

**Subcommittee to study the proposed accountability system
for principal officials and related issues**

Issues previously raised at the LegCo Panel on Constitutional Affairs

Introduction

At previous meetings of the LegCo Panel on Constitutional Affairs, a number of points relating to the accountability system for principal officials were raised. This paper sets out the Administration's response to these points.

LegCo's role in the appointment and removal of principal officials

2. Some Panel members have expressed the view that LegCo should have a role in the appointment and removal of principal officials.

3. Our view is that Article 48(5) of the Basic Law provides that principal officials are nominated by the Chief Executive for appointment by the Central People's Government and are recommended by the Chief Executive for removal by the Central People's Government. The appointment and removal of principal officials must be dealt with in accordance with the relevant provisions of the Basic Law.

4. In the event that a motion of no confidence has been passed against an individual principal official, the Chief Executive said, at the LegCo meeting on 17 April 2002, he would consider among other things the circumstances leading to such a motion.

Universal suffrage for election of the Chief Executive and of LegCo

5. It has been suggested that in order to enhance the accountability of principal officials, the Chief Executive and LegCo should be elected by universal suffrage as soon as possible.

6. Our position is that 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 after 2007. By the year 2004, the number of directly elected seats in the legislature will increase to 30 and the ultimate aim is the election of all LegCo members by universal suffrage. As regards election of the Chief Executive, the Basic Law provides that the ultimate aim is the election of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

To whom principal officials are accountable

7. Some Members have expressed concern that principal officials under the accountability system would only be accountable to the Chief Executive, not to LegCo or the general public.

8. Our position is that the accountability system is fully consistent with the Basic Law. The Basic Law provides for a system of checks and balances. Article 99(2) of the Basic Law provides that public servants must be dedicated to their duties and be responsible to the Government of the Hong Kong Special Administrative Region (HKSARG). The Chief Executive is the head of the HKSARG [BL60] and he leads the HKSARG [BL48(1)]. Public servants including principal officials work under the leadership of the Chief Executive and are responsible to the latter. The HKSARG will continue to be accountable to the legislature in accordance with Article 64 of the Basic Law.

The post of Secretary for Justice

9. There have been queries on including the office of Secretary for Justice in the accountability system.

10. This matter has been thoroughly discussed at the Panel meetings on 17 December 2001 and 21 January 2002. Our response is set out in detail in the two papers LC Paper No. CB(2)675/01-02(03) and LC Paper No. CB(2)921/01-02(03). In particular, it should be noted that:

- (a) the arrangements now set out would not materially alter the position of a Secretary for Justice who is recruited from outside the civil service;
- (b) the arrangements now set out are consistent with arrangements for similar posts in many other common law jurisdictions;
- (c) it is appropriate that the Secretary for Justice should be accountable for the manner in which he or she formulates and executes policy in respect of the legal system and legal services; and
- (d) Article 63 of the Basic Law provides that the Department of Justice shall control criminal prosecutions, free from any interference. The Secretary for Justice is required to act independently in respect of prosecutions and will continue to do so under the accountability system.

Conflict of interest and post-office restrictions

11. It has been suggested that measures should be put in place to prevent conflict of interest on the part of principal officials.

12. We will set out in a separate paper on how we propose to minimise conflict of interest.

Integrity checking and medical examination

13. It has been suggested that a proper system of pre-appointment integrity checking should be put in place.

14. We agree that there is a need for integrity checking. As set out in paragraph 46 of the Legislative Council paper on Accountability System for Principal Officials, integrity checking and medical examination of prospective candidates will be conducted before they are nominated for appointment as principal officials.

Working relationship between principal officials and civil servants

15. Questions have been raised on the working relationship between principal officials under the accountability system and civil servants.

16. The roles and functions of principal officials under the accountability system and permanent secretaries are outlined in paragraphs 13 and 20 respectively of the Legislative Council paper on Accountability System for Principal Officials. In sum, permanent secretaries will work to their respective principal officials. They will support their respective principal officials in running the relevant bureaux and departments.

Rank of Permanent Secretaries

17. It has been suggested that, when compared with incumbent D8 Directors of Bureau, permanent secretaries would be shouldering fewer responsibilities and therefore they need not be ranked at D8.

18. The work of principal officials has increased tremendously during the last four and half years. In addition to overseeing the formulation and implementation of policies, monitoring the delivery of services by the executive departments, and exercising various statutory and administrative functions, more and more time has to be spent on matters relating to LegCo and dealings with the press. Given the increasing complexity of Government policies and programmes and the increased demands from LegCo and the public, we consider it appropriate to continue to pitch the rank of the most senior civil servants in most of

the bureaux at D8 so that:

- (a) the most senior civil service posts in bureaux will be filled by officers with sufficient experience and authority to steer the delivery of services by executive departments, and where necessary, to resolve the competing priorities among various executive departments or bureaux having regard to the overall objectives of the Administration in the relevant policy areas. They would assist the principal officials in formulating, explaining and defending policies, as well as securing support of the public and LegCo. They would support their respective principal officials in running the relevant bureaux and departments. They would have to front up for their principal officials at LegCo panels, bills committees and at public forums. This would relieve the principal officials from the internal coordination and administrative functions as well as certain LegCo duties, so that they can focus on their priority policy roles; and
- (b) the relativity between the civil servants in policy bureaux and those in the executive departments will be preserved. In this connection, it is relevant to note that Heads of Departments are mainly ranked at D5 or D6 though there are two Heads of Department at the rank of D7 and one at the rank of D8.

19. That said, we agree that there is a case to review the staffing and structure of the policy bureaux including the number of D8 civil service posts in bureaux. We feel that such a review would best be entrusted to the new principal officials upon their assumption of office. We aim to complete the review within twelve months.

Preserving the political neutrality, etc. of the civil service

20. It has been suggested that proper mechanisms should be put in place to ensure the political neutrality of the civil service and to guard against civil servants being forced to act improperly.

21. Our position on the political neutrality of the civil service has been set out in paragraph 23 of the Legislative Council paper on Accountability System for Principal Officials. Under the accountability system, the civil service will remain permanent, honest, meritocratic and politically neutral. One of the tasks of the Secretary for the Civil Service is to uphold these values of the civil service system. There are established civil service regulations and guidelines within the civil service to ensure the integrity and probity of civil servants in their discharge of official duties. In particular, where there are incidents which are considered to be criminal or corrupt, civil servants are duty bound to report them to the enforcement agencies. If civil servants are asked to act in any way which conflicts with their role as civil servants or with the principle of political neutrality, they should report the matter through the procedures for redress laid down in the Administration for appropriate follow-up action.

22. In addition, the principal officials will be required as a condition of their contract to uphold the principle of maintaining a permanent, honest, meritocratic and politically neutral civil service system. More specifically, the contract provides that principal officials shall observe a Code of Practice which will among other things set out the relationship between principal officials and civil servants and safeguard the core values of the civil service. We will consolidate and elucidate these arrangements in a suitable manner within the civil service so that civil servants have a clear understanding of their working relationship with the principal officials.

23. We will prepare a separate paper to elaborate on these arrangements.

Public Consultation

24. Some Panel members have suggested that there should be sufficient time for public consultation. There has also been suggestion for a motion debate in LegCo.

25. Since the Chief Executive announced in his Policy Address

in October 2000 that a study would be conducted to review the accountability system for principal officials, we have exchanged views with LegCo Members at a number of meetings of the Panel on Constitutional Affairs; we have attended the public consultation meetings arranged by the Panel; we have also exchanged views with academics and commentators on various occasions. In addition, we have carefully taken note of the views expressed in newspapers, magazines, radio phone-in programmes and TV programmes.

26. We have also considered the recommendations made in the reports of the Panel on Constitutional Affairs, in particular, the “Report on the Development of the Political System of the Hong Kong Special Administrative Region” and the “Report of the delegation of the Panel on Constitutional Affairs on duty visit to study the systems of executive accountability in the United Kingdom, France and Germany.”

27. In the 2001 Policy Address, the Chief Executive outlined the framework of the accountability system, after which we have continued to exchange views on the basis of the outline with LegCo Members at meetings of the Panel on Constitutional Affairs, and attend public consultation meetings arranged by the Panel. We have also continued to exchange views with academics and commentators. We have taken all these views into careful consideration in devising the new system.

28. Members of the public still have time to express their views on the details of the accountability system announced by the Chief Executive.

29. We will move a motion debate in LegCo on the accountability system for principal officials to provide a further opportunity for a full discussion on the subject.