMP* March 12, 1999). In the end, the motion was defeated because, one may argue, the Liberal Party abstained.⁷

According to the Basic Law, ‘the Department of Justice of the HKSAR shall control criminal prosecutions, free from any interference’ (Art. 63). Legco’s attempt to hold the Secretary of Justice accountable for the decision not to prosecute Sally Aw could be seen as an infringement of the independence of the Secretary to take these kinds of decisions. Still, the Secretary provided an explanation which constitutionally she may not have been required to do. In the end, her explanation was so fraught with difficulties that members of Legco decided to take action.

In this case members of Legco went beyond publicizing the results of its investigation and attempted to pass a motion of no confidence against one of ‘the executive authorities’. Still, Legco was unable to muster sufficient support among its members to pass the motion.

In the final case, Legco succeeded in passing a motion of no confidence against senior housing officials who were nonetheless not part of the ‘executive authorities’. Legco’s attempt to force the resignation of the Director of Housing was frustrated by the government’s claim that because he was a civil servant he could only be fired for serious misconduct, which was neither alleged nor proven in this case.

Short Piling Public Housing Projects

Hong Kong’s public housing policy infrastructure is complex and lines of authority are blurred.⁸ The Secretary for Housing, who as a principal official is responsible to Legco, is responsible for among other things ‘formulating policies on the provision of public housing; monitoring and coordinating the implementation of policies on the provision of public housing; and handling matters relating to the Housing Authority’ (<http://www.info.gov.hk/hb> April 21, 2002). He shares policy making and implementing responsibilities with the Housing Authority.

Set up in April 1973 under the Housing Ordinance (Laws of Hong Kong, Chapter 283), the Housing Authority is a statutory body that also has public housing policy making and implementation duties.⁹ The HA describes itself as ‘a statutory body responsible for implementing Hong Kong’s public housing programme within

the objectives of the Government's Long Term Housing Strategy (Housing Authority Website, <http://www.housingauthority.gov.hk/eng/ha/message.htm> April 21, 2002).

The Chairman of the HA is appointed by the CE and is not a civil servant.

Membership of the HA consists of the Chairman, a Vice Chairman who is also the Director of Housing, 24 'unofficial members' (five of whom have in the past been legislators), and three official members (the Secretary for Housing, the Secretary for the Treasury (both 'principal officials'), and the Director of Lands. That is, several 'principal officials' were members of the HA, although they did not chair it.

The Housing Department is charged with implementing housing policy, and is described by the HA as its 'executive arm'. Legislators have, however, pointed out that the Housing Department also plays a not insignificant role in housing policy making (See Fred Li, Hansard, June 28, 2000, p. 9226). These blurred lines of authority provide the background to Lego's attempt to hold senior public officials accountable for a series of public housing scandals.

In 1999 the Housing Department revealed that it had discovered that nearly completed public housing blocks in Shatin had been built on short piles that rendered them unsafe. As a result the government was forced to demolish two new 31-story blocks of Home Ownership Scheme flats at a cost of \$258 million (*SCMP* March 17, 2000). Short piles in other sites were also found.¹⁰ On January 9, 2000 the Independent Commission Against Corruption charged three government officials and five employees of construction companies who had tried to cover up the scandals, with corruption and at least one very large contractor (Zen Pacific) was banned from participating in future public housing projects (*SCMP* January 10, 2000).

After an inquiry set up by the Housing Department apportioned responsibility to middle-level and lower-level officials and contractors but cleared the heads of the Housing Authority and the Housing Department, Legco members demanded that they resign (*SCMP* May 26, 2000). Thousands of people protested in public demonstrations in late June over the public housing scandal and unpopular government policies (*SCMP* June 26, 2000). In spite of intensive lobbying by government officials, in an unprecedented move Legco passed a motion of no confidence in both officials on June 28, 2000 (See Hansard, June 28, 2000; *Legislative Council Annual Report 1998-99* and *SCMP* June 29, 2000). In the event the Head of the Housing Authority, Rosanna Wong Yick-ming (also an Executive Councillor) had resigned a few days before the censure vote (*SCMP* June 25, 2000).

Amid much criticism the Head of the Housing Department, Tony Miller, a career civil servant, refused to resign, a decision strongly supported by the Chief Executive and the administration (*SCMP* June 29, 2000), but condemned by many legislators.

Many in Legco and the government saw the debate on the motion of no confidence as less about the failings of two public officials and more a criticism of Hong Kong's system of accountability. Indeed, the Chief Secretary for Administration said as much in her speech on the motion (Hansard, June 28, 2000, p. 9315). In this case Legco attempted to hold senior public officials accountable and succeeded in forcing the resignation of the Chairman of the HA and passing a motion of no confidence. Still, because those targeted by the motion were not 'the government'¹¹ as laid down in the Basic Law, Legco's action has neither created a precedent for more responsible government nor has it helped to institutionalize a convention that faced with a vote of no confidence, the government or members of it should resign to accept responsibility for their mistakes. Legco's action in this case, however, probably spurred the government to consider new measures to improve the accountability of government in the eyes of the public.

Strengthened Executive Accountability

Frustration among legislators, continued public dissatisfaction with government performance, and doubts among senior civil servants about whether they should be held accountable for policy failures has pushed the government to consider various remedies. In his October 2000 Policy Address, the CE acknowledged for the first time the public's demand for more political accountability (Tung, 2000; 37). The government then undertook to 'examine how, under the leadership of the Chief Executive, the accountability of principal officials for their respective policy portfolios [could] be enhanced' (Tung, 2000, 37-38). This was something of a watershed.

On April 17, 2002, the CE outlined a new system of executive accountability to Legco (Press Release, <http://www.info.gov.hk/gia/general/2002/17/04> April 25, 2002). According to the new system 14 of the current 27 or so principal officials will in future no longer be civil servants, but will be employed on fixed-term contracts. The contracts may run for five years, but may not exceed that of the CE who nominates them. These principal officials will continue to be appointed by the central government. The government anticipates recruiting for these positions both from

within and outside the civil service. The principal officials under the new accountability system ‘will accept *total responsibility* and in an extreme case, they may have to step down for serious failures relating to their respective portfolios’ (‘Framework of Accountability System for Principal Officials’ Press Release, <http://www.info.gov.hk/gia/general/2002/17/04> April 25, 2002). The new officials will be appointed to the Executive Council, which together with the CE, makes government policy (Basic Law, Arts 54-56).¹² They will be ‘directly responsible’ to the CE and will have ‘direct access’ to the CE. Moreover, they will ‘take part directly in the decision making process relating to the allocation of resources of the government as a whole’ and they will have a ‘strong say’ in the assignment of personnel working directly under them and in the share of financial resources allocated to them (‘Framework of Accountability System for Principal Officials’ Press Release, <http://www.info.gov.hk/gia/general/2002/17/04> April 25, 2002).

According to the proposals the duties of the principal officials hired under the accountability system will include in part political functions (See Box 1). Contract principal officials will be expected to ‘formulate policies, explain policy decisions, market policy proposals and gain the support of Legco and the public’ (Tung, 2002; 2).

Box 1
FUNCTIONS OF PRINCIPAL OFFICIALS EMPLOYED
UNDER THE ACCOUNTABILITY SYSTEM

To gauge public opinion and take societal interests into account in serving the community;
To set policy objectives and goals, and develop, formulate and shape policies;
To take part as a member of the Executive Council in all of the deliberations and decision making of the Executive Council and assume collective responsibility for the decisions made;
To secure the support of the community and Legco for their policy and legislative initiatives as well as proposals relating to fees and charges and public expenditure;
To attend full sessions of Legco to initiate bills or motions, respond to motions and answer questions from Legco members;
To attend Legco committee, subcommittee, and panel meetings where major policy issues are involved;
To exercise the statutory functions vested in them by law;
To oversee the delivery of services by the executive departments under their purview and ensure the effective implementation and successful outcome of policies; and
To accept total responsibility for policy outcome and the delivery of services by the relevant executive departments.

Source: ('Framework of Accountability System for Principal Officials' Press Release, <http://www.info.gov.hk/gia/general/2002/17/04> April 25, 2002.

The scope of the arrangements extends to the three top positions identified in the Basic Law (Art. 60), that is the Chief Secretary for Administration, the Financial Secretary and the Secretary for Justice, and to the holders of eleven other policy portfolios (See Table 1). The government has taken the opportunity of introducing the new system to make substantial changes to the organization of the Government Secretariat, especially the merger of several policy branches. Environment and welfare groups have opposed the merger of these two portfolios fearing that these areas will in future be relatively neglected.

The government also will transfer the Secretariat of the Executive Council, currently located in the Chief Secretary for Administration's Office to the CE's Office, the head of which will be a contract principal official. A contract principal official will also head the Central Policy Unit (Tung, 2002; 2). Each contract principal official will be served by a D8-level permanent secretary (civil service policy secretaries are currently all ranked at this level), who will be responsible to 'formulate and implement policies, listen to the views of the public and Legco, explain policies to these respective groups, respond to questions raised and gain support from different quarters for government policies' (Tung, 2002; 2). According to the Chief Executive, the new system will 'improve governance, speed up decision making, and result in more direct responses to the demands of the community and the needs of the public' (Tung, 2002; 2).

Table 1

PROPOSED DISTRIBUTION OF PORTFOLIOS AMONG POLITICAL APPOINTEES

Portfolios Held by Civil Servant Principal Officials, mid-2002	Proposed Portfolios Held by Accountable Principal Officials
Civil Service	Unchanged
Commerce and Industry	Commerce, Industry and Manpower
Constitutional Affairs	Unchanged
Economic Services	Economic Development
Education and Manpower	Education
Environment and Food	Environment, Health and Welfare
Finance	Merged with Financial Services
Financial Services	Financial Services and Treasury

Health and Welfare	Merged with Environment
Home Affairs	Unchanged
Housing	Housing, Planning and Lands
IT and Broadcasting	Merged with Economic Development
Planning and Lands	Merged with Housing
Security	Security
Transport	Transport and Works
Works	Merged with Transport

Source: Government Information Agency Press Release April 17, 2002

The government will remunerate contract policy secretaries at more or less the same level as the civil service policy secretaries. They will be put on cash remuneration packages in the region of \$3.74 million for directors of bureaus and \$3.87 million, \$4.01 million, and \$4.15 million for the Secretary for Justice, Financial Secretary, and Chief Secretary respectively ('Framework of Accountability System for Principal Officials' Press Release, <http://www.info.gov.hk/gia/general/2002/17/04> April 25, 2002).

The new accountability system will centralize power in the hands of the Chief Executive. First, the CE will have more control over the appointment of principal officials. Under the previous system, postings and promotions boards, chaired by the Chief Secretary for Administration and staffed by other principal officials made recommendations to the CE for these positions from among the senior civil service. Although the CE could probably influence the outcome of these decisions, his influence was relatively indirect. Senior officials report that the CE accepted all of the postings and promotion decisions of the boards, for nomination to the central government. Under the contract principal official system, the CE is much more directly involved in the selection of the top officials. He will also rely on friends and acquaintances from the local business community for their suggestions. Moreover, the local CCP may have more influence on these decisions as well.¹³ The local party has long criticized the HKSAR civil service for failing to be sufficiently responsive to Hong Kong's political executive. Indeed, giving contract principal officials a 'strong say in the assignment of personnel working directly under them' is designed to increase responsiveness ('Framework of Accountability System for Principal Officials' Press Release, <http://www.info.gov.hk/gia/general/2002/17/04> April 25, 2002). Clearly, the CE will gain more influence over the selection of principal

officials as a result of the changes. Second, because contract principal officials will all be members of the Executive Council, this body will begin to play a more active role in policy making. No longer amateurs without staffs, the new contract principal official members of the Executive Council will all be in some sense ‘professionals’. The new status of the Executive Council is reflected in the decision to move the Secretariat of the Executive Council into the CE’s office.

These moves weaken the power of the Chief Secretary for Administration. The plans call for the Chief Secretary to take on a coordinating role. The CS and FS will ‘oversee and coordinate the work of the respective policy bureaux and coordinate work which straddles different policy bureaux’ (Tung, 2002; 3) as determined by the CE and the Executive Council. The Chief Secretary will chair various Executive Council subcommittees that will replace the policy groups under the Chief Secretary’s committee (Tung, 2002; 3). That is, policy making that previously was the responsibility of the Chief Secretary and other Secretaries working to some extent independently of the CE will now be brought directly under his control via the Executive Council. These arrangements, the government hopes, will improve policy coordination, the lack of which has dogged the administration for many years. Enhanced coordination will be achieved at the expense of the Chief Secretary’s position.

The new arrangements do not make a clear distinction between the roles of the contract principal officials and their permanent secretaries, both of which are expected to perform both political and administrative tasks. The permanent secretaries will still be responsible to ‘formulate and implement policies, listen to the views of the public and Legco, explain policies to these respective groups, respond to questions raised and gain support from different quarters for government policies’ (Tung, 2002; 2). Responsibility for policy blunders will, however, fall on the shoulders of the contract principal officials.

The contract principal officials will be drawn from among serving civil servants and from outside the civil service. It is likely that a strategic bargain has been struck between the CE and the civil service that will give senior and trusted civil servants continuing control over certain key portfolios. To allay fears that the political neutrality of the civil service may be compromised, the government has already publicly designated the post of Secretary for the Civil Service for someone from within the civil service. This person must resign from the service to take up the

appointment, and on completion of his contract, may return to the civil service. As a member of the Executive Council, he or she ‘will be able to represent the expectations and interests of the civil service in the process of policy making at the highest levels of government...and can convey the considerations taken into account in respect of major decisions to civil service colleagues. This will facilitate full and effective implementation of policies adopted’ (Tung, 2002; 5). Given the nature of their portfolios it is likely that the Secretaries of Security, Home Affairs, and Constitutional Affairs will also come from among senior civil servants. So too may the education portfolio. That is, the civil service is unlikely to give up these strategic positions of power (and maybe others) in the new arrangements. Consequently there is a real danger, then, that little will change after the implementation of the new system.

The selection of contract principal officials from outside the government raises other issues. Even if the remuneration packages, status and power attached to the new positions are sufficient to attract talent from outside government, there is a danger that when the new appointees leave government they will take with them inside information that could be exploited for private gain. Hong Kong has had relatively little experience of dealing with conflicts of interest at the top and its regulations for senior officials are of relatively recent origin. Providing a method for outsiders to re-enter their occupations after a stint in government will be more important than the remuneration package itself. So far, little has been published about how the government intends to deal with this issue.

Finally, the reforms propose no new institutional mechanisms to achieve their primary goal of ensuring that public policy better meets the expectations of the community. Although principal officials are admonished to ‘place importance on public opinion and make further efforts to gauge public sentiments’ and are urged to ‘strengthen the relationship between the Executive and the Legislative Council’ institutional mechanisms that would require them to do so do not figure in the proposals. Officials ‘motivated by common perspectives, shared policy goals and a collective mission’ are usually found in party-based government, yet political parties play no role in the reforms (Tung, 2002; 5). No new mechanism to ensure that the government will be in tune with the public (except, perhaps the proposal to strengthen opinion polling conducted by the Central Policy Unit!) is provided here. Neither do the proposals provide for any new mechanism for gaining the support of the Legislative Council. That is, the proposals provide no confidence that ‘the team will

be able to set, coordinate and implement policies more effectively to meet the needs of the community and our expectations' (Tung, 2002; 4) than is currently the case. While the new contract Secretaries may be more responsive to the Chief Executive, the changes do not address the problem of the lack of political support for the government in Legco. The government will continue to lobby Legco for each bill and defeats of the government's program are likely. Legco will continue to be shut out of decisions on the formation of the government and will continue to be powerless to sanction the new contract Secretaries without further and more fundamental changes.

Conclusion

Legco members and academics have suggested that the government and Legco adopt constitutional conventions that require the government to obtain Legco's prior approval of all appointments of contract principal officials before they are recommended for appointment to the central government, and that require contract principal officials to resign if Legco passes a motion of no confidence in them (Legislative Council, Panel on Constitutional Affairs, 2000). However, such conventions must be agreed by all parties and are difficult to initiate in practice. Essentially they emerge over many years of practice. Indeed, we have seen Legco's failed attempts to achieve something like this since 1998. Moreover, they need the CE's full cooperation and he has indicated rather cautiously that under the new system he would only be prepared to consider carefully why the legislature had passed a motion of no confidence. That is, he has not pledged to recommend the dismissal of and principal official who was the subject of such a motion.

In the three cases discussed above, the new arrangements would probably not have resulted in the resignation of a contract principal official. In the airport case, the CE could have said that responsibility for the opening of the airport (an 'operational matter') lay with the Airport Authority and not with the government. In the Aw Sian case, the government likely would not have tolerated legislative interference in the Department of Justice's independence to decide who to prosecute. To do otherwise might have been seen as undermining the rule of law. And in the housing scandals, Legco did not directly target principal officials.

Fundamental change to Hong Kong's system of political accountability is only possible through reform that will permit the community to participate in the selection of its government. Such reforms might mean returning the legislature by universal

suffrage and permitting it to participate in the formation of the government (through the approval of contract principal officials) or through the return of the Chief Executive through a system of open nominations and universal suffrage. Neither seems likely in the short term, however, because of opposition from the central government which fears losing control of Hong Kong and opposition from Hong Kong's business elite who fear a welfare state.

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¹ The Basic Law lays down that 'the ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures' but that this goal should be achieved 'in the light of the actual situation of the HKSAR and in accordance with the principle of gradual and orderly progress.' (Art. 45).

² See 'A Draft Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Future of Hong Kong' Hong Kong: Government Printer, 1984, p. 15.

³ These are, Commissioner of the Independent Commission Against Corruption, Director of Audit, Commissioner of Police, Director of Immigration and the Commissioner of Customs and Excise.

⁴ The latter action is highly unlikely because of severe restrictions placed on the ability of Council members to introduce private member's bills. They may only be introduced if they 'do not relate to public expenditure or political structure or the operation of the government'. The CE must approve in writing the introduction of any bill 'relating to government policies' before it may be introduced. Basic Law Art 74.

⁵ The 800-member Election Committee is composed of 200 representatives of 'industrial, commercial and financial sectors'; 200 members of 'the professions'; 200 members from 'labor, social services, religious and other sectors' and 200 members from 'members of the Legco, representatives of the district councils, Hong Kong deputies to the National People's Congress, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference (CPPCC)'. The Chinese Communist Party in Hong Kong through the Liaison Office of the Central government of the People's Republic of China stationed in the HKSAR selects members of the latter two bodies. The electorate for the Election Commission is largely the same as for the functional constituencies (See the Basic Law, Annex I).

⁶ The survey, carried out in November-December 1999 surveyed all directorate-level officials and all AOs. A total of 1473 questionnaires were mailed out and 490 useable questionnaires returned for a response rate of 34 percent. The response rate for directorate officials was 36 percent and for AOs was 30 percent. In terms of gender and terms of service the respondents were broadly representative of the directorate and the Administrative Service as a whole (See Table below). As in the service as a whole, men employed on local terms of service dominated the respondents. Still, the respondents under-represent women, especially in the AO grade (only 36 percent of respondents were women although they hold 47 percent of AO positions). Women are slightly under represented in the directorate sample as well. In order to protect the confidentiality of respondents and, thus, to increase the response rate we chose not to ask specific questions concerning rank or current position. Still, we do have some indication of the representativeness of our respondents. Currently the directorate is composed of about 249 Administrative Officers, or 20.3 percent of the directorate. Among our respondents, 80 AOs identified themselves as directorate officers (Staff Grade C and above), or about 18.9 percent of our directorate respondents. Approximately 50.5 percent of the AO grade is composed of those at Staff Grade C and above, compared to 55.9 percent of our respondents. These figures indicate that our respondents are roughly representative of the total population. If anything, among AOs the senior segment (Staff Grade C and above) is slightly over represented.

DIRECTORATE QUESTIONNAIRE REPRESENTATIVENESS

	Total	Male	Female	% Female	Local	Overseas	% Local
AOs	493	262	231	47	467	26	95
AO respondents	143	91	51	36	130	13	91
Directorate	1229	978	251	20	1095	134	89
Directorate respondents	423	349	71	17	369	52	87

⁷ Twenty legislators voted for the motion (14 from geographic constituencies and 6 from functional constituencies); 28 opposed the motion (4 from geographic constituencies and 16 from functional constituencies); 8 Liberal Party members abstained and one Liberal Party member was absent. Had the Liberal Party voted for the motion as they had pledged publicly to do, the motion would have carried by 29 votes to 28 (*SCMP* March 12, 1999).

⁸ One Legco member described it as a 'three-horsed cart'.

⁹ According to the Housing Ordinance, the Authority's function is to 'secure the provision of housing and such amenities ancillary thereto as the Authority thinks fit for such kinds or classes of persons as the Authority may, subject to the approval of the CE, determine.' (Housing Ordinance, Laws of Hong Kong, Chapter 283, Section 4) in Bilingual Laws Information System, consulted on April 21, 2002)

¹⁰ Indeed, this short pile episode was one of nine instances of short piling, substandard piles, uneven ground settlement, corruption and jerry-built housing referred to the Legco debate on the issue (See Hansard, June 28, 2000, pp. 9224).

¹¹ The record of the no confidence debate reveals that Legco members perceived the HA and the Housing Department to be responsible for the housing scandals, not the Secretary for Housing. Still a few Legco members speculated about whether the Secretary for Housing should also resign (See Hansard June 28, 2000, 9244).

¹² According to the Basic Law, the Executive Council shall assist the CE in policy-making. The CE appoints members to the Executive Council from among the principal officials of the government, members of Legco, and the public. Their terms of office do not extend beyond the CE's term of office. The CE is required to consult the Executive Council before making important policy decisions, introducing bills to the Legco, making subordinate legislation, or dissolving Legco (Basic Law, Arts 54-56).

¹³ See the article by Wang Ziyang, "Gangauban shi gaoguan wenzizhi de shiji sheji zhe" [The Hong Kong Macau Office is the Real Designer of the Principal Official Accountability System] *Xinbao* [Economic Daily] April 22, 2002 which suggests that a plan such as what has been adopted may have come from the central government.

致

立法會研究擬議主要官員問責制及相關事宜小組委員會

本人謹就主要官員問責制發表書面意見如下：

由行政長官董建華提出的「主要官員問責制」，目的是精簡行政機關的架構，提高行政效率及施政水平，增加官員對香港的承擔，加強官員對市民的問責性，從而更加順應廣大市民的訴求，更加積極地回應香港所面對的挑戰，更好地建設特區為市民服務，這些明顯符合香港市民的利益，所以我們支持這項與時並進的改革。

有人認為主要官員問責制使行政長官可以「擴權」、甚至變成「獨裁者」的說法是歪曲事實，誤導市民，嘩眾取寵。因為行政長官的職權已由基本法第四十八條明確規定，其中第五款規定行政長官提名並報請中央人民政府任命主要官員，並無限制只可在公務員隊伍中挑選，而目前律政司司長、財政司司長及衛生福利局局長等均是來自社會的精英。一旦推行「問責制」，行政長官不但沒有「擴權」，反而下放權力給各主要官員。

在實行主要官員問責制之後，作為行政機關的特區政府仍須遵守基本法第六十四條的規定：「必須遵守法律，對香港特別行政區立法會負責，執行立法會通過並已生效的法律，定期向立法會作施政報告，答覆立法會議員的質詢，徵稅和公共開支須經立法會批准」(原文)。這即是行政機關受到立法機關的制衡，根本不可能「獨裁」。所以「獨裁」之說是荒謬的。

「問責制」加強高官的問責性，實質上就是加強高官對市民的負責，因為高官所決定推行的政策要想成功便必須符合廣大市民的根本和長遠利益，並須得到廣大市民的支持。根據基本法第四十三條的規定，行政長官必須對中央人民政府及香港特區(即香港市民)負責，所以主要官員透過向行政長官負責，歸根究底是向市民負責。因此所謂主要官員「不向市民負責」的說法是完全錯誤的。

以下是對主要官員問責制的一些分析：

一、「問責制」高官屬政治任命，必須對其所作決策負起政治責任，決策錯誤可被免職，因此，高官必須對市民具有高度的責任感。

二、「問責制」高官必須更加重視民意，更加深入瞭解民情才作出決策；

在推行政策時更加努力爭取民心才能使政策得到成功。

三、「問責制」高官有固定任期，當在任期內做到最好。

四、「問責制」高官與行政長官具有共同的政治理念及為市民服務的使命感，大家一起同心同德建設香港特區。

五、「問責制」高官參加行政會議，他們掌握各自所主管部門的情況，可以更好地根據基本法第五十四條的規定，協助行政長官決策。

六、「問責制」高官要憑自身的才能和實幹做出實際的政績，不能靠「擦鞋」保住職位，所以「擦鞋」之說不能成立。

七、接受做「問責制」高官的精英人士，不論來自公務員隊伍抑或來自社會，都以服務市民為目的，不計較私人利益，現任財政司司長梁錦松放棄年薪千多萬的私人銀行高職而加入特區政府為市民服務便是很好的實例。

總而言之，「主要官員問責制」明顯有利於香港市民和建設特區，我們理所當然決定予以支持。

陳堅

二〇〇二年五月二日

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聲明：

在周三特首在立法會公佈其「高官向責制」，良心說，我這個讀政治學系出身的議員，真的听不懂，怪不得黃錦儀議員听了，一个簡介會十數分鐘就過出來說听不懂什麼，沒意義。

只有一句話，我聽特首說的非常清晰「高官不再是公務員」！故有人只就此句話作一下解析：

先來看看下表的比較：

所有的公務員制度	高官向責制
(1)、雖有「合約制」，但只是臨時性、暫時性，而非常規；	(1)、將「合約制」變為常規；且由政治任命；
(2)、仍是「公務員」；	(2)、已非「公務員」；
(3)、以等「合約制」公務員只佔極少數；	(3)、以等「合約制」高官佔極大多數；
(4)、保持「政治中立」。	(4)不再「政治中立」。

由上表之比較可知：

(一)、特首將公務員中的「合約制」之暫時性非常規性、極少數、政治中立等「規定」變更了，這就違反了《基本法》^{第四}第六節第103條所載「...

NO

...香港所有關於公務人員的招聘、僱用、---和
管理的制度、---予以保留。」「基本法」臨時性
的「合約制」在九七前已予規定。特首范是誰可以
變更此「合約制」呢？

而特首范還說是「政治任命」，但第103條還
載明「---香港所有關於公務人員的招聘、僱
用、---和管理的制度，包括負責公務人員的任
用、薪金、服務條件的專門機構---予以保留
。」第文中所謂「專門機構」就是指所有的「公務員
敘用委員會」，特首范想奪取該委員會之權而改

馬 耀 雄

編 輯

為「政治任命」呢？這明顯是違反了「基本法」！

(二)、或有人說，特首任命的主要官員，不是
「公務員」，都是經由中央任命的。

那麼請看基本法「基本法」第四章第六節「公務人員」的第101條之規定「香港特別行政
區政府可任用---把該政府部門的各級人員，
但下列各職級的官員必須由在外國居住滿年
香港特別行政區永久居民中的中國公民擔任：
各司司長、副司長，各局局長，廉政專員，
審計署署長，警務處處長，入境事務處處長，

海關關長。」這次「我稱」和「基本法」第四十
八條第(五)項的「主要官員」一樣。這是說，「主要官
員」就是「基本法」第四十條第六節所稱的「公務
人員」，今特首為什麼說「高官」(即「主要官員」)可
以不是「公務員」????這不是特首公然在立法會宣
佈違反「基本法」嗎????

這樣看來，特首已觸犯「基本法」第七
十三條第(九)項所載「嚴重違法或濫職行為」，如不
辭職，立法會可以成立調查委員會，準備將其彈
劾，好嗎？！

原 題 錄

錄 原

據此，一句話就已觸犯「憲法」產生如此嚴重的
「違憲」問題，則其所謂「高官向責制」的「細節」，豈不
是更多「違憲」問題?!那些「細節」究竟什麼時候才「公
佈」?於此吾人以「權力」的知識多口向一句——
究竟將來行政機關中的「最高權力機構」在哪一部
門?(在行政會議?「特首」?「特首」與各司、局首
長联席会议?)曾司長記者會中說行政會議「特
首有個小組」，他是主席，那是甚麼小組?「最高
權力」所在??都之會議各違向清抗。也政

立法會秘書處

立法會「政制委員會」主席陸恭穀
立法會「法律委員會」主席陸恭穀

海關關長
2002年4月17日

彭鳳書：

20X20=400

律政司梁愛詩向立法會提出「文件」為高官所奏制辯護，其所謂「論抵」，令人啼笑皆非，梁某究竟有無受過正規的法律訓練？怎會提出如此「垃圾論抵」？因在貴處侮辱吾人之智慧，但為了港人前途，不得不為文論述如下：

(一)、關於「基本法」第101條，梁某千萬已不該不承認「主要官員」本是「公務人員」(這可說已推翻其主子董特的那「公務員」說)，但她還狡辯說這並不意味必須以「公務員」條款及條件聘用他云云。這說法很不妥，既承認「主要官員」屬

原 稿 紙

紙 張

「公務員」系統，又怎說不必以「公務員」的條款及條件聘用？顯然梁某對邏輯學上的「屬、種」概念一無認識所致！即不知道為「屬概念」的「公務人員」與「種概念」的「主要官員、行政級官員、執行級官員、書記以及專門技術人員、該種低級人員」的邏輯關係。其內涵、外延和不同的屬性所形成的「遞屬性」，所以梁某才會如此拙劣、單邊情感用事的「意味」說了。不懂法律的人不學邏輯，就會像梁司長、董劍局長以及立法會中的保皇派一樣胡說八道、竟敢用事、妄作妄論了！

NO

P. 1

因此，梁某所提倡的问责制，还把「合约制」的公务员的「临时性、暂时性、少数性」改为「常规化、极大多数化」，甚至改为「政治任命」而不再「政治中立」，这种彻底的改变，还敢说没有违反「基本法」，真可谓无知、无耻之尤矣！！

(二)、梁某虽已承认「主要官员」为「公务人员」，但又说「基本法」只规定法官为「终身制」，对「主要官员」无以规之云云；且还说特首有权建议中央政府免除主要官员，已隐含以非终身制云云。

原稿紙

第 頁

由此可知，梁某原来对「公务员的终身制」毫无认识！她不知道全世界实行的「公务员终身制」乃为针对「非终身制」而言，即「终身制」对「公务员」有一重要保证——除非犯了重大过失才可免职，否则任何公务员可任职至退休为止！而相对于「非终身制」则无此保证，即公务员无论何有重大过失，均可随时予以免职。（这里要给梁某补一课：法律之「绝对性」或「确定性」，许多时是为了事物的「相对性」所发生的概念和定义，故思考法律问题，宜在注重其「相对性」。）

而梁司馬竟創誤以為「終身制」的公考員是不
可免職的，所以才有如自以為創見的「隱含說」給 P.3
「主要官員」找來以「終身制」的所謂理據，其~~理據~~要
官員既既「公考員」，当然是「終身制」，每可因重大
過失而予免職的！毋須梁某多此一舉的「隱含說」
！

(三)、梁某又到法庭判決《海峽公考員協會
對公考員事務局訴訟案》，說明《基本法》第100
條的規定所保障的公考員薪金不低於原來標準
，法庭認為並非為了保障政府的「良好管治」新

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第

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措施而設限的，故現在問責制就是政府為良好
管治^{而設}乃合憲之云。

其實，該案法官的判詞對於《基本法》只
說對了一事，即基本法100條確是並無^{法律}限制良好
管治的新措施而設限，但「新措施」既不是
原來《基本法》的規定，則應怎样做呢（即在
進行甚麼法律程序呢）？這一事則法官沒有說
出來，因為普通法的法官不懂「大陸法系」所致！

其實，必須進行的法律程序就是要引用《
基本法》第159條的修政權，以所「成文憲法」之

设定「修改权」以备用，而不是搞在「表」花瓶！
换句话说，成文宪法的「基本法」必须经过正式
的「修改程序」才可以实施「新措施」，否则「新措施」无效！这与「不成文宪法的普通法制度」不同，故无所谓「修改权」，只须另立「新法」或可
易如通过一些决议或修订、删改就可。

故上述一案，公务员事务局的「新措施」虽经
未曾修改《基本法》第100条，仍未生效，我
奇怪「海外公务员协会」何以不上诉至终审法院以此
「成文宪法」的条文以制止公务员事务局的「违宪行

原 稿 稿

稿 原

为??

今梁司若拒据该法官判词以「良好管治为
由」而随时随意推出「新措施」而不须修宪，以为「合
意」，则全世界要施「成文宪法」的地区之法律人士
必笑甩大牙，且会因此对香港特区的司法制度
信任了！

(四)、梁某还到港大当法律编辑佳日思著作
谓主要官员已得特首提名中央任命，因此第103
条所适用的是「其他公务员」，而不适用於主要官
员云云。

我请问——《基本法》有「其他公务员」一词的规定吗？中文的「成文宪政」跟英文的「普通法」言词虽短，但对比「大原则」或「主要立法原则」的硬性规定，其概括性和指示性均相当清晰的，如第100条「……香港政府各部门……其中部分保留，薪金——不低於原有标准。」其中一词「香港政府各部门」即已包含「所有公务员」，不可能指「其他公务人员」；同样，第103条「公务人员——香港所有关于公务人员的招聘、任用——和薪酬制度——除有例外情况外

法律

紙

紙

籍人员特殊待遇的规定外，予以保留。」其中一句「除——外」法界称之为「但书」，即「但——除外」，这是说，如有例外，必已以「但书」同时在条文中规定了，不可能随心所欲地认为「其他公务人员」这种「但书」也没有予以区别规定的情况存在。佳日思此我不懂这种中国式大法院的规定，所以才会真荒唐的别作和批驳！况且，「主要官员」是由中央「委任任命」，岂那不符合香港特区的「自治范围」？且何谓「高度自治」？何谓「享有行政管理权」？何谓「行政机构向立法机关负责」？

立法会社会服务

立法会改制委员会，各委员
立法会「法律委员会」各委员

海外李正
2002年4月29日