

立法會

Legislative Council

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

**Minutes of the fifteenth meeting
held on Tuesday, 11 June 2002 at 4:30 pm
in the Chamber of the Legislative Council Building**

Members Present :

- Hon IP Kwok-him, JP (Chairman)
- Dr Hon YEUNG Sum (Deputy Chairman)
- Dr Hon David CHU Yu-lin, 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
- Hon Andrew WONG Wang-fat, JP
- Dr Hon Philip WONG Yu-hong
- Hon Jasper TSANG Yok-sing, JP
- Hon Howard YOUNG, JP
- Hon YEUNG Yiu-chung, BBS
- Hon Ambrose LAU Hon-chuen, GBS, JP
- Hon Emily LAU Wai-hing, JP
- Hon Timothy FOK Tsun-ting, SBS, JP
- Hon LI Fung-ying, JP
- Hon Michael MAK Kwok-fung
- Hon LEUNG Fu-wah, MH, JP
- Hon MA Fung-kwok
- Hon Audrey EU Yuet-mee, SC, JP

Members : Hon Kenneth TING Woo-shou, JP
Absent Hon Cyd HO Sau-lan
Hon LEE Cheuk-yan
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
Dr Hon LO Wing-lok

Public Officers : Mr Michael M Y SUEN
Attending Secretary for Constitutional Affairs

Mr Clement C H MAK
Deputy Secretary for Constitutional Affairs

Mr I G M WINGFIELD
Law Officer (Civil Law)
Department of Justice

Mrs Philomena LEUNG
Principal Assistant Secretary for Constitutional Affairs

Mr Allen LAI
Senior Government Counsel
Department of Justice

Ms Vicki LEE
Senior Government Counsel
Department of Justice

Miss Katy FONG
Assistant Secretary for Constitutional Affairs

Clerk in : Mrs Percy MA
Attendance Chief Assistant Secretary (2)3

Staff in : Mr Jimmy MA, JP
Attendance Legal Adviser

Mrs Justina LAM
Assistant Secretary General 2

Miss Monna LAI
Assistant Legal Adviser 7

Miss Mary SO
Senior Assistant Secretary (2)8

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Proposed resolution to be moved by the Administration under section 54A of Cap. 1

The Chairman said that this meeting was held pursuant to the decision of the House Committee on 7 June 2002 that the Subcommittee should further discuss the proposed resolution under section 54A of the Interpretation and General Clauses Ordinance (Cap.1) to be moved by the Administration.

Powers and duties delegated by the Chief Executive (CE) to existing bureau secretaries

2. In response to Hon Emily LAU's query on how the transfer of powers and duties delegated by CE would be effected after the reorganisation, Secretary for Constitutional Affairs (SCA) explained that pursuant to section 63 of Cap. 1, CE had delegated certain powers conferred on, or duties imposed upon, him to the existing bureau secretaries. The powers and duties so delegated included, for example, power to appoint members of certain advisory committees or appeal boards; power to determine the rate of remuneration for members of advisory boards and committees; power to receive information from certain bodies and organisations; and power to approve the tabling of annual reports and financial statements submitted by certain bodies at the Legislative Council (LegCo). Following the reorganisation of bureaux, such powers and duties would be delegated to the bureau secretaries responsible for the relevant reorganised bureaux. The Administration would take necessary administrative measures to ensure that these delegations would have effect as from 1 July 2002.

3. Ms Emily LAU asked whether such delegations would be promulgated for information of the public. SCA explained that it was a practice for such delegations to be effected administratively and there was no requirement for gazettal. Nevertheless, the Administration was prepared to provide the relevant information for members' inspection.

Paragraph 4 and Schedule 4 - Transfer of statutory functions from Secretary for Education and Manpower to Secretary for Economic Development and Labour (SEDL)

4. Referring to the Administration's proposal of putting the Labour portfolio under the same bureau secretary responsible for the Economic

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Development portfolio, Mr Albert HO expressed concern whether efforts to promote safety and health at work as well as employees' rights and benefits would be compromised to make way for a more business-friendly environment. He asked whether any items of subsidiary legislation to be made by the Commissioner for Labour (C for L) would require policy support from the bureau. Given that the interests of SEDL and those of C for L might conflict in labour issues, he also expressed concern that C for L would be subject to pressure if his views differed from those of SEDL, and he might be given an adverse appraisal report or be transferred to another post.

5. SCA explained that any items of subsidiary legislation proposed by the Labour Department would normally be considered by the bureau and the relevant advisory committees, and also subject to scrutiny and approval by LegCo. It was not possible for SEDL to do whatever he pleased, given the existence of such a check and balance system.

Paragraph 5 and Schedule 5 - Transfer of statutory functions from Secretary for the Environment and Food to Secretary for the Environment, Transport and Works (SETW)

6. Miss Margaret NG and Ms Audrey EU pointed out that SETW had role conflicts in overseeing the Environment portfolio on the one hand, and the Transport and Works portfolios on the other. They were concerned whether the Director of Environmental Protection (DEP) working under SETW could make decisions independently without being influenced or even overturned by SETW. They pointed out that, for instance, under sections 14 and 24 of the Environmental Impact Assessment Ordinance (Cap. 499), DEP needed the consent of the bureau secretary to suspend, vary or cancel an environmental permit, or issue an order to require a project to cease work. They also pointed out that SETW could even give directions to DEP regarding the scope of the Environmental Impact Assessment (EIA) study of a certain road or works project, and the outcome of the EIA study might be affected as a result.

7. SCA responded that Cap. 499 bound the Government and was therefore applicable to government projects. Under section 14 of Cap. 499, the bureau secretary could give consent to suspend, vary or cancel an environmental permit under very specific situations i.e. if DEP was satisfied that the applicant gave misleading information, wrong information, incomplete information, false information, or the applicant was no longer able to comply with the conditions of the environmental permit.

8. As regards section 24 of Cap. 499, DEP could, with the consent of the bureau secretary, issue an order requiring persons working on a designated project to cease working on the project until the order was withdrawn, when the following conditions were met -

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- (a) if an environmental permit had not been issued for the project being undertaken;
- (b) if an environmental permit had been withdrawn from the project being undertaken; or
- (c) if there had been a breach of the conditions of an environmental permit.

9. SCA stressed that in both scenarios, the decision of DEP was confined to specified circumstances. The role of SETW was very limited and he could not disagree with the decision of DEP for reasons which were irrelevant. Law Officer (Civil Law) supplemented that an order to amend Schedule 2 to Cap. 499 relating to "Designated Projects Requiring Environmental Permits" was subsidiary legislation subject to negative vetting by LegCo.

10. In further response to Ms Audrey EU, SCA explained that under Cap. 499, a person who was planning a designated project had to apply for an EIA study brief to proceed with an EIA study for the project, or for approval to apply directly for an environmental permit. The applicant had to advertise the availability of the project profile in newspapers. The Advisory Council on the Environment and any person could comment on a project profile. The applicant was required to prepare an EIA report in accordance with the study brief. The availability of the EIA report was required to be advertised in newspapers. The Advisory Council on the Environment could give any comments it had on the EIA report. If the EIA report was approved by DEP, the person could then apply for an environmental permit. Given the high transparency of the mechanism for environmental impact assessment, SCA assured members that the work of the Environmental Protection Department was under public scrutiny.

11. In response to comments made by some members on the desirability for the same bureau secretary to oversee "conflicting" policy areas, the Chairman pointed out that the policy aspect of the proposed resolution had been discussed in detail by the Subcommittee at previous meetings, and that members had different views on the Administration's reorganisation proposals.

12. Ms Audrey EU expressed concern that if the new SETW was appointed in place of the Secretary for Transport as a director on the Board of Directors of the Kowloon-Canton Railway Corporation, there would be role conflicts where environmental issues were concerned. SCA responded that if a bureau secretary was appointed as a member of the board of directors of a statutory body, he had to act in accordance with the common law and, among other things, should consider the interests of the body. A decision taken by the board was a decision taken collectively by members of the board. If there appeared to be conflict of interest between the bureau secretary's official duties

and his public office as a member of the board, he should seek legal advice on how best to avoid any such conflict. For example, he could refrain from participating in the discussion of, or making a decision on, the matter in question.

Paragraph 9 and Schedule 9 - Transfer of statutory functions from Secretary for the Treasury (S for Tsy) to Secretary for Financial Services and the Treasury (S for FS & Tsy)

13. Miss Margaret NG pointed out that the term "Financial Secretary"(FS) was defined in section 3 of Cap. 1 as FS and S for Tsy. With the change of the reference to S for Tsy in this definition to S for FS & Tsy, the functions exercisable by FS in various ordinances would also be exercisable by S for FS & Tsy. Unlike S for Tsy who was accountable to FS, both FS and S for FS & Tsy were principal officials under the accountability system. Miss NG requested the Administration to provide a paper to clearly set out the respective statutory functions exercisable by FS and S for FS & Tsy.

14. SCA explained that with the reference of S for Tsy amended to S for FS & Tsy, the arrangement for S for FS & Tsy to exercise the statutory functions of FS would be exactly the same as that for the existing S for Tsy exercising the statutory functions of FS. SCA reiterated that the purpose of the proposed resolution under section 54A of Cap.1 was to transfer the respective statutory functions to the new bureau secretaries. There was no question of the resolution introducing any substantive changes to these statutory functions.

15. The Legal Adviser pointed out that the existing statutory functions of S for Tsy did not cover matters such as securities and trading in futures contracts as well as monetary affairs which fell within the policy purview of the Secretary for Financial Services under the present government structure. However, these statutory functions would be exercised by the new S for FS & Tsy, and therefore the respective policy portfolios of the existing S for Tsy and S for FS & Tsy were not the same. The Legal Adviser also pointed out that there were 737 references to FS in the Laws of Hong Kong, although some might not be related to his statutory functions.

16. SCA responded that the proposed resolution under section 54A of Cap.1 did not cover the Chief Secretary for Administration (CS) and FS, and they would continue to exercise the statutory powers vested in them. The Administration intended to review the statutory functions currently vested in CS and FS to see if any such functions should be transferred to the relevant bureau secretaries or delegated to them, when the principal officials under the accountability system had settled in their respective positions. The review would include an examination of the definition of FS in section 3 of Cap. 1.

Process of scrutiny

17. Miss Margaret NG considered it necessary to study the proposed resolution, clause by clause, to clarify and examine what statutory functions would be transferred to the principal officials, whether the terms used in the resolution and the proposed transfer of statutory functions would give rise to any inconsistencies or discrepancies from the policy point of view or operational difficulties, what administrative powers would be exercised by the principal officials, whether the exercise of the statutory functions would be subject to any constraints, and how the statutory functions not subject to transfer in the proposed resolution would be dealt with. Miss NG expressed regret that it was not possible for the Subcommittee to do a proper job in scrutinising the proposed resolution, as the Administration was not cooperative in providing the necessary information and arranging the incumbent bureau secretaries and other public officers concerned to answer members' questions.

18. The Chairman pointed out that the policy aspect of the resolution to be moved by the Administration had been discussed in detail by the Subcommittee, but members had not reached any consensus view. As regards the legal and drafting aspects, the Legal Service Division had studied the resolution and had submitted a report to the House Committee meeting confirming that these aspects of the proposed resolution were in order.

19. Miss Margaret NG considered that it was unfair to the Legal Adviser and his Division by placing on them the responsibility of providing a guarantee that the drafting and legal aspects of the resolution were in order. Miss NG pointed out that as the Administration had insisted that it would move the proposed resolution at the Council meeting on 19 June 2002, even if the Subcommittee was to meet every day in the coming few days, it would not be possible for members to complete scrutiny of the proposed resolution before the debate. Miss NG wished to state for the record that she did not consider that the Subcommittee had studied the resolution. She would not request the Subcommittee to meet again, as it was meaningless to hold any further meeting.

20. Mr CHEUNG Man-kwong also wished to state for the record that Members belonging to the Democratic Party shared Miss Margaret NG's views. Mr CHEUNG pointed out that documents relating to the resolution had only been provided by the Administration when the Subcommittee was already in its middle and late stage of its deliberations.

21. Ms Emily LAU expressed concern that members had little time to study the proposed resolution, and there might be problems with it that members might not be aware of. Ms LAU pointed out under normal situations, it would take one to two years to scrutinise a legislative proposal of such a wide scope and to consider such a large amount of related documents. She also

pointed out that even at such a late stage, the Administration was still providing replacement sheets to documents relating to the resolution issued to members earlier. If LegCo was to bear responsibility for any mistakes, those Members who voted to support the Administration's resolution should be held accountable. Ms LAU then asked when the organisation chart of the new government structure, which the Subcommittee had asked for some time ago, would be available for members' reference.

22. SCA responded that it had provided the supplementary papers explaining the provisions of the draft resolution and the legal effect of individual paragraphs and the Schedules in the resolution to members in early May. The replacement sheets to the supplementary papers had been prepared as the Legal Adviser had earlier pointed out that there were omissions and inaccuracies in some of the pages of the original papers. As regards the organisation chart, Administration undertook to provide it to the Subcommittee by 13 June 2002.

23. SCA further said that the Administration did not see the necessity for the incumbent bureau secretaries and other public officers concerned to attend meetings of the Subcommittee to answer members' questions, as the exercising of statutory functions by the principal officials under the accountability system would be the same as that by the existing policy secretaries and the resolution would not bring any changes to the nature of the statutory functions.

24. SCA also pointed out that at the first meeting of the Subcommittee on 24 April 2002, he had suggested that the policy issues and the draft resolution be discussed in parallel at separate meetings. However, members had decided to proceed with the deliberations according to the order of the list of topics drawn up by the Subcommittee.

Proposed resolutions to be moved by Hon YEUNG Sum and Hon CHEUNG Man-kwong under section 54A of Cap. 1

25. Members noted that Mr CHEUNG Man-kwong would move a motion to transfer the statutory functions of the Secretary for the Civil Service to CS. Dr YEUNG Sum would also move a motion to transfer the statutory functions of the Secretary for Constitutional Affairs to CS. Both members had provided a paper to explain their respective proposals.

26. In response to Mr Howard YOUNG, Dr YEUNG Sum said that all the statutory functions of the Secretary for Constitutional Affairs were proposed to be transferred to CS. If his proposed resolution was passed, the Constitutional Affairs Bureau would no longer exist.

27. Mr CHEUNG Man-kwong informed the Subcommittee that Mr Fred LI, Mr SIN Chung-kai, Mr Andrew CHENG, Mr Albert HO, and Mr LAW Chi-

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kwong had also given notice to move amendments to the proposed resolution to be moved by the Administration. More information on the amendments would be provided to Members after the President had given her ruling on the proposed amendments.

28. There being no other business, the meeting ended at 6:30 pm.

Council Business Division 2
Legislative Council Secretariat
2 September 2002