

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

“Civil Servants” and “Public Servants”

Purpose

This paper sets out the applicability of the laws of Hong Kong to civil servants and principal officials under the accountability system.

Background

2. At the Subcommittee meeting on 29 April 2002, a member asked about the differences between “civil servant” and “public servant” and whether their conduct in public office is subject to the same types and extent of regulatory control under existing law, e.g. the Prevention of Bribery Ordinance. The findings of the research conducted in the time available are set out below.

“Public officer” and “Public servant”

3. Under the laws of Hong Kong, the term “civil servant” is not used. Instead, the terms “public officer”, “public servant” and “Crown servant” are used.

4. In most instances where the terms “public officer”, “public servant” are used, they have not been defined in their respective ordinances. In such cases, the definition under the Interpretation and General Clauses Ordinance (Cap 1) applies.

Under the Interpretation and General Clauses Ordinance (Cap 1)

5. Under the Interpretation and General Clauses Ordinance (Cap 1), “public servant” (公務員、公務人員) has the same meaning as “public officer”. “(P)ublic officer” (公職人員) means

“any person holding an office of emolument under the Government, whether such office be permanent or temporary”.

6. The definition of “public officer” and “public servant” in Cap 1 would include civil servants as well as principal officials under the accountability system. In other words, in those ordinances where the terms “public officer” and

“public servant” are not defined, the provisions applicable to civil servants would be equally applicable to principal officials under the accountability system.

Under other ordinances

7. Set out below are all the relevant ordinances where the terms “public officer” and “public servant” are defined.

8. Under the Legal Officers Ordinance (Cap 87), “public servant” (公務員) means

“in addition to the meaning assigned to it by the Interpretation and General Clauses Ordinance (Cap 1), any employee or member of a public body as defined in this Ordinance, whether temporary or permanent and whether paid or unpaid”.

9. Under the Prevention of Bribery Ordinance (Cap 201), “public servant” (公職人員) means

“any Crown servant and also any employee of a public body and

(a) in the case of a public body other than a body referred to in paragraph (aa), (b) or (c) of this definition, any member of the public body;

(aa) in the case of a public body specified in Schedule 2-

(i) an office holder of the public body (other than an honorary office holder);

(ii) any member of any council, board, committee or other body of the public body which is vested with any responsibility for the conduct or management of the affairs of the public body;

(b) in the case of a public body which is a club or association, any member of the public body who-

(i) is an office holder of the body (other than an honorary office holder); or

(ii) is vested with any responsibility for the conduct or management of its affairs;

(c) in the case of a public body which is an educational institution established or continued in being by an Ordinance, any officer of the

institution and, subject to subsection (3), any member of any council, board, committee or other body of the institution, which is itself a public body, or which-

- (i) is established by or under the Ordinance relating to the institution;
- (ii) is vested with any responsibility for the conduct or management of the affairs of the institution (not being affairs of a purely social, recreational or cultural nature); and
- (iii) is not excluded under subsection (3),

whether the employee, officer or member is temporary or permanent and whether paid or unpaid, but-

- (A) the holding of a share by a person in a company which is a public body; or
- (B) the entitlement of a person to vote at meetings of a club or association which is a public body, shall not of itself constitute that person a public servant”.

“(P)ublic body” means

“the Government; the Executive Council; the Legislative Council; any District Council; any board, commission, committee or other body, whether paid or unpaid, appointed by or on behalf of the Governor or the Governor in Council; and any board, commission, committee or other body specified in Schedule 1”.

“Crown servant” (官方僱員) means

“a person holding an office of emolument, whether permanent or temporary, under the Crown in right of the Government”¹

The definitions of “public servant” and “Crown servant” would include principal officials under the accountability system even though they are not civil servants.

10. Under the Independent Commission Against Corruption Ordinance (Cap 204), “public servant” (公職人員) and “Crown servant” (官方僱員) have the same meanings as in the Prevention of Bribery Ordinance.

11. Under the Official Secrets Ordinance (Cap 521), “public servant” (公務人員) means

¹ Under the Adaptation of Laws Bill 2001, “Crown servant” will be amended as “prescribed officer”. Principal officials under the accountability system will remain within the definition.

- “(a) any person who holds an office of emolument under the Crown in right of the Government of Hong Kong, whether such office is permanent or temporary;
- (b) any person employed in the civil service of the Crown in right of the United Kingdom, including Her Majesty's Diplomatic Service and Her Majesty's Overseas Civil Service;
- (c) any member of the armed forces;
- (d) any person who is a member or employee of a prescribed body or a body of a prescribed class and either is prescribed for the purposes of this paragraph or belongs to a prescribed class of members or employees of any such body;
- (e) any person who holds a prescribed office or who is an employee of such a person and either is prescribed for the purposes of this paragraph or belongs to a prescribed class of such employees”.

12. Under the Summary Offences Ordinance (Cap 228), “public officer” (公職人員) or “public department” (公共機關)

“extends to and includes the Chief Executive and every officer or department invested with or performing duties of a public nature, whether under the immediate control of the Chief Executive or not”.

13. Under the Hong Kong Reunification Ordinance, “public officer” (公職人員)

“in relation to the period before 1 July 1997, includes the Governor, the Governor in Council and any employee of the Government of Hong Kong, and in relation to the period after 30 June 1997, includes the Chief Executive, the Chief Executive in Council and any employee of the Government of the HKSAR”.

14. Under the Surviving Spouses’ and Children’s Pensions Ordinance (Cap 79), “public officer” (公職人員) means

- “(a) at any time before the appointed day, a person who is appointed to or reappointed to an established office on terms which attract pension, gratuity or other benefits under the Pensions Ordinance

(Cap 89), the Pension Benefits Ordinance (Cap 99) or the Pension Benefits (Judicial Officers) Ordinance (Cap 401), whether on probation or not; and

- (b) at any time on or before the appointed day,-
 - (i) an officer who is appointed to or reappointed to an established office on terms which attract pension, gratuity or other benefits under the Pensions Ordinance (Cap 89), the Pension Benefits Ordinance (Cap 99) or the Pension Benefits (Judicial Officers) Ordinance (Cap 401), whether on probation or not;
 - (ii) an officer who is in service under the Government and who is appointed or reappointed to a non-established office otherwise than on agreement”.

15. Under the Hospital Authority Ordinance (Cap 113), “public officer” (公務員) means

“a person employed in the Civil Service of the Government”.

16. The definitions of “public officer”, “public servant” and “Crown servant” in the six ordinances set out in paragraphs 8 to 13 above would include both civil servants as well as principal officials under the accountability system. In other words, the provisions applicable to civil servants would be equally applicable to principal officials under the accountability system.

17. As regards the two ordinances set out in paragraphs 14 and 15 above, the Surviving Spouses’ and Children’s Pensions Ordinance (Cap 79) makes provisions for granting pensions to surviving spouses and children of deceased public officers (as defined). It is not relevant to the principal officials under the accountability system. The definition of “public officer” in the Hospital Authority Ordinance (Cap 113) does not include principal officials under the accountability system. The relevant provisions do not apply to them.