

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

**Administration's response to  
issues/matters raised at the meeting on 29 April 2002**

This paper sets out the Administration's response to the list of issues/matters raised at the meeting on 29 April 2002 as set out in LC Paper No. CB(2)1775/01-02(01).

(1) Principal officials under the proposed system

- (a) Issue/matter raised: The role, if any, to be played by the Public Service Commission in the appointment of principal officials, including the appointment of the Secretary for the Civil Service.

Administration's response: The new accountability system would be applicable to the principal official positions of Secretaries of Department and Directors of Bureau. These principal officials are not civil servants and they would be employed on terms different from those of the civil service. Their appointment will continue to be made in accordance with Article 48(5) of the Basic Law. Appointment to these principal official positions, including that to the office of the Secretary for the Civil Service (SCS), will not involve the Public Service Commission.

- (b) Issue/matter raised: Whether a SCS who has resigned/been removed from office for policy failure can return to the civil service, and if so, how such an arrangement would operate in practice.

Administration's response: To underline the importance of the civil service, the Chief Executive has announced that as a matter of policy, the SCS under the accountability system would be selected from within the civil service. He will be employed on terms identical to those of other Directors of Bureau. But he retains his link with the civil service in that he does not have to leave the civil service permanently before taking up the appointment. He may return to the civil service at his original rank after the appointment if his age permits. Whether or not he will do so is a matter for the individual.

- (c) Issue/matter raised: The differences between "civil servants" and "public servants"; whether their conduct in public office is subject to

the same types and extent of regulatory control under existing law, e.g. the Prevention of Bribery Ordinance.

Administration's response: Please refer to LC Paper No. CB(2)1809/01-02(03).

- (d) Issue/matter raised: Principal officials will be required to observe a Code of Practice which will among other things set out the relationship between principal officials and civil servants and safeguard the core values of the civil service. What is the "status" of this Code of Practice, i.e. is it a set of internal guidelines, or does it have legal backing.

Administration's response: In the employment contract for principal officials under the accountability system we will stipulate a requirement for them to observe the principles contained in a Code. It will be a breach of the employment contract if principal officials violate provisions in the Code.

- (e) Issue/matter raised: Whether the status of the Permanent Secretaries being subordinates of principal officials will be established by legislative means, or through administrative measures.

Administration's response: Permanent Secretaries will work to their respective principal officials. There is no need to establish such a relationship through legislative means.

- (f) Issue/matter raised: Whether there will be changes to the powers and functions of the Chief Secretary for Administration and the Financial Secretary, and if so, whether such changes will be effected through legislative means or administrative means.

Administration's response: The statutory functions vested in the Chief Secretary for Administration and the Financial Secretary will continue to be exercised by them. Other changes to the functions of the Chief Secretary for Administration and the Financial Secretary will be effected administratively.

(2) The functions, composition and operation of the Executive Council

- (g) Issue/matter raised: To provide a list and explanation of the 689 references to "the Chief Executive (CE) in Council (ExCo)" in the laws of Hong Kong, and explain how appeals against decisions of

principal officials presently dealt with by CE in Council will in future be handled when principal officials appointed under the proposed accountability system will also be members of ExCo.

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

- (h) Issue/matter raised: The legislative intent of Article 56 of the Basic Law and how such intent can be achieved. Under what circumstances will a record of CE not accepting a majority opinion of ExCo be made public. How have such records been kept since 1 July 1997, and who/which is/are the public officer/authorities responsible for keeping such records since 1 July 1997. Will the present arrangement for keeping such records be reviewed with a view to making the arrangement more transparent under the proposed accountability system.

Administration's response: Please refer to LC Paper No. CB(2)1809/01-02(02).

(3) Consistency with the Basic Law

- (i) Issue/matter raised: Relevant court judgments referred to in the Administration's paper entitled "The Constitutionality of the Accountability System"

Administration's response: Please refer to LC Paper No. CB(2)1735/01-02(01).