

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

**Administration's response to
issues raised at the meeting on 21 May 2002**

This paper sets out the Administration's response to the list of issues raised at the meeting on 21 May 2002 as set out in LC Paper No. CB(2)2033/01-02(01).

Issues relating to appointment, employment and removal of principal officials

1. Issue raised: To provide a breakdown to show how the remuneration package for principal officials is arrived at.

Administration's response: Please refer to paragraphs 38 to 44 of the Legislative Council paper issued on 17 April 2002. As regards the breakdown of the remuneration package for incumbent Directors of Bureau, please see Annex.

2. Issue raised: To consider introducing a pay adjustment mechanism for principal officials.

Administration's response: In the event civil service salaries are cut later this year, the remuneration of principal officials under the accountability system will be adjusted accordingly. Other than this, there will not be any pay adjustment mechanism for principal officials. In the event that the remuneration of principal officials is out of kilter with movements in the market, it will be for the Chief Executive to decide if a review should be initiated.

Conflict of interest and Code of Practice

3. Issue raised: On the arrangements for former principal officials to take up any employment or going into any business after stepping down from office, to consider the following -
 - (a) the prohibitions listed in paragraphs 16 and 17 of the Administration's paper (LC Paper No. CB(2)1952/01-02(01)) should be set out in greater detail in the employment contract.

Administration's response: Paragraphs 16 to 18 of LC Paper No. CB(2)1952/01-02(01) relate to the restrictions and prohibitions applicable to principal officials during their term of office and after stepping down from office. These provisions will be written into the employment contract.

- (b) to provide information on the criteria to be adopted by the committee appointed by the Chief Executive in considering matters relating to post-office employment of former principal officials; and to consider the suggestion that the advice of the committee should have binding effect on the principal officials concerned.

Administration's response: In deciding on the advice to be given, the committee will be guided by the following principles:

- (i) to ensure so far as reasonably possible that the Government's performance of its functions is not affected, compromised, or otherwise in any manner influenced, by the principal official's proposed employment; and
- (ii) to avoid or minimise any reasonable belief or perception that the Government's performance of its functions during the principal official's term of office might have been affected or compromised by the principal official's proposed employment.

The committee will take into account:

- (i) the nature of the proposed employment;
- (ii) the nature and extent of the principal official's official dealings in Government and his responsibilities vis-à-vis the proposed employment; and
- (iii) whether the principal official's right to reasonably exploit his skills and experience will be unreasonably restricted if he were advised not to take up the proposed employment.

It is relevant to note that the relevant provisions in the employment contract prohibiting the disclosure of classified or sensitive information obtained by the former principal official while in office will continue to apply even after he stepped down from office. We remain of the view that, as the advice of the committee will be made public, the force of public scrutiny and public censure are powerful deterrents even though the advice is not legally binding on the former

principal officials. If such arrangement proves to be inadequate after implementation, we will carefully consider the need for more stringent requirements. It is relevant to note that for example there is no requirement in the United Kingdom for ministers to seek approval for employment after stepping down from ministerial office.

- (c) members' views concerning the duration of the sanitisation period.

Administration's response: We note the different views expressed at the Subcommittee meeting on 21 May 2002 and believe that a one year "sanitisation period" is appropriate.

- (d) adopting a system of post-office employment for principal officials similar to that for retired civil servants at D8 rank, i.e. prior approval is required before employment or any business activity can be taken up.

Administration's response: see response on (b) above.

- (e) any breaches of the contractual obligations should be liable to criminal sanctions.

Administration's response: Principal officials breaching the Official Secrets Ordinance will be liable to criminal sanctions. As regards breaching of the employment contract, we could take civil action as necessary.

4. Issue raised: To advise whether principal officials under the accountability system will be required to declare interests and investments held by trustee.

Administration's response: Principal officials under the accountability system will be required to declare any investments which belong to them but are held in the name of their spouse or of any other person, agent or company acting on their behalf.

5. Issue raised: To consider the suggestion that any changes to the Code of Practice for principal officials should be subject to the scrutiny of the Legislative Council.

Administration's response: We will inform the relevant LegCo Panel should there be any changes to the Code for Principal Officials.

6. Issue raised: To make reference to the provisions of the UK Ministerial Code and spell out explicitly in the Code of Practice that principal officials

cannot use public resources for party or constituency work.

Administration's response: We will spell out more clearly in the Code prohibition against using government resources for non-government purposes.

7. Issue raised: To state clearly the leave relief arrangements for principal officials in the Code of Practice.

Administration's response: Please refer to LC Paper No. CB(2)2075/01-02(01) issued on 27 May 2002.

Involvement in political activities

8. Issue raised: To provide information on whether a person is a member of the Communist Party and the Kuomintang can be appointed as a principal official, and whether a principal official can stand as a candidate for the Chief Executive election.

Administration's response: Freedom of association is protected by law in Hong Kong. It is the responsibility of the principal official under the accountability system to ensure that no conflict will arise with his oath to uphold the Basic Law and his oath of allegiance to the HKSAR. It is also his responsibility to ensure that there is no conflict with the principles set out in Chapter 4 of the Code for Principal Officials. The same applies to participation in activities organised by political organisations or bodies. In case of doubt, the principal official should seek guidance from the Chief Executive as is also provided for in Chapter 4 of the Code.

Section 14(c) of the Chief Executive Election Ordinance provides that a "prescribed public officer" is disqualified from being nominated as a candidate. The definition of "prescribed public officer" includes "any person holding an office, whether permanent or temporary, in a Government department or bureau and employed in the department or bureau". Principal officials fall within the definition.

Review of statutory bodies and other public bodies

9. Issue raised: To provide more information on the regulations made and directions or instructions given by the Financial Secretary under the Public Finance Ordinance (Cap. 2) to designated Controlling Officers.

Administration's response: Under section 11 of the Public Finance Ordinance (Cap 2), the Financial Secretary may make such administrative

regulations and give such administrative directions and instructions as may appear to him to be necessary or expedient for the better carrying out of the provisions and purposes of this Ordinance and for the safety, economy and advantage of public moneys and Government property. Such administrative regulations, directions and instructions include the Stores and Procurement Regulations, the Financial and Accounting Regulations and the various internal Financial Circulars.

**Annual weighted average cost to taxpayers of the incumbent
Directors of Bureau
(at 2001/02 price level)**

Salary	\$2,281,200
pension/gratuity/ MPF	\$657,456
Leave and leave pension/gratuity	\$437,232
Housing	\$247,428
Leave passage	\$122,424
Children's education	\$9,912
Medical and dental care	\$5,184
Total	\$3,760,836