

立法會

## *Legislative Council*

LC Paper No. CB(2)691/01-02

(These minutes have been  
seen by the Administration)

Ref : CB2/PL/CA

### **Legislative Council Panel on Constitutional Affairs**

#### **Minutes of meeting held on Monday, 19 November 2001 at 2:30 pm in Conference Room A of the Legislative Council Building**

**Members Present** : Hon Andrew WONG Wang-fat, JP (Chairman)  
Hon Emily LAU Wai-hing, JP (Deputy Chairman)  
Hon James TIEN Pei-chun, GBS, JP  
Hon Margaret NG  
Hon CHEUNG Man-kwong  
Hon HUI Cheung-ching, JP  
Hon Howard YOUNG, JP  
Dr Hon YEUNG Sum  
Hon YEUNG Yiu-chung, BBS  
Hon SZETO Wah  
Hon IP Kwok-him, JP

**Member Attending:** Hon Henry WU King-cheong, BBS

**Public Officers Attending** : Mr Clement C H MAK  
Acting Secretary for Constitutional Affairs  
  
Mrs Philomena LEUNG  
Principal Assistant Secretary for Constitutional Affairs

**By Invitation** : Dr LO Shiu-hing  
Associate Professor  
Department of Politics and Public Administration  
The University of Hong Kong

Mr CHEUNG Yat-fung  
Course Instructor  
Department of Politics and Public Administration  
The University of Hong Kong

Mr WAN Kwok-fai  
Course Instructor  
Department of Politics and Public Administration  
The University of Hong Kong

Mr KWONG Kam-kwun  
Course Instructor  
Department of Politics and Public Administration  
The University of Hong Kong

Mr CHOY Chi-keung  
Lecturer  
Division of Social Studies  
City University of Hong Kong

Dr LI Pang-kwong  
Associate Professor  
Department of Politics and Sociology  
Lingnan University

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

**Staff in Attendance** : Mr Jimmy MA, JP  
Legal Adviser

Mr Paul WOO  
Senior Assistant Secretary (2)3

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**I. Confirmation of minutes of meeting**  
(LC Paper Nos. CB(2)385 and 313/01-02)

The minutes of the meetings held on 27 August 2001 and 4 October 2001 respectively were confirmed.

## II. System of accountability for principal officials

### Meeting with deputations

(LC Paper Nos. CB(2)421/01-02(01) to (05); and 441/01-02(01))

2. The Chairman welcomed the academics from the Lingnan University, the University of Hong Kong and the City University of Hong Kong to attend the meeting.

3. The Chairman invited the academics to give an oral presentation of their views on the proposed system of accountability for principal officials outlined by the Chief Executive (CE) in his 2001 Policy Address (the written submissions of the academics were circulated to the Panel vide LC Paper Nos. CB(2)421/01-02(01) to (05) and 441/01-02(01) respectively). The academics' views were summarised in **Appendix**.

4. Ms Emily LAU pointed out that the CE's Policy Address provided only a very crude model with scanty information on the proposed accountability system for principal officials. She opined that as a matter of principle, executive accountability had to be looked at in the context of the political development of Hong Kong, such as the election of CE by universal suffrage. She said that apart from considering suggestions on how to implement the proposed system technically, she would also like to hear the views of the academics on whether the proposed model was in principle acceptable, having regard to the constitutional structure and political development of Hong Kong.

5. Miss Margaret NG asked the academics whether or not they would recommend to the Panel to accept the proposed system as it was presented in the present format.

6. Dr LO Shiu-hing said that the principle of implementing a system of accountability for principal official was acceptable. However, he agreed that more information on the proposed system should be provided by the Administration. He said that as pointed out in his written submission, some important issues underlying the success of a political accountability system had to be addressed. He stressed the importance of the need to, firstly, develop constitutional conventions for the appointment and removal of principal officials, and secondly, to improve the fusion of powers between the executive and the legislature. He said that although Hong Kong did not have the feature of a ruling party or a coalition of parties in power as in other parliamentary systems of government, the role of political parties, be they pro-government or in opposition to the Government, should be clearly delineated. He added that he held no strong views on whether or not the CE should have political party background. However, for the successful operation of the future accountability system, CE should consider the need of nominating LegCo

Members belonging to political parties in support of the Government as politically appointed principal officials.

7. With regard to constitutional conventions, Dr LO Shiu-hing said that it should become accepted practice that when a political appointee wished to resign because of a serious policy failure or for matters involving personal integrity, CE should allow the official concerned to step down. Also, in the event of the LegCo passing a motion of no-confidence on a political appointee, the latter should resign from office and the CE should approve the resignation.

8. Dr LI Pang-kwong said that the proposed model outlined by the CE had created a reasonable expectation on the part of the public that the Government was taking the matter of accountability seriously by introducing an institutionalised system for that purpose. He said that he accepted the present proposed framework of the accountability system on the premise that it was the initial step in an on-going and progressive process of constitutional reform. He added that other related issues such as election of CE by universal suffrage and the development of party politics etc should also be dealt with as essential parts of the overall reform. Otherwise, the present proposal made by the Administration could not be accepted as a satisfactory accountability system.

9. Mr CHOY Chi-keung considered that the general framework of the proposed model was acceptable in principle. The system would improve executive accountability and achieve other objectives such as providing a training ground for people, apart from those in the civil service, to become politicians. However, he would not accept the system if it resulted in over-expansion of the power of the CE, politicisation of the civil service or groups of government officials acting in collusion in pursuit of self-interest. Hence, effective checks and balances had to be built into the mechanism at the same time. To guard against possible abuse of power, the monitoring role of the legislature should be enhanced.

10. Mr CHOY Chi-keung added that on the understanding that the present proposals put forward by the Administration were only preliminary, he could not conclude at this stage whether the proposals should be accepted.

11. Echoing Mr CHOY Chi-keung's views, Dr LI Pang-kwong said that the Administration should provide more information on the new system and make more forward-looking proposals for the consideration of all concerned. He pointed out the Administration should give more thoughts to introducing measures to improve the situation of lack of mutual trust between the Government and the legislature.

12. Dr YEUNG Sum said that it was apparent that the Government did not accept political parties as playing any significant role, as reflected in the requirement in the newly enacted CE election Bill that a winning candidate had

to declare that he was not a member of political party. He added that he had heard from some sources that similar requirement would also apply to the future political appointees. He further said that despite repeated calls from LegCo and other sectors of the community, the Administration had made no commitment as to how and when it would expedite a comprehensive review of political development in Hong Kong, such as a commitment to implement a system for the election of the CE by universal suffrage at the earliest stage. The fact that the Director of Housing still remained in office despite the passing of a vote of no-confidence against him by LegCo on the public housing piling problems reflected the attitude of the Government on the proposal to develop constitutional conventions to enhance public accountability. Dr YEUNG said that he was afraid that the pre-conditions for the successful operation of the accountability system as stated by the academics would not in fact materialise.

13. Dr YEUNG Sum added that in his opinion, the proposed accountability system merely served to increase the power of the CE, as the principal officials appointed under the system would only be answerable to the CE, not to the general public.

14. Mr SZETO Wah said that the existing Financial Secretary, the Secretary for Justice and the Secretary for Health and Welfare were appointed by CE from outside the civil service. He asked the academics whether they would support the new accountability system if the system merely meant to extend such appointment practice to cover all the principal officials.

15. Mr CHOY Chi-keung responded that there were precedent cases of top civil service posts being filled by people recruited from outside the civil service. He opined that the important thing was that the new accountability system should clearly define the special status of the politically appointed principal officials, their relationship with the civil servants who would be assisting with the formulation and implementation of policies, as well as their relationship with the legislature.

16. The Chairman said that the method of appointing principal officials would be different under the new system, where the principal officials would be appointed on special contract terms instead of civil service (whether permanent or contract) terms, and their term of office would not exceed that of the CE who nominated them.

#### Meeting with the Administration

(LC Paper Nos. CB(2)194/01-02(01) and CB(2)441/01-02(02))

17. Acting Secretary for Constitutional Affairs (SCA(Ag)) responded to the issues raised by the academics as follows -

- (a) The power of CE to nominate principal officials for appointment by the Central People's Government (CPG) was clearly set out in the Basic Law. The proposed system of accountability did not have the effect of reducing or expanding that power;
- (b) Concerning constitutional requirements as to accountability, Article 43 of the Basic Law specified that CE should be accountable to the CPG and the Hong Kong Special Administrative Region (HKSAR). Article 64 specified that the Government of the HKSAR was accountable to the Legislative Council. These requirements had been strictly adhered to by the Government;
- (c) Politicisation of the civil service was a matter of concern to the Administration. The Administration was aware of the need to maintain a civil service free from political interference. Under the proposed accountability system, the politically appointed principal officials would be held ultimately responsible for the success or failure of policies within their particular portfolios; and
- (d) The issue of whether the principal officials appointed under the new system would be allowed to have political party background would be considered by the Administration.

18. Miss Margaret NG expressed reservation about turning the Secretary for Justice (SJ) into a political appointment under the proposed accountability system. She pointed out that SJ assumed the duty of offering legal advice to the Government, including advice on the constitutionality of any policy decision or act by the Government. SJ also decided on the initiation, conduct and termination of criminal prosecutions. These powers were reflected in Article 63 of the Basic Law, which required that the Department of Justice of the HKSAR should control criminal prosecutions, free from any interference. The successful carrying out of all these duties required the greatest independence and detachment on the part of SJ. Miss NG said that owing to the unique constitutional functions of SJ, it would not be appropriate to politicise the office of SJ which might undermine the confidence of the public in the impartiality of criminal prosecution and the rule of law in Hong Kong.

19. Dr YEUNG Sum echoed the views of Miss Margaret NG. He said that a potential conflict existed between the exercise of the independent role of SJ and the requirement of collective responsibility imposed upon Executive Council Members.

20. Regarding the concern expressed by Miss Margaret NG, the Chairman drew members' attention to the written submission from the Bar Association which was tabled at the meeting (LC Paper No. CB(2)441/01-02(02)). According to the Bar Association, if SJ became a political appointee, the legal

roles of the post should be transferred and discharged by another law officer in the Department of Justice. The Chairman asked the Administration to take the Bar Association's suggestion into consideration.

21. Mr HUI Cheung-ching referred to paragraph 14 of the Administration's paper (LC Paper No. CB(2)194/01-02(01)) which stated that the existing civil service posts at Director of Bureau (D8) rank would be retained and filled by civil servants, who would assist the principal officials appointed under the new accountability system in formulating and implementing policies. He asked whether the pay of these civil servants would be reduced as they would then be shouldering fewer responsibilities. In his view, the salary should be adjusted downwards.

22. The Chairman pointed out that in western European countries, it was not uncommon that the pay of senior civil servants was higher than that of the ministers.

23. SCA(Ag) responded that the Administration would consider members' views.

24. Mr SZETO Wah referred to the statement in paragraph 18 of the Administration's paper that "[t]here would be greater incentive for principal officials under the new accountability system to keep closely in touch with the public...". He asked whether that statement implied that there was no such incentive for the existing principal officials.

25. SCA(Ag) said that the new accountability system would create a structural change to the existing system in that the principal officials appointed under the new system would be public servants [公職人員] employed on contract terms, not civil servants [公務員]. As the success of their term of office depended on the success or failure of the policies under their charge, there would be greater incentive, in relative terms, for them to heed public demand in the formulation and implementation of policies in order to get public support for the policy decisions. He said that the statement in paragraph 18 of the Administration's paper had no intention whatsoever to cast doubt on the dedication of existing principal officials.

26. Ms Emily LAU and Mr CHEUNG Man-kwong sought the Administration's clarification on the meaning of the term "public servants" [公職人員] as opposed to "civil servants" [公務員].

27. SCA(Ag) responded that "public servants" [公職人員] covered, inter alia, "civil servants" [公務員].

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28. Mr CHEUNG Man-kwong pointed out that in the relevant Articles of the Basic Law where the reference to “public servants” appeared, the Chinese equivalent of the term was [公務人員], not [公職人員] as mentioned by SCA(Ag). Ms Emily LAU said that whether [公務人員] and [公職人員] had different meaning should be clarified as they might have an implication on interpreting Article 79(4) of the Basic Law, which stipulated that a LegCo Member was no longer qualified for the office when he or she accepted a government appointment and became a public servant [公務人員].

Adm

29. The Administration was requested to clarify in writing the meaning of the terms used in the context of the proposed accountability system to see if there would be any Basic Law implications.

### III. Items for discussion at the next meeting

Adm

30. As the meeting had been overrun, the Panel decided that the item of accountability system for principal officials should be further discussed at the next meeting on 17 December 2001. To facilitate discussion, the Administration was requested to provide a paper to respond to the views expressed by the academics and members.

31. Members also agreed that if the Administration was able to revert on other items on the list of issues to be considered by the Panel, such issues could also be discussed at the next meeting.

*(Post-meeting note : At the request of the Administration, an item "Development of a new electoral and registration system" has been included in the agenda of the meeting on 17 December 2001)*

32. There being no other business, the meeting ended at 4:35 pm.

Council Business Division 2  
Legislative Council Secretariat  
14 December 2001



## LegCo Panel on Constitutional Affairs

Meeting on 19 November 2001

A summary of written submissions made by academics on  
System of Accountability for Principal Officials

Person LC Paper No. CB(2)	Major views
(1) Dr LO Shiu-hing Associate Professor, Department of Politics and Public Administration, University of Hong Kong  441/01-02(01)	<ul style="list-style-type: none"> <li>- The politically appointed officials under the new accountability system, who will also become Executive Council (ExCo) Members, should be sensitive to the principle of collegiality (a group of cabinet members acting jointly). However, it is not clear how the new system will impact on the existing practice of collective responsibility of ExCo Members;</li> <li>- Existing advisory committees can be re-organised to provide research support and policy advice to the appointed principal officials. The principal officials may also establish committees similar in nature to the cabinet committees in Britain;</li> <li>- The role of the Chief Executive's Office and the Information Coordinator will have to be reviewed;</li> <li>- The division of responsibility between the politically appointed principal officials and civil servants under them remains ambiguous. The relationship between the principal officials and other semi-government and statutory bodies is also unclear, which may complicate the issue of who should be held responsible for policy failures; and</li> <li>- The Chief Executive (CE) should consider nominating some LegCo Members as principal officials under the new accountability system so as to form either a coalition of pro-government parties or a ruling party in power. This will also help train politicians in the HKSAR.</li> </ul>
(2) Mr CHEUNG Yat-fung	<ul style="list-style-type: none"> <li>- Apart from the offices of the Chief Secretary for Administration (CS), the Financial Secretary and the</li> </ul>

<p>Course Instructor, Department of Politics and Public Administration, University of Hong Kong</p> <p>421/01-02(01)</p>	<p>Secretary for Justice, the existing Directors of Bureaux posts should be reshuffled so that about seven or eight of such posts will be turned into political offices under the new accountability system. The Civil Service Bureau should then include the Administration Wing and headed by a civil servant who will also become head of civil servants and be responsible to CS. Civil servants should remain politically neutral;</p> <ul style="list-style-type: none"><li>- CS should also assume the role of Deputy CE and Convenor of the ExCo. He can also take up the duties of the existing Information Coordinator. If necessary, one or two politically appointed deputies to CS can be created, but they need not be Members of ExCo;</li><li>- The positions as heads of certain statutory advisory bodies or committees should be taken up by the appointed principal officials responsible for the relevant policy portfolios;</li><li>- Two or three of the existing unofficio ExCo Members should remain in ExCo as full-time ExCo Members. The majority of the rest of the unofficio ExCo Members should be appointed to the Central Policy Unit to become members of the CE's think-tank; and</li><li>- Constitutional conventions should be developed requiring potential candidates of principal officials to attend LegCo meetings to answer questions before formal nomination for appointment, presentation of regular work progress reports by the principal officials to LegCo, and CE to make recommendation to the Central People's Government (CPG) for removal of certain principal officials if a vote of no-confidence is passed in LegCo.</li></ul>
<p>(3) Mr WAN Kwok-fai Course Instructor, Department of Politics and Public Administration, University of Hong Kong</p>	<ul style="list-style-type: none"><li>- The overall structure of Government should be reviewed to re-demarcate the roles and duties of the Policy Bureaux. The work of CS should also be reviewed in view of his reduced functions under the new accountability system;</li><li>- CE should consider appointing principal officials from outside the civil service;</li><li>- To enhance awareness of public accountability, detailed guidelines should be promulgated to be strictly observed</li></ul>

421/01-02(02)	<p>by the politically appointed officials. The spirit of accountability should be promoted to all government departments, statutory bodies and public organisations;</p> <ul style="list-style-type: none"><li>- Constitutional conventions have an important role to play in enhancing accountability and in improving executive/legislature relationship; and</li><li>- A principal official should resign from office consequent upon the passing of a vote of no-confidence by LegCo.</li></ul>
(4) Mr KWONG Kam-kwun Course Instructor, Department of Politics and Public Administration, University of Hong Kong  421/01-02(03)	<ul style="list-style-type: none"><li>- The proposed accountability system cannot achieve the objective of enhancing public accountability because the principal officials are nominated for appointment or recommended for removal by CE to CPG. They will be ultimately responsible to CPG. The appointment of the principal officials, in which the public and LegCo have no role to play, lack public mandate and support;</li><li>- There are no formal criteria nor mechanism for removing a principal official from office. Judging from past instances, it is unlikely that CE will exercise the power to remove officials from office even if serious policy or administrative blunders occur. This will create an obstacle to implementing a true accountability system; and</li><li>- LegCo should have a role to play in appointing principal officials, e.g. it can conduct public hearings before the appointments are made. A principal official should be made to resign if a vote of no-confidence is passed against him by LegCo.</li></ul>
(5) Mr CHOY Chi-keung Lecturer, Division of Social Studies, City University of Hong Kong  421/01-02(04)	<ul style="list-style-type: none"><li>- The source of principal officials under the new accountability system should be carefully considered as it will have an important influence on the relationship between the HKSAR Government and the civil service, LegCo, and the political parties;</li><li>- The proposed accountability system could politicise government leadership. In order to guard against civil servants being forced to act against their will on matters involving a fundamental issue of conscience, a safeguarding mechanism should be established. Examples of such mechanisms are the Civil Service Code in Britain and the Whistleblower Protection Act in the</li></ul>

	<p>United States;</p> <ul style="list-style-type: none"><li>- Some issues need to be clarified, e.g. the position and the roles of CS vis-à-vis the other political appointees, the relationship between the various principal officials as regards collective and individual responsibility, whether individual principal officials will form their own "ministerial cabinets" etc. Furthermore, if principal officials are allowed to be members of political parties, any requirements governing their relationship with the political parties should also be clarified;</li><li>- Measures should be introduced to enhance transparency in the process of appointment and removal of principal officials by CE, and to avoid conflict of interests when the principal officials join the private sector after leaving service; and</li><li>- In most parliamentary systems, the legislature provides the important checks on the power of the government. Consideration should be given to provide LegCo with greater monitoring power under the proposed accountability system, such as the power to conduct public hearings and engage in impeachment proceedings of the principal officials.</li></ul>
<p>(6) Dr LI Pang-kwong Associate Professor, Department of Politics and Sociology, Lingnan University  421/01-02(05)</p>	<ul style="list-style-type: none"><li>- Political appointments of principal officials under the new system would enable CE to choose his own political aides in formulating and achieving policy goals, eliminate disharmony between CE and the senior administrative bureaucrats, and lessen the tension between the executive and the legislature;</li><li>- Apart from an accountability system for principal officials, it is necessary to implement an institutionalised system for enhancing public accountability of the CE. Any decisions taken by the public on the performance of CE through a set procedure should bind the CE; and</li><li>- Party politics and the emergence of a ruling party are inevitable developments in achieving genuine political accountability. The monitoring role of the legislature should also be strengthened. These issues should be considered by the Administration in the second phase of the constitutional reform.</li></ul>

Council Business Division 2  
Legislative Council Secretariat  
14 December 2001