

LegCo Panel on Constitutional Affairs

System of Accountability of Principal Officials

Introduction

At the last meeting of the LegCo Panel on Constitutional Affairs held on 19 November 2001, Members asked about the differences between the terms “public servants” and “civil servants” and whether introducing a new system of appointment for certain principal officials on terms different from those in the civil service would contravene the Basic Law.

Analysis

Principal officials are public servants

2. The term “civil servants” does not appear in the Basic Law. The term “public servants” appears in Articles 79(4), 99, 100, 101, 102, and 103 of the Basic Law. The Basic Law is silent on the definition of the term.

3. However, it is clear from these provisions, particularly BL 101, that principal officials are public servants. Article 101(1) of the Basic Law reads:

“The Government of the Hong Kong Special Administrative Region may employ British and other foreign nationals previously serving in the public service in Hong Kong, or those holding permanent identity cards of the Region, to serve as public servants in government departments at all levels, but only Chinese citizens among permanent residents

of the Region with no right of abode in any foreign country may fill the following posts: the Secretaries and Deputy Secretaries of Departments, Directors of Bureaux, Commissioner Against Corruption, Director of Audit, Commissioner of Police, Director of Immigration and Commissioner of Customs and Excise.”

4. BL 101 provides that certain non-Chinese nationals may be employed by the Government of the HKSAR to serve “as public servants in government departments at all levels”, except for certain posts specified therein which may only be filled by “Chinese citizens among permanent residents of the Region with no right of abode in any foreign country.” The posts set out in BL 101 are the principal official posts specified in BL 48(5). It is therefore clear that principal officials are public servants.

Terms of appointment for principal officials

5. The Basic Law does not require that the principal official posts set out in Articles 48(5) and 101 should be appointed on civil service terms. Therefore, we consider that the Government could appoint principal officials under the accountability system on other appropriate terms. Such an arrangement would not contravene the Basic Law.