

## ACCOUNTABILITY AND THE SENIOR CIVIL SERVICE IN THE HKSAR

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### **Introduction**

The Asian financial crisis and policy blunders committed by the Hong Kong government have exposed weaknesses in the Special Administrative Region's (SAR's) system of political accountability. In spite of the fact that the Basic Law calls for 'the government' to be accountable to the legislature, Hong Kong's political system has provided no mechanisms for the legislature to sanction the government other than by taking the extreme steps of either impeaching the Chief Executive or forcing him to resign. On three occasions since 1998 an increasingly assertive legislature has attempted to hold senior officials politically accountable for policy blunders. Not surprisingly on each occasion the legislature has failed to impose sanctions. The legislative activism has, however, forced the Chief Executive to acknowledge the shortcomings of Hong Kong's system of accountability. The government has now unveiled a plan to remove the most senior government posts from the protection of 'the civil service' to make them more politically accountable. These changes are likely to strengthen the hold of the Chief Executive over the government, however, and leave the problematic relationship between the executive and the legislature untouched.

### **Accountability and the HKSAR Government**

Because of its centrality to public administration, much has been written about the concept of accountability (See Peters, 2001; Romzek and Dubnick, 1987; Thynne and Goldring, 1987). In this paper we use accountability in the original core sense of the word to mean 'a process of being called to account to some authority for one's actions' (Mulgan, 2000; 555), a process that involves both answerability and taking responsibility. Those being held to account must justify their action and, as part of taking responsibility, accept sanctions for making mistakes (Mulgan, 2000; 557). As Mulgan points out, accountability is external to the person or institution being held

accountable. Those seeking to hold someone accountable want answers and rectification from those who are being held to account, who in turn respond and accept sanctions or rewards. Accountability implies *rights of authority* in the sense that ‘those calling for an account are asserting rights of superior authority over those who are accountable, including the rights to demand answers and to impose sanctions’ (Mulgan, 2000; 555). Accepting sanctions or punishment is an integral part of exercising control. This is the essence of being held accountable.

The Basic Law, the constitution for the Hong Kong Special Administrative Region (HKSAR), clearly sets out Hong Kong’s system of accountability. First, the Chief Executive (CE) of the Hong Kong government is accountable to the central government (Art 43). The central government (through the State Council) appoints the CE (Art 45) and it is to the State Council in the form of the President of the People’s Republic of China and the Premier that he is accountable. The power to appoint implies the power to remove. Accordingly, the State Council has the power to remove the CE, that is, the power to sanction. This means that he must answer questions from the central government, provide justification for his actions, and accept any punishment or sanctions decided on by the central government for wrongdoing or mistakes. Thus, the CE is accountable to the central government in both senses of the term, that is, answerability and the acceptance of sanctions. Acceptance of sanctions might involve taking remedial action and/or possibly resigning from office.

Second, the Basic Law lays down that the CE ‘shall be accountable ... to the HKSAR’ (Art 43) of which he is also Head. No mechanism, however, is provided for the HKSAR (an administrative unit) to hold its Head (the CE) accountable. Although the CE is ‘selected by election or through consultations held locally (Art 45 and Annex I), he is appointed by the Central government. The Basic Law provides for the CE to be elected by an 800-member ‘broadly representative Election Committee’ organized along functional constituency lines (Annex I). That is the CE is not popularly elected by universal suffrage.<sup>1</sup> The Election Committee could sanction a serving CE who was seeking a second term by failing to select him, but the Central government is not obliged to appoint as CE the individual chosen by the Election Committee although the Basic Law anticipates that the Central government would normally do so. Thus, the Election Committee has no power to hold the CE accountable. No other mechanism is provided for in the Basic Law to hold the CE accountable to the HKSAR.

Third, the Basic Law lays down that the government of the HKSAR must be accountable to the Legislative Council (Art 64). The government is clearly identified as the Chief Executive (who is the head of the government [Art. 60]) and ‘the executive authorities of the region’ (Art. 59). These arrangements follow those first articulated in the Annex to the Sino-British Joint Declaration which required ‘the executive authorities’ to be accountable to the legislature.<sup>2</sup> Article 15 of the Basic Law identifies ‘the executive authorities’ as the CE and the 27 or so principal officials who are appointed by the central government (Art. 15). Article 48 (5) identifies the principal officials as ‘secretaries and deputy secretaries of departments, directors of bureaus’, and a number of other posts.<sup>3</sup> Finally, Article 99 requires ‘public servants [... to] be responsible to the government of the HKSAR.’ In this context, ‘public servants’ means ‘civil servants’ or *gongwu renyuán*.

The Basic Law lays down several mechanisms through which the government (that is, ‘the executive authorities’) must be accountable to the Legislative Council: 1) the government must implement laws passed by the Council; 2) it must present a regular policy address to the Council; 3) it must answer questions raised by the Council; and 4) the government must obtain the approval of the Council for taxation and public expenditure (Art 64). Although these provisions appear to address the ‘answerability’ component of accountability, they provide only limited mechanisms to hold the government responsible. First, under some conditions, the legislature may punish the CE by forcing him to resign. For example, the legislature may refuse to pass laws, taxation, and public expenditure measures put to it by the government. In such cases the CE may dissolve the Council. If a new Council repeatedly refuses to pass the budget or other ‘important bill’ (Article 52 (3)) or repeatedly passes a bill that the CE refuses to sign (Article 52 (2)),<sup>4</sup> the CE must resign. Second, under certain circumstances (e.g., when the Legislative Council charges the CE with committing ‘serious breaches of law or dereliction of duty and he refuses to resign’) the legislature may impeach the CE and report its action to the central government ‘for decision’ (Art 73 [9]). The Basic Law thus provides that the legislature may sanction the CE in only two relatively extreme situations. No other sanctions of either the CE or the government are provided for in the Basic Law. Moreover, in the short time that the Basic Law has been in force (since July 1, 1997) no constitutional convention has emerged that requires members of the Hong Kong government to resign to take responsibility for policy blunders or other implementation failures.

Hong Kong's constitution provides for some elements of a separation of powers system (See Ghai, 1999; 262-264). Under certain conditions the CE may dissolve the legislature and call for new Legco elections. The legislature also can force the resignation of the CE. Yet the constitution also provides for a weak legislature to accommodate 'executive-led' government or rule by the bureaucracy. Private members bills, for example, may only be introduced under very restrictive conditions and, unlike bills introduced by the government which pass by majority vote, must be passed by majorities of representatives from both functional and non-functional constituencies (Basic Law, Annex II). Moreover, the legislature plays no role in the formation of the government. Neither the CE nor the principal officials are popularly elected not are they endorsed or approved by the legislature. Consequently, the issue of the accountability of the executive has become even more critical.

The composition and method of selection of the legislature have weakened its capacity to represent the interests of the community and, as a consequence, have undermined its legitimacy. Citizens of the HKSAR elect by universal suffrage 24 members of the 60-member Legislative Council. Another 30 members are returned by functional constituencies that represent employers, labor, and professional groups and that could have as few as 100 electors. These groups heavily over represent business interests (See Table 1). Because majority support of functional constituencies is constitutionally required to pass bills in the legislature (Basic Law, Annex II, Section II), these groups effectively exercise veto power. An additional six members are currently selected by an 800-member Election Committee,<sup>5</sup> a practice that will cease in 2004 when the number of elected non-functional constituency Legco members will increase to 30 (Basic Law, Annex II, Section I (1)). The peculiar composition and method of selecting Hong Kong's legislature is the product of the central government's preference for executive-led (that is, weak legislative) government, the preferences of the HKSAR's business elite, and the territory's colonial past.

Table 1  
**LEGISLATIVE COUNCIL FUNCTIONAL CONSTITUENCIES, 2000**

<b>Number</b>	<b>Name</b>	<b>Number</b>	<b>Name</b>
1	Heung Yee Kuk	15	Tourism
2	Agriculture and Fisheries	16	Commercial (First)
3	Insurance	17	Commercial (Second)
4	Transport	18	Industrial (First)

5	Education	19	Industrial (Second)
6	Legal	20	Finance
7	Accountancy	21	Financial Services
8	Medical	22	Sports, Performing Arts, Culture and Publication
9	Health Services	23	Import and Export
10	Engineering	24	Textiles and Garment
11	Architectural, Surveying and Planning	25	Wholesale and Retail
12	Labor (3 seats)	26	Information Technology
13	Social Welfare	27	Catering
14	Real Estate and Construction	28	District Council

Source: Electoral Affairs Commission (<http://www.info.gov.hk/eac>) December 15, 2001.

### **The Senior Civil Service**

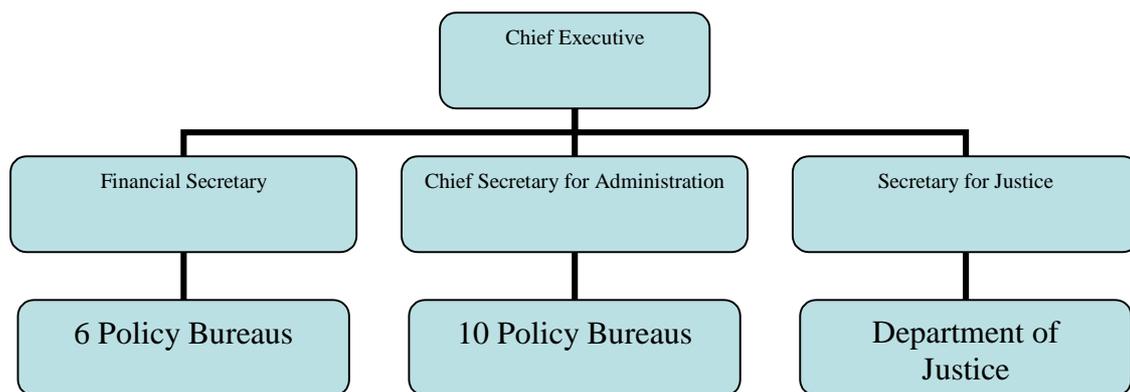
The senior civil service in Hong Kong is composed of all directorate-level officials, who in 2001 numbered approximately 1,200 people, or about one percent of the total civil service (CSB, 2001; 7). The directorate is composed of two types of civil servants: general grades officers (such as the elite Administrative Officers [AOs]) and departmental grade officers, such as engineers, surveyors, lawyers, and other professionals. AOs in the directorate number about 250 people. Of these, about 35 percent are women, and 91.3 percent are employed on local terms of service (CSB, 2001; 7). That is, the directorate is made up overwhelmingly of local males who are professionals and other specialists.

The principal officials identified in the Basic Law as ‘the executive authorities’ have been appointed mostly from among the civil service on ‘civil service’ terms of service. They are nominated by the Chief Executive and appointed by the central government. The Basic Law identifies the three top positions as the Chief Secretary for Administration, Financial Secretary and Secretary for Justice. The Chief Secretary and the Financial Secretary lead 14 policy and two resource bureaus. Below them range more than 70 departments and agencies. Senior policy making positions are mostly held by Administrative Officers, all career civil servants. In 2001 only three of 19 individuals holding Secretary-level positions were *not* members of the Administrative Service (the Financial Secretary, the Secretary for Justice, and the Secretary for Health and Welfare). They were, nonetheless, appointed on civil service terms of service. The ‘executive authorities’ also included the head of the ICAC, the

Director of Audit, the Commissioner of Police, the Director of Immigration and the Commissioner of Customs and Excise (Art. 48 [5]).

In the absence of political appointees, the executive authorities (that is, the policy secretaries) have played both administrative and political roles, a position recognized by the government which describes the role of policy Secretaries as being different from that of other civil servants. ‘They are not only responsible for putting forward policy options and analyzing their implications. They also play an active and important role in the policy making process and they are expected to garner the support of the community by explaining, promoting, and defending policies in public. In addition, they have to steer legislative proposals through the Legislative Council’ (Constitutional Affairs Bureau, 2001).

Figure 1



Ambiguities in the Basic Law have permitted Hong Kong’s principal officials to evade responsibility. As the ‘executive authorities’ they are responsible to Legco and should be held to account. However, because they are also ‘public servants’ they are responsible to the Government of the HKSAR’ (Art. 99), that is to themselves. This arrangement is entirely contrary to the notion of accountability which requires that the entity holding the person or institution to account be external to that person or institution.

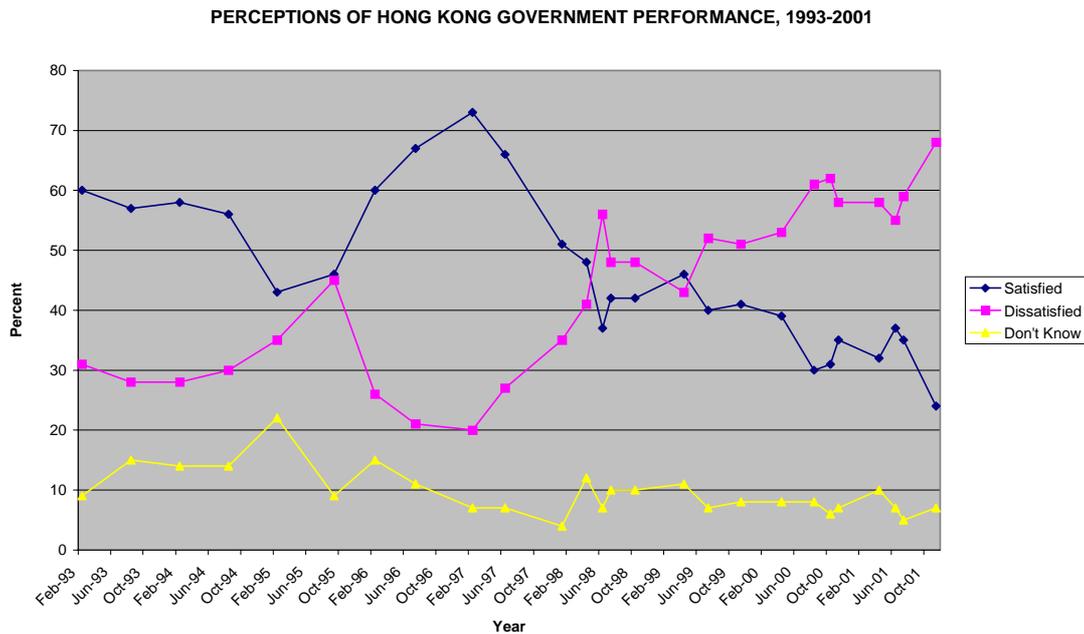
Moreover, the government has maintained that because they are civil servants, they ‘have a reasonable expectation to remain in service until normal retirement’ (Constitutional Affairs Bureau, 2001). In the government’s view they may not be removed from office to take responsibility for policy blunders. They may only be

removed from office for misconduct or poor performance on their part and not because of any perceived failure of government policy or its outcome (Constitutional Affairs Bureau, 2001). (The dismissal of former Director of Immigration, Leung Min-yin, a principal official under the Basic Law, is a case in point of a dismissal for misconduct.) Thus, principal officials as the executive authorities are accountable to Legco and should take responsibility for policy blunders, yet because they are civil servants they may not be sanctioned by Legco. The system of accountability is, then, fundamentally flawed.

The issue of the accountability of the HKSAR government has gained increasing salience in the wake of the Asian Financial crisis (1997-1998). During the crisis Hong Kong's economy contracted (GDP grew by -5.1 percent from 1998-99), unemployment rose to record levels (over six percent), salaries were frozen or cut, and prices fell. Indeed, by the end of 2001 Hong Kong had witnessed 35 months of continuous deflation. Economic hard times and a series of high profile policy blunders (the chaotic opening of Hong Kong's new international airport, the government's mishandling of a deadly outbreak of avian flu, scandals in the management of public housing, and so forth) have seen the public's satisfaction with the performance of government plunge (See Figure 2). This discontent has translated into dissatisfaction with the political system more generally and has included calls from academics, politicians, and the media for more politically accountable government (See Legislative Council Panel on Constitutional Affairs, 2000; *SCMP* June 27, 2000).

Not surprisingly, senior civil servants have been less critical of the performance of the government. While opinion polls showed that more than half of the public was dissatisfied with government performance in late 1999 (See Figure 2), only about a third of senior government officials who responded to our survey conducted in late 1999 thought that the government's performance had declined since 1997.<sup>6</sup> Still, senior official respondents also perceived that there were problems with the political system. Thus, only 17.9 percent of senior official respondents agreed that Hong Kong's political system was then 'working well'. Overwhelmingly (69 percent) senior officials perceived that a lack of support in Legco for government policy was undermining the smooth functioning of the political system.

Figure 2



Source: Hong Kong Transition Project (2001) ‘Winter of Despair: Confidence and Legitimacy in Crisis in the Hong Kong SAR’ (December) Hong Kong: Baptist University, mimeo.

Although the Basic Law calls for the government (that is, ‘the executive authorities’) to be accountable to Legco, not surprisingly less than half (44.5 percent) of senior official respondents believed that ‘the civil service’ should be accountable to Legco. (Indeed, the Basic Law requires civil servants to be responsible to the Government of the HKSAR, that is, ‘the executive authorities’ (Art 99), and not to Legco.) As one would expect the more politically attuned AOs believed in larger numbers among our respondents that they should be accountable to Legco. Thus, 52.6 percent of directorate-level AO respondents thought they should be accountable compared to 43 percent of the directorate as a whole. This result is somewhat surprising, given that the Basic Law requires only that the most senior officials (‘the executive authorities’) to be accountable to Legco. Still most senior officials (51.4 percent of respondents) believed that being accountable did *not* mean that they should resign to take responsibility for policy errors, which reflects the government’s official position (See *SCMP* January 20, 2000). Indeed they believed (58.9 percent) that executive-led government means that the government may implement policy that has not first been approved by the Legislative Council. These findings are entirely consistent with the Basic Law which focuses mostly on accountability as

answerability and as currently interpreted provides virtually no mechanisms to sanction the government.

### **Accountability in Practice**

Legislatures generally hold governments accountable through a variety of means: Ministerial responsibility (in parliamentary systems); control over funding; the power of investigation (including administrative redress such as an ombudsman); providing constituency service; reviewing secondary legislation (regulation); and post-audit procedures such as ‘value for money’ studies (Peters, 2001; 315-323). Recent trends in some OECD parliamentary democracies that have separated policy making departments from policy implementing executive agencies (such as under the UK’s ‘Next Steps’ program) have ‘blurred lines of accountability’ with ministers forcing chief executives of agencies to take responsibility for blunders committed by the agencies (Dargie and Locke, 1999; 199). In some countries ministers have become increasingly reluctant to take responsibility for what they claim are operational or implementation blunders committed by the agencies. Thus in the UK, Derek Lewis, the Director General of the Prisons Service was sacked rather than Michael Howard, the Home Secretary, for a series of high profile escapes from the country’s prisons. What was ‘policy’ for Derek Lewis was ‘operations’ for Michael Howard and Lewis had to go (Dargie and Locke, 1999; 199). Nor is this an isolated case. Also in the UK, the government fired the head of the Child Support Agency, to take responsibility for ‘operational’ blunders committed there (Dargie and Locke, 1999; 199).

As we have seen, Hong Kong’s political arrangements have thus far held the executive authorities only weakly accountable (essentially answerable but not subject to sanctions) to the legislature. In spite of these weaknesses, on at least three occasions since 1998 legislators in Hong Kong have attempted to hold senior civil servants (including in two cases, ‘the executive authorities’) responsible for policy blunders and in each case they have failed. In two cases Legco demanded that the Chief Secretary for Administration and the Secretary for Justice respectively take responsibility for blunders. In the first case, the Chief Secretary accepted that she was responsible but refused to be sanctioned. In the second case, under tremendous pressure from the executive the legislature failed to pass a vote of no confidence in the Secretary for Justice. In the third case, Legco’s ire was directed at very senior public figures who were, nonetheless, not officially part of ‘the executive authorities’

(the Head of the Housing Authority (who was concurrently an Executive Councillor) and the Director of the Housing Department). In two of the cases, the government could claim that 'the executive' authorities concerned were civil servants and, thus, should not resign to take responsibility. Moreover, following trends overseas, in all three cases the government could claim that the blunders were 'operational' matters not matters of policy. Consequently, no one from among the executive authorities should resign to take responsibility.

### *Opening of the New Hong Kong International Airport*

On July 6, 1998 Hong Kong's new International Airport was officially opened amid scenes of chaos (See Lee, 2000). The computer information system failed leaving passengers stranded. The baggage systems did not work properly and the cargo handling system completely collapsed. A huge public outcry prompted authorities to undertake three separate investigations of the matter, one each by a Legislative Council Select Committee, a Commission of Inquiry appointed by the Chief Executive, and the Ombudsman. All three investigations found instances of maladministration and other problems and two of the investigations identified particular individuals who should be held responsible for the chaos (Ombudsman, 1999). The Commission of Inquiry laid most of the responsibility on officials of the Airport Authority, accusing it of misleading the high-level Airport Development Steering Committee [ADSC] headed by the Chief Secretary (Report of the Commission of Inquiry on the New Airport, 1999, I-XI).

The Legco Select Committee, however, dwelt at length on the responsibility of the executive authorities, that is the Chief Secretary for Administration and the Secretary for Works, Kwong Hon-sang (Report, 1999; 187-191). The Select Committee was scathing in its criticism of the Chief Secretary, who the Select Committee said, should 'shoulder special personal responsibility' for the chaotic opening. Because she failed to lead the ADSC in assessing the readiness of the airport for opening and because she failed to ensure that all signs of risk were considered, she 'remains responsible' (Report, 1999; 188). The Select Committee also criticized the Secretary for Works Kwong Hon-sang for misleading the ADSC and failing as a professional advisor. His assessment of the FIDS computer information system, the failure of which caused much of the chaos, 'border[ed] on being irresponsible,' the Committee concluded (Report, 1999; 189). In spite of his acknowledged lack of

expertise in IT, ‘he made sweeping and, as it turned out, unfounded and mistaken statements on the airport systems’ to the ADSC. The Select Committee also criticized the directors of the New Airport Project Coordinating Office for failing to act as the government’s watchdog, ‘dangerously misunderstanding the situation’ and having little appreciation of their duties (Report, 1999; 192-196; *SCMP* January 28, 1999).

Organizing its report as it did with special sections detailing the responsibilities and failings of the most senior government officials, the Select Committee hoped to hold the officials personally responsible. Their object was frustrated by the Chief Executive, however. Although the Chief Executive offered an apology to the people of Hong Kong, he concluded that there was ‘no *prima facie* evidence to support disciplinary action against any of the officers concerned since there was clearly no question of misconduct.’ ‘The officers concerned,’ he said, ‘have all acted in good faith and performed their duties with due diligence’ (*SCMP* January 28, 1999 and Economic Services Bureau et al, 1999). That is, because they were both civil servants, they could not be removed for policy blunders. As a result, Legco’s attempt to hold the executive authorities personally responsible failed.

#### *The Decision Not to Prosecute Sally Aw Sian*

In a second case, members of the legislature attempted to hold the Secretary for Justice responsible for a decision she made not to prosecute a prominent businesswoman in Hong Kong. Based on information it received in 1996, the Independent Commission Against Corruption (ICAC) investigated the *Hong Kong Standard* group of newspapers, owned by Sally Aw Sian, for fraudulently inflating the number of newspapers it sold, thereby defrauding advertisers. In 1998 the Department of Justice charged So Shuk-wa, general manager, Wong Wai-shing, circulation director and Tang Cheong-shing, finance manager with conspiracy to defraud. Sally Aw Sian, the owner of the newspaper, was also named as a co-conspirator. In the event So, Wong, and Tang were tried and convicted of conspiracy. Sally Aw Sian, although named, was not charged (*SCMP* February 5, 1999). The Legislative Council demanded to know why the government did not prosecute Sally Aw Sian.

When she appeared before the Legco Panel on Administration of Justice and Legal Services, the Secretary for Justice Elsie Leung Oi-sie defended her action not to prosecute Sally Aw. She argued that the main reason for failing to prosecute was a lack of evidence against Aw but that she had also taken into account the ‘public

interest'. She noted that the Aw's Singtao Group, which owned the *Hong Kong Standard*, was facing financial difficulties and was negotiating with banks to restructure. The Secretary for Justice reasoned: 'If Aw Sian was prosecuted, it would be a serious obstacle for restructuring. If the [Singtao] group should collapse, its newspapers would be compelled to cease operation. Apart from the staff losing employment, the failure of a well-established important media group at that time could have sent a very bad message to the international community' (*SCMP* February 5, 1999). Although Aw Sian was a member of the Beijing-appointed Chinese People's Political Consultative Conference and the CE was a former director of the Singtao Group, the Secretary for Justice insisted that failing to prosecute Aw Sian had nothing to do with these matters. 'At no point was any consideration given to the political or personal status of Aw Sian,' she said (*SCMP* February 5, 1999). The Secretary explained to the Panel that she had decided to give a 'frank and detailed' account of her decision. 'Different factors have been considered as a whole,' she said. 'They are reasonable factors...if I only gave the evidence reason [to the Panel], people will say I'm dishonest. As that [the public interest] is a fact, I don't want to hide it from the public' (*SCMP* February 5, 1999).

The Secretary for Justice's admission that she considered the damage prosecuting Aw Sian might have on Aw's businesses was met with disbelief and outrage by the legal community, politicians, the media, and members of the public (See *SCMP* February 6, February 11, 1999). As HKU Law Professor Yash Ghai said: 'I am amazed by this reasoning. It does not show proper understanding by the Department of Justice of what the rule of law means.' The Bar Association was equally scathing. In February Legco member Margaret Ng Ngoi-ye, representative of the legal functional constituency, proposed a motion of no confidence in the Secretary for Justice (*SCMP* February 7, 1999). Both the Democratic Party and the Liberal Party, organized to represent business interests, vowed publicly to vote for the motion. The Democratic Alliance for Betterment of Hong Kong (DAB) and the Hong Kong Progressive Alliance supported the Secretary, however (*SCMP* February 7, 1999).

The government, especially the office of the CE, put tremendous pressure on the Liberal Party to abstain or vote against the motion and the Party eventually relented (*SCMP* March 10, March 11, March 17, 1999). As the head of the Liberal Party said, the government's pressure on the Party 'was a problem...There's nothing wrong with them [the government] lobbying us. But when they found they could not

convince us [the Liberal Party], they turned to our constituents’ which Party leaders found unacceptable (*SCMP* March 17, 1999). The CE appealed directly to ‘property tycoons and business leaders’ to influence the outcome (See ‘Officials Admit Lobbying Fiercely,’ *SCMP* March 12, 1999). In the end, the motion was defeated because, one may argue, the Liberal Party abstained.<sup>7</sup>

According to the Basic Law, ‘the Department of Justice of the HKSAR shall control criminal prosecutions, free from any interference’ (Art. 63). Legco’s attempt to hold the Secretary of Justice accountable for the decision not to prosecute Sally Aw could be seen as an infringement of the independence of the Secretary to take these kinds of decisions. Still, the Secretary provided an explanation which constitutionally she may not have been required to do. In the end, her explanation was so fraught with difficulties that members of Legco decided to take action.

In this case members of Legco went beyond publicizing the results of its investigation and attempted to pass a motion of no confidence against one of ‘the executive authorities’. Still, Legco was unable to muster sufficient support among its members to pass the motion.

In the final case, Legco succeeded in passing a motion of no confidence against senior housing officials who were nonetheless not part of the ‘executive authorities’. Legco’s attempt to force the resignation of the Director of Housing was frustrated by the government’s claim that because he was a civil servant he could only be fired for serious misconduct, which was neither alleged nor proven in this case.

### *Short Piling Public Housing Projects*

Hong Kong’s public housing policy infrastructure is complex and lines of authority are blurred.<sup>8</sup> The Secretary for Housing, who as a principal official is responsible to Legco, is responsible for among other things ‘formulating policies on the provision of public housing; monitoring and coordinating the implementation of policies on the provision of public housing; and handling matters relating to the Housing Authority’ (<http://www.info.gov.hk/hb> April 21, 2002). He shares policy making and implementing responsibilities with the Housing Authority.

Set up in April 1973 under the Housing Ordinance (Laws of Hong Kong, Chapter 283), the Housing Authority is a statutory body that also has public housing policy making and implementation duties.<sup>9</sup> The HA describes itself as ‘a statutory body responsible for implementing Hong Kong’s public housing programme within

the objectives of the Government's Long Term Housing Strategy (Housing Authority Website, <http://www.housingauthority.gov.hk/eng/ha/message.htm> April 21, 2002).

The Chairman of the HA is appointed by the CE and is not a civil servant.

Membership of the HA consists of the Chairman, a Vice Chairman who is also the Director of Housing, 24 'unofficial members' (five of whom have in the past been legislators), and three official members (the Secretary for Housing, the Secretary for the Treasury (both 'principal officials'), and the Director of Lands. That is, several 'principal officials' were members of the HA, although they did not chair it.

The Housing Department is charged with implementing housing policy, and is described by the HA as its 'executive arm'. Legislators have, however, pointed out that the Housing Department also plays a not insignificant role in housing policy making (See Fred Li, Hansard, June 28, 2000, p. 9226). These blurred lines of authority provide the background to Lego's attempt to hold senior public officials accountable for a series of public housing scandals.

In 1999 the Housing Department revealed that it had discovered that nearly completed public housing blocks in Shatin had been built on short piles that rendered them unsafe. As a result the government was forced to demolish two new 31-story blocks of Home Ownership Scheme flats at a cost of \$258 million (*SCMP* March 17, 2000). Short piles in other sites were also found.<sup>10</sup> On January 9, 2000 the Independent Commission Against Corruption charged three government officials and five employees of construction companies who had tried to cover up the scandals, with corruption and at least one very large contractor (Zen Pacific) was banned from participating in future public housing projects (*SCMP* January 10, 2000).

After an inquiry set up by the Housing Department apportioned responsibility to middle-level and lower-level officials and contractors but cleared the heads of the Housing Authority and the Housing Department, Legco members demanded that they resign (*SCMP* May 26, 2000). Thousands of people protested in public demonstrations in late June over the public housing scandal and unpopular government policies (*SCMP* June 26, 2000). In spite of intensive lobbying by government officials, in an unprecedented move Legco passed a motion of no confidence in both officials on June 28, 2000 (See Hansard, June 28, 2000; *Legislative Council Annual Report 1998-99* and *SCMP* June 29, 2000). In the event the Head of the Housing Authority, Rosanna Wong Yick-ming (also an Executive Councillor) had resigned a few days before the censure vote (*SCMP* June 25, 2000).

Amid much criticism the Head of the Housing Department, Tony Miller, a career civil servant, refused to resign, a decision strongly supported by the Chief Executive and the administration (*SCMP* June 29, 2000), but condemned by many legislators.

Many in Legco and the government saw the debate on the motion of no confidence as less about the failings of two public officials and more a criticism of Hong Kong's system of accountability. Indeed, the Chief Secretary for Administration said as much in her speech on the motion (Hansard, June 28, 2000, p. 9315). In this case Legco attempted to hold senior public officials accountable and succeeded in forcing the resignation of the Chairman of the HA and passing a motion of no confidence. Still, because those targeted by the motion were not 'the government'<sup>11</sup> as laid down in the Basic Law, Legco's action has neither created a precedent for more responsible government nor has it helped to institutionalize a convention that faced with a vote of no confidence, the government or members of it should resign to accept responsibility for their mistakes. Legco's action in this case, however, probably spurred the government to consider new measures to improve the accountability of government in the eyes of the public.

### **Strengthened Executive Accountability**

Frustration among legislators, continued public dissatisfaction with government performance, and doubts among senior civil servants about whether they should be held accountable for policy failures has pushed the government to consider various remedies. In his October 2000 Policy Address, the CE acknowledged for the first time the public's demand for more political accountability (Tung, 2000; 37). The government then undertook to 'examine how, under the leadership of the Chief Executive, the accountability of principal officials for their respective policy portfolios [could] be enhanced' (Tung, 2000, 37-38). This was something of a watershed.

On April 17, 2002, the CE outlined a new system of executive accountability to Legco (Press Release, <http://www.info.gov.hk/gia/general/2002/17/04> April 25, 2002). According to the new system 14 of the current 27 or so principal officials will in future no longer be civil servants, but will be employed on fixed-term contracts. The contracts may run for five years, but may not exceed that of the CE who nominates them. These principal officials will continue to be appointed by the central government. The government anticipates recruiting for these positions both from

within and outside the civil service. The principal officials under the new accountability system ‘will accept *total responsibility* and in an extreme case, they may have to step down for serious failures relating to their respective portfolios’ (‘Framework of Accountability System for Principal Officials’ Press Release, <http://www.info.gov.hk/gia/general/2002/17/04> April 25, 2002). The new officials will be appointed to the Executive Council, which together with the CE, makes government policy (Basic Law, Arts 54-56).<sup>12</sup> They will be ‘directly responsible’ to the CE and will have ‘direct access’ to the CE. Moreover, they will ‘take part directly in the decision making process relating to the allocation of resources of the government as a whole’ and they will have a ‘strong say’ in the assignment of personnel working directly under them and in the share of financial resources allocated to them (‘Framework of Accountability System for Principal Officials’ Press Release, <http://www.info.gov.hk/gia/general/2002/17/04> April 25, 2002).

According to the proposals the duties of the principal officials hired under the accountability system will include in part political functions (See Box 1). Contract principal officials will be expected to ‘formulate policies, explain policy decisions, market policy proposals and gain the support of Legco and the public’ (Tung, 2002; 2).

Box 1  
FUNCTIONS OF PRINCIPAL OFFICIALS EMPLOYED  
UNDER THE ACCOUNTABILITY SYSTEM

To gauge public opinion and take societal interests into account in serving the community;

To set policy objectives and goals, and develop, formulate and shape policies;

To take part as a member of the Executive Council in all of the deliberations and decision making of the Executive Council and assume collective responsibility for the decisions made;

To secure the support of the community and Legco for their policy and legislative initiatives as well as proposals relating to fees and charges and public expenditure;

To attend full sessions of Legco to initiate bills or motions, respond to motions and answer questions from Legco members;

To attend Legco committee, subcommittee, and panel meetings where major policy issues are involved;

To exercise the statutory functions vested in them by law;

To oversee the delivery of services by the executive departments under their purview and ensure the effective implementation and successful outcome of policies; and

To accept total responsibility for policy outcome and the delivery of services by the relevant executive departments.

Source: ('Framework of Accountability System for Principal Officials' Press Release, <http://www.info.gov.hk/gia/general/2002/17/04> April 25, 2002.

The scope of the arrangements extends to the three top positions identified in the Basic Law (Art. 60), that is the Chief Secretary for Administration, the Financial Secretary and the Secretary for Justice, and to the holders of eleven other policy portfolios (See Table 1). The government has taken the opportunity of introducing the new system to make substantial changes to the organization of the Government Secretariat, especially the merger of several policy branches. Environment and welfare groups have opposed the merger of these two portfolios fearing that these areas will in future be relatively neglected.

The government also will transfer the Secretariat of the Executive Council, currently located in the Chief Secretary for Administration's Office to the CE's Office, the head of which will be a contract principal official. A contract principal official will also head the Central Policy Unit (Tung, 2002; 2). Each contract principal official will be served by a D8-level permanent secretary (civil service policy secretaries are currently all ranked at this level), who will be responsible to 'formulate and implement policies, listen to the views of the public and Legco, explain policies to these respective groups, respond to questions raised and gain support from different quarters for government policies' (Tung, 2002; 2). According to the Chief Executive, the new system will 'improve governance, speed up decision making, and result in more direct responses to the demands of the community and the needs of the public' (Tung, 2002; 2).

Table 1

**PROPOSED DISTRIBUTION OF  
PORTFOLIOS AMONG POLITICAL APPOINTEES**

<b>Portfolios Held by Civil Servant Principal Officials, mid-2002</b>	<b>Proposed Portfolios Held by Accountable Principal Officials</b>
Civil Service	Unchanged
Commerce and Industry	Commerce, Industry and Manpower
Constitutional Affairs	Unchanged
Economic Services	Economic Development
Education and Manpower	Education
Environment and Food	Environment, Health and Welfare
Finance	Merged with Financial Services
Financial Services	Financial Services and Treasury

Health and Welfare	Merged with Environment
Home Affairs	Unchanged
Housing	Housing, Planning and Lands
IT and Broadcasting	Merged with Economic Development
Planning and Lands	Merged with Housing
Security	Security
Transport	Transport and Works
Works	Merged with Transport

Source: Government Information Agency Press Release April 17, 2002

The government will remunerate contract policy secretaries at more or less the same level as the civil service policy secretaries. They will be put on cash remuneration packages in the region of \$3.74 million for directors of bureaus and \$3.87 million, \$4.01 million, and \$4.15 million for the Secretary for Justice, Financial Secretary, and Chief Secretary respectively ('Framework of Accountability System for Principal Officials' Press Release, <http://www.info.gov.hk/gia/general/2002/17/04> April 25, 2002).

The new accountability system will centralize power in the hands of the Chief Executive. First, the CE will have more control over the appointment of principal officials. Under the previous system, postings and promotions boards, chaired by the Chief Secretary for Administration and staffed by other principal officials made recommendations to the CE for these positions from among the senior civil service. Although the CE could probably influence the outcome of these decisions, his influence was relatively indirect. Senior officials report that the CE accepted all of the postings and promotion decisions of the boards, for nomination to the central government. Under the contract principal official system, the CE is much more directly involved in the selection of the top officials. He will also rely on friends and acquaintances from the local business community for their suggestions. Moreover, the local CCP may have more influence on these decisions as well.<sup>13</sup> The local party has long criticized the HKSAR civil service for failing to be sufficiently responsive to Hong Kong's political executive. Indeed, giving contract principal officials a 'strong say in the assignment of personnel working directly under them' is designed to increase responsiveness ('Framework of Accountability System for Principal Officials' Press Release, <http://www.info.gov.hk/gia/general/2002/17/04> April 25, 2002). Clearly, the CE will gain more influence over the selection of principal

officials as a result of the changes. Second, because contract principal officials will all be members of the Executive Council, this body will begin to play a more active role in policy making. No longer amateurs without staffs, the new contract principal official members of the Executive Council will all be in some sense ‘professionals’. The new status of the Executive Council is reflected in the decision to move the Secretariat of the Executive Council into the CE’s office.

These moves weaken the power of the Chief Secretary for Administration. The plans call for the Chief Secretary to take on a coordinating role. The CS and FS will ‘oversee and coordinate the work of the respective policy bureaus and coordinate work which straddles different policy bureaus’ (Tung, 2002; 3) as determined by the CE and the Executive Council. The Chief Secretary will chair various Executive Council subcommittees that will replace the policy groups under the Chief Secretary’s committee (Tung, 2002; 3). That is, policy making that previously was the responsibility of the Chief Secretary and other Secretaries working to some extent independently of the CE will now be brought directly under his control via the Executive Council. These arrangements, the government hopes, will improve policy coordination, the lack of which has dogged the administration for many years. Enhanced coordination will be achieved at the expense of the Chief Secretary’s position.

The new arrangements do not make a clear distinction between the roles of the contract principal officials and their permanent secretaries, both of which are expected to perform both political and administrative tasks. The permanent secretaries will still be responsible to ‘formulate and implement policies, listen to the views of the public and Legco, explain policies to these respective groups, respond to questions raised and gain support from different quarters for government policies’ (Tung, 2002; 2). Responsibility for policy blunders will, however, fall on the shoulders of the contract principal officials.

The contract principal officials will be drawn from among serving civil servants and from outside the civil service. It is likely that a strategic bargain has been struck between the CE and the civil service that will give senior and trusted civil servants continuing control over certain key portfolios. To allay fears that the political neutrality of the civil service may be compromised, the government has already publicly designated the post of Secretary for the Civil Service for someone from within the civil service. This person must resign from the service to take up the

appointment, and on completion of his contract, may return to the civil service. As a member of the Executive Council, he or she 'will be able to represent the expectations and interests of the civil service in the process of policy making at the highest levels of government...and can convey the considerations taken into account in respect of major decisions to civil service colleagues. This will facilitate full and effective implementation of policies adopted' (Tung, 2002; 5). Given the nature of their portfolios it is likely that the Secretaries of Security, Home Affairs, and Constitutional Affairs will also come from among senior civil servants. So too may the education portfolio. That is, the civil service is unlikely to give up these strategic positions of power (and maybe others) in the new arrangements. Consequently there is a real danger, then, that little will change after the implementation of the new system.

The selection of contract principal officials from outside the government raises other issues. Even if the remuneration packages, status and power attached to the new positions are sufficient to attract talent from outside government, there is a danger that when the new appointees leave government they will take with them inside information that could be exploited for private gain. Hong Kong has had relatively little experience of dealing with conflicts of interest at the top and its regulations for senior officials are of relatively recent origin. Providing a method for outsiders to re-enter their occupations after a stint in government will be more important than the remuneration package itself. So far, little has been published about how the government intends to deal with this issue.

Finally, the reforms propose no new institutional mechanisms to achieve their primary goal of ensuring that public policy better meets the expectations of the community. Although principal officials are admonished to 'place importance on public opinion and make further efforts to gauge public sentiments' and are urged to 'strengthen the relationship between the Executive and the Legislative Council' institutional mechanisms that would require them to do so do not figure in the proposals. Officials 'motivated by common perspectives, shared policy goals and a collective mission' are usually found in party-based government, yet political parties play no role in the reforms (Tung, 2002; 5). No new mechanism to ensure that the government will be in tune with the public (except, perhaps the proposal to strengthen opinion polling conducted by the Central Policy Unit!) is provided here. Neither do the proposals provide for any new mechanism for gaining the support of the Legislative Council. That is, the proposals provide no confidence that 'the team will

be able to set, coordinate and implement policies more effectively to meet the needs of the community and our expectations' (Tung, 2002; 4) than is currently the case. While the new contract Secretaries may be more responsive to the Chief Executive, the changes do not address the problem of the lack of political support for the government in Legco. The government will continue to lobby Legco for each bill and defeats of the government's program are likely. Legco will continue to be shut out of decisions on the formation of the government and will continue to be powerless to sanction the new contract Secretaries without further and more fundamental changes.

## **Conclusion**

Legco members and academics have suggested that the government and Legco adopt constitutional conventions that require the government to obtain Legco's prior approval of all appointments of contract principal officials before they are recommended for appointment to the central government, and that require contract principal officials to resign if Legco passes a motion of no confidence in them (Legislative Council, Panel on Constitutional Affairs, 2000). However, such conventions must be agreed by all parties and are difficult to initiate in practice. Essentially they emerge over many years of practice. Indeed, we have seen Legco's failed attempts to achieve something like this since 1998. Moreover, they need the CE's full cooperation and he has indicated rather cautiously that under the new system he would only be prepared to consider carefully why the legislature had passed a motion of no confidence. That is, he has not pledged to recommend the dismissal of and principal official who was the subject of such a motion.

In the three cases discussed above, the new arrangements would probably not have resulted in the resignation of a contract principal official. In the airport case, the CE could have said that responsibility for the opening of the airport (an 'operational matter') lay with the Airport Authority and not with the government. In the Aw Sian case, the government likely would not have tolerated legislative interference in the Department of Justice's independence to decide who to prosecute. To do otherwise might have been seen as undermining the rule of law. And in the housing scandals, Legco did not directly target principal officials.

Fundamental change to Hong Kong's system of political accountability is only possible through reform that will permit the community to participate in the selection of its government. Such reforms might mean returning the legislature by universal

suffrage and permitting it to participate in the formation of the government (through the approval of contract principal officials) or through the return of the Chief Executive through a system of open nominations and universal suffrage. Neither seems likely in the short term, however, because of opposition from the central government which fears losing control of Hong Kong and opposition from Hong Kong's business elite who fear a welfare state.

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<sup>1</sup> The Basic Law lays down that 'the ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures' but that this goal should be achieved 'in the light of the actual situation of the HKSAR and in accordance with the principle of gradual and orderly progress.' (Art. 45).

<sup>2</sup> See 'A Draft Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Future of Hong Kong' Hong Kong: Government Printer, 1984, p. 15.

<sup>3</sup> These are, Commissioner of the Independent Commission Against Corruption, Director of Audit, Commissioner of Police, Director of Immigration and the Commissioner of Customs and Excise.

<sup>4</sup> The latter action is highly unlikely because of severe restrictions placed on the ability of Council members to introduce private member's bills. They may only be introduced if they 'do not relate to public expenditure or political structure or the operation of the government'. The CE must approve in writing the introduction of any bill 'relating to government policies' before it may be introduced. Basic Law Art 74.

<sup>5</sup> The 800-member Election Committee is composed of 200 representatives of 'industrial, commercial and financial sectors'; 200 members of 'the professions'; 200 members from 'labor, social services, religious and other sectors' and 200 members from 'members of the Legco, representatives of the district councils, Hong Kong deputies to the National People's Congress, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference (CPPCC)'. The Chinese Communist Party in Hong Kong through the Liaison Office of the Central government of the People's Republic of China stationed in the HKSAR selects members of the latter two bodies. The electorate for the Election Commission is largely the same as for the functional constituencies (See the Basic Law, Annex I).

<sup>6</sup> The survey, carried out in November-December 1999 surveyed all directorate-level officials and all AOs. A total of 1473 questionnaires were mailed out and 490 useable questionnaires returned for a response rate of 34 percent. The response rate for directorate officials was 36 percent and for AOs was 30 percent. In terms of gender and terms of service the respondents were broadly representative of the directorate and the Administrative Service as a whole (See Table below). As in the service as a whole, men employed on local terms of service dominated the respondents. Still, the respondents under-represent women, especially in the AO grade (only 36 percent of respondents were women although they hold 47 percent of AO positions). Women are slightly under represented in the directorate sample as well. In order to protect the confidentiality of respondents and, thus, to increase the response rate we chose not to ask specific questions concerning rank or current position. Still, we do have some indication of the representativeness of our respondents. Currently the directorate is composed of about 249 Administrative Officers, or 20.3 percent of the directorate. Among our respondents, 80 AOs identified themselves as directorate officers (Staff Grade C and above), or about 18.9 percent of our directorate respondents. Approximately 50.5 percent of the AO grade is composed of those at Staff Grade C and above, compared to 55.9 percent of our respondents. These figures indicate that our respondents are roughly representative of the total population. If anything, among AOs the senior segment (Staff Grade C and above) is slightly over represented.

#### DIRECTORATE QUESTIONNAIRE REPRESENTATIVENESS

	<b>Total</b>	<b>Male</b>	<b>Female</b>	<b>% Female</b>	<b>Local</b>	<b>Overseas</b>	<b>% Local</b>
AOs	493	262	231	<b>47</b>	467	26	<b>95</b>
AO respondents	143	91	51	<b>36</b>	130	13	<b>91</b>
Directorate	1229	978	251	<b>20</b>	1095	134	<b>89</b>
Directorate respondents	423	349	71	<b>17</b>	369	52	<b>87</b>

<sup>7</sup> Twenty legislators voted for the motion (14 from geographic constituencies and 6 from functional constituencies); 28 opposed the motion (4 from geographic constituencies and 16 from functional constituencies); 8 Liberal Party members abstained and one Liberal Party member was absent. Had the Liberal Party voted for the motion as they had pledged publicly to do, the motion would have carried by 29 votes to 28 (*SCMP* March 12, 1999).

<sup>8</sup> One Legco member described it as a 'three-horsed cart'.

<sup>9</sup> According to the Housing Ordinance, the Authority's function is to 'secure the provision of housing and such amenities ancillary thereto as the Authority thinks fit for such kinds or classes of persons as the Authority may, subject to the approval of the CE, determine.' (Housing Ordinance, Laws of Hong Kong, Chapter 283, Section 4) in Bilingual Laws Information System, consulted on April 21, 2002)

<sup>10</sup> Indeed, this short pile episode was one of nine instances of short piling, substandard piles, uneven ground settlement, corruption and jerry-built housing referred to the Legco debate on the issue (See Hansard, June 28, 2000, pp. 9224).

<sup>11</sup> The record of the no confidence debate reveals that Legco members perceived the HA and the Housing Department to be responsible for the housing scandals, not the Secretary for Housing. Still a few Legco members speculated about whether the Secretary for Housing should also resign (See Hansard June 28, 2000, 9244).

<sup>12</sup> According to the Basic Law, the Executive Council shall assist the CE in policy-making. The CE appoints members to the Executive Council from among the principal officials of the government, members of Legco, and the public. Their terms of office do not extend beyond the CE's term of office. The CE is required to consult the Executive Council before making important policy decisions, introducing bills to the Legco, making subordinate legislation, or dissolving Legco (Basic Law, Arts 54-56).

<sup>13</sup> See the article by Wang Ziyun, "Gangauban shi gaoguan wenzizhi de shiji sheji zhe" [The Hong Kong Macau Office is the Real Designer of the Principal Official Accountability System] *Xinbao* [Economic Daily] April 22, 2002 which suggests that a plan such as what has been adopted may have come from the central government.