

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

**Administration's response to
issues raised at the meeting of the
Panel on Constitutional Affairs on 18 April 2002**

This paper sets out the Administration's response to the list of issues raised at the meeting of the Panel on Constitutional Affairs held on 18 April 2002 as set out in LC Paper No. CB(2)1762/01-02(01).

(1) Basic principles

- (a) Issue raised: In what way would the propose system ensure that the Government of the Special Administrative Region is accountable to the Legislative Council.

Administration's response: Article 64 of the Basic Law provides that the Government of the Hong Kong Special Administrative Region (HKSAR) must abide by the law and be accountable to the Legislative Council (LegCo) of the Region: it shall implement laws passed by the Council and already in force; it shall present regular policy addresses to the Council; it shall answer questions raised by members of the Council; and it shall obtain approval from the Council for taxation and public expenditure. Under the accountability system, the Government of the HKSAR will continue to the accountable to LegCo in accordance with the specific provision of the Basic Law.

- (b) Issue raised: In what way would the proposed system implement the Basic Law principle of gradual and orderly progress in the democratic development in Hong Kong.

Administration's response: The Basic Law has laid down the road map for Hong Kong's democratic development. It provides for gradual and orderly progress in our democratisation process. The Basic Law provides for a mechanism for a decision to be taken on the method for forming LegCo and selecting the Chief Executive (CE) after 2007. In considering how to further the constitutional development of Hong Kong, we need to consider very carefully the

impact of democratic reform on society and adopt a step-by-step approach. The accountability system would not in any way constrain such development.

(2) Consistency with the Basic Law

(c) Issue raised: Whether the proposal system would contravene the Basic Law especially in view of –

- (i) its limiting effect on the career path of a public servant (whether he is employed on permanent pensionable terms or contract terms);
- (ii) the change in the constitutional role of the public servants as members of the Government of HKSAR from one of formulating policies to one of assisting principal officials in the formulation of policies;
- (iii) the change from the existing system of CE appointing some of the principal officials to the Executive Council to one under which all principal officials would automatically become members of the Executive Council.

Administration's response: We have addressed the constitutionality of the accountability system vide LC Paper No. CB(2)1735/01-02(01) and the functions, composition and modus operandi of the Executive Council under the Basic Law vide LC Paper No. CB(2)1809/01-02(02). In addition, it should be noted that not all principal officials will automatically become members of ExCo, only the principal officials under the accountability system.

(3) Executive Council

(d) Issue raised: The difference, if any, in the functions and operation of the Executive Council brought about by the proposed system.

Administration's response: There will not be any difference to the functions and operation of the Executive Council as provided for under the Basic Law.

(4) Amalgamation of Bureaux

- (e) Issue raised: The reasons for the proposed amalgamation of Bureaux. A member has suggested the Administration to consider merging Commerce & Industry with Economic Services and Financial Services into one Bureau.

Administration's response: Please refer to LC Paper No. CB(2)1870/01-02(01).

(5) Civil Service under the proposed system

- (f) Issue raised: Whether a Permanent Secretary can refuse to carry out instructions from a principal official if he considers that the instructions to be unlawful or the carrying out of such instructions would be contrary to his conscience, and whether a Permanent Secretary would be required to resign from office if he refuses to carry out instructions from a principal official, and if so, whether he is prohibited from revealing the reasons for his refusal to carry out the instructions after leaving office.

Administration's response: Please refer to LC Paper No. CB(2)1822/01-02(04).

- (g) Issue raised: Whether a Code similar to the UK Civil Service Code should be promulgated.

Administration's response: We will prepare a Code for principal officials under the accountability system, the draft of which is attached to LC Paper No. CB(2)1952/01-02(01).

(6) Conflict of interest

- (h) Issue raised: The reasons for not proposing legislation to deal with the questions of conflict of interest and protection of whistle blowers.

Administration's response: The employment contract for principal officials under the accountability system will contain provisions on conflict of interest. Such provisions will be binding.

(7) Transfer of statutory functions

- (i) Issue raised: In view of the fact that the proposed transfer of statutory functions would be for establishing the proposed new system of accountability for principal officials, the reasons for effecting such transfer by means of a resolution of the Legislative Council under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) rather than by means of primary legislation.

Administration's response: Please refer to LC Paper No. CB(2)1822/01-02(01).

研究擬議主要官員問責制及相關事宜小組委員會

政府就 2002 年 4 月 29 日會議上所提問題／事項的回應

本文件旨在回應委員在 2002 年 4 月 29 日會議上所提出的問題／事項（見立法會 CB(2)1775/01-02(01)號文件）。

(1) 擬議制度下聘用的主要官員

- (a) 所提問題／事項：公務員 用委員會在主要官員（包括公務員事務局局長）聘任方面會否擔當任何角色；若然，該委員會所擔任的角色為何。

政府的回應：新的問責制適用於擔任司長及局長職位的主要官員。這些主要官員不是公務員，他們會以有別於公務員的條款聘任。他們的任命會繼續根據《基本法》第四十八(五)條作出。這些主要官員職位，包括公務員事務局局長職位的任命並不涉及公務員 用委員會。

- (b) 所提問題／事項：由於政策失誤而辭職／被免職的公務員事務局局長能否重返公務員體制；若然，如此安排在實際上將如何運作。

政府的回應：為了強調公務員隊伍的重要性，行政長官已宣布，問責制下的公務員事務局局長會從公務員中挑選。他的聘用條款和條件跟其他局長完全相同，而他會保留與公務員的聯繫，因此，他在接受任命之前無須永久脫離公務員隊伍。在他作為公務員事務局局長的任命結束後，如年紀許可，他可以重返公務員隊伍，恢復原來職級。至於他會否這樣做純屬個人意向。

- (c) 所提問題／事項：“公務員”與“公務人員”有何分別；他們在履行公職方面的操守，是否受現行法例（例如《防止賄賂條例》）的同類監管條文所規管，而兩者所受的規管程度亦是否相同。

政府的回應：請參閱立法會 CB(2)1809/01-02(03)號文件。

- (d) 所提問題／事項：主要官員須要遵守一套守則，當中訂明主要官員與公務員之間的關係，並維護公務員體制的基本價值觀。該套守則的“地位”為何，即該守則是一套內部指引，還是具有法律依據的守則。

政府的回應：我們會在問責制主要官員的聘任合約內訂明他們必須遵照守則中訂明的原則行事。假如問責制主要官員作出任何違反該守則的行為，即屬違反聘任合約。

- (e) 所提問題／事項：常任秘書長作為主要官員下屬的地位，將會透過立法方式還是行政措施予以確立。

政府的回應：常任秘書長會向主要官員負責，這關係毋須經立法方式予以確立。

- (f) 所提問題／事項：政務司司長與財政司司長的權力和職能會否有所改變；若然，此等改變會透過立法方式還是行政措施予以落實。

政府的回應：政務司司長和財政司司長會繼續行使法例授予他們的職能。至於政務司司長和財政司司長在其他職能上的轉變，則會透過行政措施落實。

(2) 行政會議的職能、組成方式及運作

- (g) 所提問題／事項：當局須提供一覽表，開列並說明香港法例中 689 項對“行政長官會同行政會議”的提述；另外，由於日後擬議制度下聘用的主要官員同時亦是行政會議成員，當局須解釋現時由行政長官會同行政會議處理的針對主要官員的決定所提出的上訴，將來會如何處理。

政府的回應：請參閱立法會 CB(2)1822/01-02(02)號文件。

- (h) 所提問題／事項：《基本法》第五十六條的立法目的為何，以及如何能達致有關的立法目的。在何種情況下會公開行政長官不採納行政會議多數成員的意見的有關記錄。自 1997 年 7 月 1 日起，該等記錄是如何保存的，以及自該日期起，由哪個公職人員／主管當局負責保存該等記錄。保存該等記

錄的現行安排會否予以檢討，以期令有關安排在擬議問責制下變得更具透明度。

政府的回應：請參閱立法會 CB(2)1809/01-02(02)號文件。

(3) 符合《基本法》的問題

- (i) 所提問題／事項：在題為“問責制的合憲性”的政府當局文件（於 2002 年 4 月 26 日發出的立法會 CB(2)1735/01-02(01)號文件）中提述的有關法庭判決。

政府的回應：請參閱立法會 CB(2)1735/01-02(01)號文件。

政制事務局
2002 年 5 月 21 日

研究擬議主要官員問責制及相關事宜小組委員會

政府就 2002 年 5 月 3 日會議上所提事項的回應

本文件旨在回應委員在 2002 年 5 月 3 日會議上所提出的事項（見立法會 CB(2)1821/01-02(01)號文件）。

法定職能的移轉

- (1) 所提問題：鑒於擬議主要官員問責制將會導致日後主要官員在職務性質上出現重大的改變，與現時擔任政策局局長的主要官員有所分別，建議中把現任政策局局長的法定職能轉移給擬議新制度下委任的局長此一做法，會否超越《釋義及通則條例》（第 1 章）第 54A 條在制定時的立法原意？透過制定主體法例作出建議中的法定職能轉移，使議員得以透過全面的立法程序審議該建議，會否較為恰當及可取？

政府的回應：請參閱立法會 CB(2)1822/01-02(01)號文件。

憲制慣例

- (2) 所提問題：政府當局應就其所稱憲制慣例只可透過一段時間累積先例才能建立此說法，提供支持理據。

政府的回應：我們認為無須為此作學術探討，政府的立場就是在不違反《基本法》和不違反行政主導的前提下，不排除日後產生憲制慣例。