

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

**Administration's response to
issues raised at the meeting of the
Panel on Constitutional Affairs on 18 April 2002**

This paper sets out the Administration's response to the list of issues raised at the meeting of the Panel on Constitutional Affairs held on 18 April 2002 as set out in LC Paper No. CB(2)1762/01-02(01).

(1) Basic principles

- (a) Issue raised: In what way would the propose system ensure that the Government of the Special Administrative Region is accountable to the Legislative Council.

Administration's response: Article 64 of the Basic Law provides that the Government of the Hong Kong Special Administrative Region (HKSAR) must abide by the law and be accountable to the Legislative Council (LegCo) of the Region: it shall implement laws passed by the Council and already in force; it shall present regular policy addresses to the Council; it shall answer questions raised by members of the Council; and it shall obtain approval from the Council for taxation and public expenditure. Under the accountability system, the Government of the HKSAR will continue to the accountable to LegCo in accordance with the specific provision of the Basic Law.

- (b) Issue raised: In what way would the proposed system implement the Basic Law principle of gradual and orderly progress in the democratic development in Hong Kong.

Administration's response: The Basic Law has laid down the road map for Hong Kong's democratic development. It provides for gradual and orderly progress in our democratisation process. The Basic Law provides for a mechanism for a decision to be taken on the method for forming LegCo and selecting the Chief Executive (CE) after 2007. In considering how to further the constitutional development of Hong Kong, we need to consider very carefully the

impact of democratic reform on society and adopt a step-by-step approach. The accountability system would not in any way constrain such development.

(2) Consistency with the Basic Law

(c) Issue raised: Whether the proposal system would contravene the Basic Law especially in view of –

- (i) its limiting effect on the career path of a public servant (whether he is employed on permanent pensionable terms or contract terms);
- (ii) the change in the constitutional role of the public servants as members of the Government of HKSAR from one of formulating policies to one of assisting principal officials in the formulation of policies;
- (iii) the change from the existing system of CE appointing some of the principal officials to the Executive Council to one under which all principal officials would automatically become members of the Executive Council.

Administration's response: We have addressed the constitutionality of the accountability system vide LC Paper No. CB(2)1735/01-02(01) and the functions, composition and modus operandi of the Executive Council under the Basic Law vide LC Paper No. CB(2)1809/01-02(02). In addition, it should be noted that not all principal officials will automatically become members of ExCo, only the principal officials under the accountability system.

(3) Executive Council

(d) Issue raised: The difference, if any, in the functions and operation of the Executive Council brought about by the proposed system.

Administration's response: There will not be any difference to the functions and operation of the Executive Council as provided for under the Basic Law.

(4) Amalgamation of Bureaux

- (e) Issue raised: The reasons for the proposed amalgamation of Bureaux. A member has suggested the Administration to consider merging Commerce & Industry with Economic Services and Financial Services into one Bureau.

Administration's response: Please refer to LC Paper No. CB(2)1870/01-02(01).

(5) Civil Service under the proposed system

- (f) Issue raised: Whether a Permanent Secretary can refuse to carry out instructions from a principal official if he considers that the instructions to be unlawful or the carrying out of such instructions would be contrary to his conscience, and whether a Permanent Secretary would be required to resign from office if he refuses to carry out instructions from a principal official, and if so, whether he is prohibited from revealing the reasons for his refusal to carry out the instructions after leaving office.

Administration's response: Please refer to LC Paper No. CB(2)1822/01-02(04).

- (g) Issue raised: Whether a Code similar to the UK Civil Service Code should be promulgated.

Administration's response: We will prepare a Code for principal officials under the accountability system, the draft of which is attached to LC Paper No. CB(2)1952/01-02(01).

(6) Conflict of interest

- (h) Issue raised: The reasons for not proposing legislation to deal with the questions of conflict of interest and protection of whistle blowers.

Administration's response: The employment contract for principal officials under the accountability system will contain provisions on conflict of interest. Such provisions will be binding.

(7) Transfer of statutory functions

- (i) Issue raised: In view of the fact that the proposed transfer of statutory functions would be for establishing the proposed new system of accountability for principal officials, the reasons for effecting such transfer by means of a resolution of the Legislative Council under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) rather than by means of primary legislation.

Administration's response: Please refer to LC Paper No. CB(2)1822/01-02(01).