

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

Executive Council

Introduction

This paper sets out the functions, composition and modus operandi of the Executive Council under the Basic Law.

Functions of the Executive Council

2. BL54 provides that the Executive Council of the Hong Kong Special Administrative Region (HKSAR) shall be an organ for assisting the Chief Executive in policy-making. BL56(2) provides that the Chief Executive shall consult the Executive Council before making important policy decisions, introducing bills to the Legislative Council, making subordinate legislation, or dissolving the Legislative Council.

3. It is clear that the Executive Council is an organ which advises and assists the Chief Executive in policy-making.

Composition of the Executive Council

4. Composition of the Executive Council is provided for in BL55. BL55(1) provides that members of the Executive Council of the HKSAR shall be appointed by the Chief Executive from among the principal officials of the executive authorities, members of the Legislative Council and public figures. Their appointment or removal shall be decided by the Chief Executive. The term of office of members of the Executive Council shall not extend beyond the expiry of the term of office of the Chief Executive who appoints them. BL55(2) also provides that members of the Executive Council of the HKSAR shall be Chinese citizens who are permanent residents of the Region with no right of abode in any foreign country.

5. The Basic Law does not specify either the number of Executive Council members or the proportion of members who are principal officials, members of the Legislative Council or public figures. The Basic Law provides that the appointment of members of the Executive Council shall be decided by the Chief Executive, and the proportion of the various categories of members is a matter for the Chief Executive to decide.

Modus Operandi of the Executive Council

6. BL56(1) provides that the Executive Council of the HKSAR shall be presided over by the Chief Executive. If the Chief Executive is not able to discharge his duties for a short period, such duties, including the duty to preside at meetings of the Executive Council, shall temporarily be assumed by the Chief Secretary, Financial Secretary or Secretary for Justice in this order of precedence in accordance with BL53.

7. As noted in paragraph 2 above, BL56(2) provides that except for the appointment, removal and disciplining of officials and the adoption of measures in emergencies, the Chief Executive shall consult the Executive Council before making important policy decisions, introducing bills to the Legislative Council, making subordinate legislation, or dissolving the Legislative Council.

8. BL56(3) provides that if the Chief Executive does not accept a majority opinion of the Executive Council, he or she shall put the specific reasons on record. It has been argued that this provision is intended to enable the Executive Council to check and balance the powers of the Chief Executive. Such a reading of the Basic Law runs contrary to the constitutional functions of the Executive Council in assisting the Chief Executive in policy making expressly and unequivocally stated in BL54–56. As the head of the HKSAR and the HKSARG, the Chief Executive leads the HKSARG. He will no doubt consider carefully the views of members of the Executive Council, including any contrary views that may be expressed by a majority of the members. However, the Basic Law clearly provides that if the Chief Executive does not accept a majority opinion of the Executive Council, it would suffice if he puts the

specific reasons on record. There is therefore no question of the Executive Council serving to check and balance the powers of the Chief Executive. That said, this course is unlikely to be taken without specific reasons on the part of the Chief Executive. Moreover, he will be accountable to the Central People's Government and the HKSAR for the policy decisions made by him after consultation with the Executive Council.