

立法會

Legislative Council

LC Paper No. CB(2)2736/01-02

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seen by the Administration)

Ref : CB2/HS/1/01

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

**Minutes of the tenth meeting
held on Tuesday, 21 May 2002 at 8:30 am
in the Chamber of the Legislative Council Building**

Members Present :

Hon IP Kwok-him, JP (Chairman)
Dr Hon YEUNG Sum (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, GBS, JP
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon Eric LI Ka-cheung, JP
Hon NG Leung-sing, JP Hon Margaret NG
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon CHAN Kam-lam
Dr Hon Philip WONG Yu-hong
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung, BBS
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon SZETO Wah
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, JP
Hon LEUNG Fu-wah, MH, JP
Dr Hon LO Wing-lok
Hon Audrey EU Yuet-mee, SC, JP

- Members Absent** : Dr Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan
Hon LEE Cheuk-yan
Hon Andrew WONG Wang-fat, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Timothy FOK Tsun-ting, SBS, JP
Hon Michael MAK Kwok-fung
Hon MA Fung-kwok
- Public Officers Attending** : Mr Clement C H MAK
Deputy Secretary for Constitutional Affairs (Special Duties)
- Mr Robin IP
Deputy Secretary for Constitutional Affairs 1
- Ms Anissa WONG
Deputy Secretary for the Civil Service
- Mr R C Allcock
Solicitor General
- Mr P H H WONG
Senior Assistant Solicitor General
- Mrs Philomena LEUNG
Principal Assistant Secretary for Constitutional Affairs
- Clerk in Attendance** : Mrs Percy MA
Chief Assistant Secretary (2)3
- Staff in Attendance** : Mr LEE Yu-sang
Senior Assistant Legal Adviser 1
- Mrs Justina LAM
Assistant Secretary General 2
- Mrs Constance LI
Chief Assistant Secretary (2)5
- Miss Monna LAI
Assistant Legal Adviser 7

Miss Betty MA
Senior Assistant Secretary (2)1

Mr CHAU Pak-kwan
Research Officer 5

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I. Matters arising from discussion on items I - III of the Areas for study

Interim report of the Subcommittee to the House Committee

The Chairman said that as the Secretary for Constitutional Affairs has given notice to move a motion on the accountability system for debate at the Council meeting on 29 May 2002, an interim report of the Subcommittee should be made to the House Committee on 24 May 2002.

2. Mr Howard YOUNG and Ms Emily LAU expressed support. Mr CHEUNG Man-kwong said that the Administration should provide response to the outstanding issues raised by members at previous meetings before the motion debate. Deputy Secretary for Constitutional Affairs (Special Duties) (DS(CA)(SD)) agreed to provide response to all the outstanding issues as early as practicable.

Issues relating to appointment, employment and removal of principal officials
(LC Paper No. CB(2)1976/01-02(01))

3. DS(CA)(SD) took members through the Administration's paper on "Appointment, Employment and Removal of Principal Official" (LC Paper No. CB(2) 1976/01-02(01)) which detailed the terms and conditions of employment for principal officials under the accountability system.

Remuneration

4. Mr James TIEN and Mr CHAN Kam-lam said that the remuneration of the Chief Executive (CE) should not be lower than that of the principal officials, in order to reflect the status of CE and maintain relativity with the principal officials. Mr CHAN added that the Administration should review the remuneration for CE as early as practicable. Mr James TIEN requested the Administration to provide a breakdown to show how the remuneration for principal officials was arrived at. He was concerned that there appeared to be an increase of some \$1.5 million in annual salary for principal officials under the accountability system, when compared to that of civil servants holding comparable posts at D8 level.

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5. Ms Emily LAU considered that the remuneration of CE should not be lower than that of the principal officials. She suggested that the remuneration of principal officials should be reduced, instead of increasing that of CE.

6. DS(CA)(SD) responded that the remuneration package proposed for principal officials would enable CE to select prospective principal officials from within and outside the civil service, and would not be too far below that for chief executive officers (CEOs) in the public and private sectors. In this connection, the Administration had commissioned a consultant to conduct a study and recommend an appropriate remuneration package for principal officials. DS(CA)(SD) pointed out that the consultant had recommended that the median level of total remuneration of the 56 CEOs (27 in the private sector and 29 in the public and professional sectors) surveyed (i.e. \$6.658 million) be used as a reference point. However, the Administration considered that it would be more appropriate to make reference to the median level of total direct compensation, i.e. total remuneration less elements relating to retirement benefits or contract gratuity. This was because the nature of employment as a principal official was such that it could be cut short at any time without cause or compensation. DS(CA)(SD) said that the Administration had decided to pitch the remuneration of principal officials at a level equivalent to the total weighted average cost of the incumbent substantive civil servants at Directors of Bureau rank (D8), i.e. \$3,760,836 per annum.

7. DS(CA)(SD) further said that the proposed remuneration of \$3,743,050 per annum for principal officials was the net amount less \$12,000 for Mandatory Provident Fund contribution and \$5,808 for medical and dental coverage a year. The proposed remuneration package was between the 15th and 20th percentile of the total direct compensation of the CEOs surveyed, and the Administration considered the proposed remuneration appropriate given that these were appointments to the public service. DS(CA)(SD) added that he would provide a breakdown to show how the remuneration for principal officials was arrived at after the meeting.

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8. Miss CHOY So-yuk asked about the reasons for reducing the pay differential between Directors of Bureau, Secretary for Justice, Financial Secretary (FS) and Chief Secretary for Administration (CS) from 6% - 7% to 3.5%. DS(CA)(SD) explained that the proposed reduction would ensure that the remuneration at each tier of the principal officials under the accountability system would be acceptable to the public.

9. Ms Emily LAU suggested that there should be a pay adjustment mechanism for principal officials. DS(CA)(SD) said that the employment package for principal officials under the accountability system would not be linked to civil service salaries, and the Administration had no intention to introduce a pay adjustment mechanism for principal officials. However, in the event that civil service salaries were cut later this year, the remuneration of

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principal officials would be adjusted accordingly. DS(CA)(SD) further said that the Administration would consider Ms LAU's suggestion.

10. Mr James TIEN expressed reservations about including benefits such as housing allowances in the remuneration, if the civil servant appointed as principal official had already exhausted his entitlement to such benefits.

Other terms and conditions

11. Mr James TIEN considered that the notice period for principal officials to resign from the post should be increased from one to three months. DS(CA)(SD) responded that the Government and the principal officials could resolve the employment contract at any time by mutual agreement. Hence, there was no need to further extend the notice period from one month to a longer period.

12. Mr Kenneth TING enquired about the differences in the terms and conditions of employment between principal officials and civil servants. DS(CA)(SD) replied that the terms and conditions of employment of principal officials would generally be in line with those of the civil servants. He pointed out that the content of the main provisions in the employment contract for principal officials was set out in paragraphs 2 and 3 of the Administration's paper on "Employment Contract and Conflict of Interest" (LC Paper No. CB(2)1952/01-02(01)).

13. DS(CA)(SD) further said that in the case of a breach of the provisions in the employment contract, depending on the circumstances, the Government could commence legal proceedings for damages even though the incumbent had already left the post.

Leave relief arrangement

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14. Ms LAU enquired about the leave relief arrangement for principal officials. Ms LAU suggested that details of the leave relief arrangement should be stipulated in the Code for Principal Officials. DS(CA)(SD) said that the Administration would provide further information to the Subcommittee.

Administrative support

15. Ms Emily LAU noted that each Director of Bureau would be provided with administrative support staff, including an administrative assistant pitched at D2 level, who could either be filled by a civil servant or by way of direct appointment. Ms LAU considered that the proposed arrangement would politicise the new system, as similar posts were at present filled by civil servants.

16. DS(CA)(SD) reiterated that the arrangement was to provide flexibility for the principal official concerned to recruit his administrative support staff, if necessary. Deputy Secretary for Civil Service (DS(CS)) added that these support staff would be subject to the civil service regulations and requirements on conduct and conflict of interest during their term of office.

Other issues

17. Mr Howard YOUNG said that under the Basic Law, principal officials were recommended by CE for appointment and removal by the Central People's Government (CPG). He enquired about the relationship between CPG and principal officials. DS(CA)(SD) replied that principal officials would be nominated by CE for appointment by CPG after they had completed the integrity check and medical examination. The Government of HKSAR would enter into an employment contract with the principal officials after CPG had approved the relevant appointments. If CE recommended to CPG the removal of a principal official, the principal official would not be removed until the recommendation had been accepted by CPG.

Conflict of interest

(LC Paper No. CB(2)1952/01-02(01))

18. DS(CA)(SD) took members through the Administration's paper on "Employment Contract and Conflict of Interest" (LC Paper No. CB(2) 1952/01-02(01)). The paper detailed the content of the main provisions in the employment contract for principal officials under the accountability system, and the measures that would be put in place to guard against conflict of interest.

Sanitisation period

19. Members noted that the Administration had proposed that within one year after termination of employment, a principal official was required to seek the advice from a committee appointed by CE for the purpose, if he intended to commence any employment or start any business or profession. Mr James TIEN said that Members belonging to the Liberal Party considered that the sanitisation period should be reduced from 12 to three months. DS(CA)(SD) said that the Administration had no intention to prohibit a principal official from returning to his original profession or business within the 12 months after stepping down. Former principal officials would only be required to obtain the advice of the committee within one year after stepping down from office.

20. Mr TIEN further said that to remove any doubts that the provisions prohibiting principal officials from using official position for personal gain or other purposes (listed in paragraphs 16 and 17 of the Administration's paper) would continue to apply to a principal official after expiry of office, these

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prohibitions should be set out in greater detail in the employment contract. DS(CA)(SD) agreed to consider Mr TIEN's suggestion.

21. Mr CHEUNG Man-kwong said that he supported the introduction of a sanitisation period for principal officials, as he was concerned that a principal official could make use of sensitive information obtained during his term of office to benefit himself or any other person after stepping down. He asked whether the advice of the committee was binding on the principal official concerned.

22. DS(CA)(SD) said that the Administration considered it appropriate for the committee to be advisory in nature. This would strike a balance between safeguarding public interest and legitimate rights of individual principal officials. Notwithstanding that retired career civil servants at D8 rank had to obtain prior approval within the three-year sanitisation period before taking up employment or going into business activity, it was not appropriate for principal officials to be subject to a similar system of post-office employment as they would stay in the post for only five years. DS(CA)(SD) further said that as the advice of the committee would be made public, public scrutiny and public censure were powerful deterrents.

23. Mr CHEUNG Man-kwong said that the committee would be a "toothless tiger" if its advice was not binding on the principal officials concerned. The Administration should introduce a two-year sanitisation period for principal officials, similar to that adopted in the United Kingdom (UK). He requested the Administration to put in place a more effective mechanism to consider and approve applications on taking up employment from principal officials after stepping down or leaving the Government.

24. DS(CA)(SD) said that the employment contract would contain express provisions to prohibit a principal official from using his official position or any information made available to him in his official capacity to benefit himself or any other person. A principal official would also be prohibited from providing assistance, advice or information to any person if this would give the recipient an unfair advantage over other persons. DS(CA)(SD) further said that the terms of contract relating to sensitive information and the relevant legislation including the Official Secrets Ordinance were binding on the principal officials even after they had stepped down. It was possible to institute legal action against former principal officials who were found to have breached the contract or the Code for Principal Officials.

25. The Solicitor General supplemented that the court could draw inferences from evidence, such as the outcome of the business decision taken by the company which the former principal official now worked for, in determining whether he had taken advantage of sensitive information obtained during his term of office.

26. Mr CHEUNG Man-kwong reiterated that the advice of the committee should be binding on the principal officials concerned.

27. Mr Albert HO expressed disagreement that retired civil servants at D8 rank should be subject to more stringent post-office employment requirements than former principal officials simply because the former were career civil servants. He said that the primary purpose of introducing a sanitisation period was to prevent an ex-public officer from gaining personal benefit from information obtained during his term of office. He was of the view that the advice of the committee should be binding on the principal officials. Ms Emily LAU concurred with Mr HO. She added that the principal officials concerned should obtain prior approval before taking up employment after stepping down or leaving the Government.

28. DS(CA)(SD) said that in deciding on the advice to be given, the committee would ensure that the Government's performance of its functions would not be affected or compromised by the principal official's proposed employment. The committee would also take into account the nature and extent of the principal official's official dealings in the Government and his responsibilities vis-à-vis the proposed employment. DS(CA)(SD) further said that he would provide a written response on the criteria to be adopted by the committee in giving advice on a proposed employment or business.

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29. In response to Mr Howard YOUNG's enquiry about the membership of the committee, DS(CA)(SD) said that the committee would comprise independent members from outside the civil service. The committee would come into operation after the principal officials assumed office on 1 July 2002.

30. Miss Margaret NG was of the view that the objective of putting in place a sanitisation period was to enhance public confidence in the performance of the principal officials during their term of office. She considered that the public would be sceptical about the integrity of principal officials if the advice of the committee was not binding and the proposed one-year sanitisation period was further shortened. She failed to see why principal officials who were persons of high public standing would object to the introduction of a sanitisation period.

31. Referring to DS(CA)(SD)'s earlier remarks, Miss CHOY So-yuk said that she was unconvinced that making public the advice of the committee would provide sufficient deterrence. Miss CHOY further said that a term of five years allowed a principal official to formulate important policies for the benefit of his post-office employment, if he so intended.

32. Mr CHAN Kam-lam also opined that the fact that the advice of the committee was not binding would render the system ineffective. He

considered that a one-year sanitisation period appropriate, only if the committee was empowered to give directions as to whether a principal official could take up a particular employment or business activity. He added that to enhance the effectiveness of the committee, objective criteria should be adopted by the committee in considering matters relating to post-office employment of former principal officials.

33. Mr Abraham SHEK considered that a one-year sanitisation period appropriate. However, to compensate the financial loss of the principal officials, they should be entitled to receive a monthly allowance during the sanitisation period. He was of the view that prohibition on post-office employment should be made known to the prospective candidates to facilitate their consideration on whether or not to accept the appointment.

34. Dr YEUNG Sum said that a sanitisation period longer than 12 months was necessary to prevent the principal officials from making use of sensitive information obtained during his term of office to benefit himself or any other person after stepping down. Dr YEUNG further said that to enhance public confidence in the performance of the principal officials during their term of office, the Administration should seriously consider introducing a mechanism whereby principal officials were required to obtain approval for taking up post-office employment during the sanitisation period.

35. Mr James TIEN was of the view that "sensitive information" obtained during the term of office of principal officials would become outdated quickly, given the fast pace of social and economic development nowadays. The sanitisation period could be reduced from 12 to three months, if any breaches of the contractual obligations would be liable to criminal sanctions.

36. DS(CA)(SD) stressed that a proper balance should be struck between prohibiting a principal official from returning to his original profession or business and safeguarding public interest. He reiterated that the proposed mechanism of making the advice of the committee public was transparent, workable and adequate, bearing in mind that principal officials to be appointed would be persons of high public standing in the community. DS(CA)(SD) further said that members' views on the sanitisation period were noted, and the Administration would revert to the Subcommittee later.

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Declaration of interests

37. Dr Philip WONG enquired how the Administration ensured that accurate and full information was provided by prospective candidates for integrity checking. He also sought clarification about whether principal officials under the accountability system would be required to declare interests and investments held by trustee.

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38. DS(CA)(SD) said that principal officials under the accountability system would be required to declare their investments and interests. These included not only investments and interests held in the name of the principal official, but also those held in the name of the principal official's spouse, children or any other persons or companies but were actually acquired on the principal official's account or in which the principal official had a beneficial interest. As to whether interests and investments held by trustee were required to be declared, DS(CA)(SD) agreed to provide a written response.

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Code for Principal Officials and civil service circular

39. Ms Emily LAU referred to para. 2.16 of the Draft Code for Principal Officials and asked whether consideration would be given to introducing an independent investigation committee, similar to the Civil Service Commissioners system in the UK, to make enquiry into complaints from civil servants against principal officials, having regard to the fact that the post of Secretary for the Civil Service (SCS) would be filled by a political appointee. Ms LAU also expressed concern that the independent role of the Public Service Commission (PSC) would be undermined, if principal officials had the power to dismiss or redeploy civil servants working to them.

40. DS(CS) stressed that the Administration was committed to preserving the integrity and impartiality of the civil service. DS(CS) said that a civil service circular setting out the framework within which civil servants were to work to principal officials would be issued. Moreover, SCS would be responsible for managing the civil service, including safeguarding the core values of the civil service. As regards the power to redeploy or dismiss civil servants, DS(CS) further said that in line with the existing practice, principal officials would not have the power to dismiss staff, but they would have a strong say in assignment of staff working under them. She further said that PSC would continue to monitor the appointment, promotion and disciplinary matters in the civil service.

41. In response to Miss Margaret NG, DS(CS) advised that the draft civil service circular was under preparation and would be made available to members before the motion debate on the accountability system on 29 May 2002.

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42. Miss Margaret NG considered that the draft Code for Principal Officials was insufficient to safeguard the core values of the civil service. She said that express provisions on what a principal official was prohibited from doing should be stipulated in the Code. Miss NG suggested that the Administration should make reference to the UK Ministerial Code, under which, for instance, Accounting Officers would not bear personal responsibility for the action concerned if they had set out in writing their objection to a funding proposal together with the reasons to the Comptroller and Audit General should the

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advice be overruled. Miss NG added that in the absence of similar safeguards for civil servants under the accountability system, it was inappropriate for Permanent Secretaries to attend the Public Accounts Committee meetings and answer questions from Members.

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43. DS(CA)(SD) responded that the Controlling Officers would act in accordance with the regulations made and directions or instructions given by the Financial Secretary under the Public Finance Ordinance (Cap. 2) to designated Controlling Officers. At the request of Miss Margaret NG, DS(CA)(SD) agreed to provide further information.

44. Mr Albert HO asked about the legal status of the Code and whether CE could amend the Code unilaterally.

45. Mr CHEUNG Man-kwong sought clarification on whether changes to the Code for Principal Officials would be subject to the scrutiny of the Legislative Council (LegCo). DS(CA)(SD) said that the Code would be made public, and the Administration would inform the relevant LegCo Panel should there be any change to the Code.

46. Dr YEUNG Sum expressed concern that the requirement for principal officials to comply with the Code was only stipulated in the employment contract. Mr CHEUNG Man-kwong said that instead of informing the relevant LegCo Panel of any changes to the Code, such changes should be subject to the scrutiny of LegCo. Ms Emily LAU echoed Mr CHEUNG's view. DS(CA)(SD) stressed that the Code would be made public.

47. In response to Mr James TIEN's question, DS(CA)(SD) advised that the term of office of the second term CE and the principal officials nominated by him would be for five years, i.e. from 1 July 2002 to 30 June 2007. In the event that a candidate returned at an election as the third term CE intended to amend the provisions of the Code before he assumed office, so that the Code would apply to the principal officials to be nominated by him, he could do so with the assistance of the second term CE.

Involvement in political activities

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48. Ms Emily LAU said that while she did not object to appointing members of political parties or organisations as principal officials, she considered that principal officials should not use public funds and other resources for political party work. She requested the Administration to spell out the requirement explicitly in the Code by making reference to the UK Ministerial Code. DS(CA)(SD) agreed to consider.

49. Mr CHEUNG Man-kwong asked whether a person who was a member of a political party or organisation outside HKSAR, for instance, a member of

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the Communist Party or the Kuomintang, could be appointed as a principal official. Mr CHEUNG further asked whether the prospective principal official must declare his political affiliation before he was nominated and appointed as a principal official. DS(CA)(SD) said that the Administration would provide a response before the next meeting.

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50. Mr CHEUNG Man-kwong also asked whether a principal official could stand as a candidate for CE election. Mr CHEUNG expressed concern that this would give rise to conflict between the electioneering activities of the principal official and his official duties. DS(CA)1 said that the qualification of candidates for CE election was spelt out clearly in the Chief Executive Election Ordinance. As to whether principal officials were eligible to be nominated as a candidate, DS(CA)1 agreed to provide a written response after the meeting.

Arrangements for civil servants appointed as principal officials under the proposed accountability system

51. DS(CS) took members through the Administration's paper entitled "Retirement Arrangements for Pensionable Civil Servants" (LC Paper CB(2) 1992/01-02(01)). DS(CS) said that the paper outlined the proposed retirement arrangements for pensionable civil servants to be appointed as principal officials under the accountability system.

52. Senior Assistant Legal Adviser 1 said that the Legal Service Division had prepared an analysis of the legal issues relating to the proposed arrangements for payment of pension to serving civil servants appointed as principal officials under the accountability system (LC Paper No. LS95/01-02). In gist, the Legal Service Division held the view that the Administration's proposal not to suspend payment of monthly pension to those who retired under the Old and New Pension Schemes would be a departure from existing government practice, and a disparity in treatment between those appointed as principal officials and other retired officers. However, under the Pensions Ordinance (Cap. 89) and the Pension Benefits Ordinance (Cap. 99), the Government had a discretion whether to suspend. For those who resigned under the New Pension Scheme (NPS), CE had a power under Cap. 99 to direct payment of the pension lump sum and monthly pension before they reached retirement age.

53. Mr Albert HO said that the disparity in treatment between civil servants appointed as principal officials and other retired public officers was unfair to the latter. He further said that CE should exercise the discretionary power on a case-by-case basis having regard to the merits of individual cases, instead of granting a blanket approval to all those civil servants appointed as principal officials. Ms Emily LAU shared the view of Mr HO and added that there should not be the preferential treatment.

54. Mr HUI Cheung-ching and Mr Abraham SHEK queried why the Administration was giving "preferential" treatment to those civil servants who would be appointed principal officials.

55. DS(CS) explained that the proposal not to suspend payment of monthly pension was only applicable to the appointment of retired civil servants as principal officials. As for civil servants who had been appointed as principal officials and who had not reached the earliest permissible retirement age under the NPS, they would receive only the pension lump sum, but the monthly pension payment would be suspended until they had reached the earliest permissible retirement age or ceased to be principal officials, whichever was the earlier. Nevertheless, civil servants taking up appointment as principal officials would only receive their earned pension, but not enhanced pension.

56. DS(CS) further explained that the cash remuneration package of the principal officials did not include any contract gratuity or pension element, which was usually provided for in appointment to the public service or public-funded organisations. For example, retired civil servants re-employed to the public service would receive a gratuity upon completion of contract, although their monthly pension payment would be suspended. The Administration considered that there was no question of "double standard" or "double benefit" being applied to those civil servants who were to be appointed as principal officials.

57. Responding to Mr HUI Cheung-ching's further question, DS(CS) clarified that suspension of monthly pension payment was currently only applicable to retired civil servants taking up employment in 16 specified public-funded organisations, and the suspension did not apply to those taking up employment in the private sector.

Relationship between bureaux and departments

58. Ms Emily LAU asked why no papers had been provided by the Administration on the review of the working relationship between bureaux and departments. DS(CA)(SD) explained that the Administration had no intention to conduct the review at this stage. It would be for the new Directors of Bureau to decide how the review should be carried out, and whether any streamlining or restructuring would be required. In this connection, the Administration could not provide any information paper at this stage.

59. Ms Emily LAU expressed concern about the implications of the accountability system on the roles and functions and independence of statutory bodies such as the Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC). DS(CA)(SD) assured members that the roles and functions as well as operation of statutory bodies were governed by

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Legal Service
Division

legislation. To facilitate members' consideration of the matter, Ms LAU requested the Legal Service Division to prepare a paper on the functions and roles of existing policy secretaries in relation to the HKMA and SFC.

II. Date of next meeting

60. The next meeting of the Subcommittee would be held on Friday, 24 May 2002 at 8:30 am.

61. There being no other business, the meeting ended at 12:25 pm.

Council Business Division 2
Legislative Council Secretariat
2 September 2002