

立法會

Legislative Council

LC Paper No. CB(2)2195/01-02

(These minutes have been
seen by the Administration)

Ref : CB2/PL/CA

Legislative Council Panel on Constitutional Affairs

Minutes of meeting held on Thursday, 18 April 2002 at 4:30 pm in the Chamber 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
Hon SZETO Wah
Hon YEUNG Yiu-chung, BBS
Hon IP Kwok-him, JP

Members Attending : Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Cheuk-yan
Hon NG Leung-sing, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon CHAN kwok-keung
Hon CHAN Kam-lam
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon WONG Yung-kan
Hon Jasper TSANG Yok-sing, JP
Hon CHOY So-yuk
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, JP
Hon Henry WU King-cheong, BBS
Hon LEUNG Fu-wah, MH, JP
Hon WONG sing-chi

Hon Frederick FUNG Kin-kee
Hon Audrey EU Yuet-mee, SC, JP

Member Absent : Dr Hon YEUNG Sum

**Public Officers
Attending** : Items III, IV and V

Mr Michael M Y SUEN
Secretary for Constitutional Affairs

Mr Joseph WONG Wing-ping
Secretary for the Civil Service

Mr Clement C H MAK
Deputy Secretary for Constitutional Affairs

Mr Robin IP
Deputy Secretary for Constitutional Affairs

Ms Anissa S Y WONG
Deputy Secretary for Civil Service

Mrs Philomena LEUNG
Principal Assistant Secretary for Constitutional Affairs

**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 meetings
(LC Paper No. CB(2)1602 /01-02)

The minutes of the meeting held on 18 March 2002 were confirmed.

II. Information papers issued since last meeting

(LC Paper Nos. CB(2)1454/01-02(01); 1494/01-02(01) and 1549/01-02(01))

2. Members noted that the above papers had been issued.

III. Items for discussion at the next meeting

(LC Paper No. CB(2)1599/01-02(01))

3. The Chairman sought the Panel's view on the agenda items for the next meeting in May 2002. Members agreed that as it was anticipated that the Panel would soon be holding meetings to discuss the proposed accountability system for principal officials after the Chief Executive (CE) announced its details on 17 April 2002, the Panel should decide at a later stage whether the meeting on 30 May 2002 should be held.

IV. System of accountability for principal officials

(Legislative Council (LegCo) Paper on "Accountability System for Principal Officials" prepared by the Constitutional Affairs Bureau; LC Paper Nos. CB(2)1546/01-02; 1620/01-02; 1643/01-02 and 1650/01-02)

Work plan for the Panel

4. The Chairman drew members' attention to the LegCo Paper prepared by the Constitutional Affairs Bureau on the proposed accountability system for principal officials which was provided to LegCo Members on 17 April 2002 when CE addressed the Council on the issue. The paper set out the framework of the accountability system and the details of its implementation. The Chairman said that before proceeding to discuss the content of the proposed system, it would be desirable for members to first decide on a work plan for the Panel to deal with the matter. He referred members to a table prepared by the Secretariat which set out a number of available timeslots for future meetings.

5. Secretary for Constitutional Affairs (SCA) said that as announced by CE on 17 April 2002, the accountability system for principal officials would be implemented on 1 July 2002. It was the intention of the Administration to move a motion on the accountability system for debate at the Council meeting on 29 May 2002, and proceed thereafter with the relevant legislative and funding procedures necessary for implementing the system. Therefore, the Administration requested members to conduct meetings to discuss the matter as early as possible. He assured that the Administration would make its best efforts to assist members in the discussion of the matter.

6. The Chairman suggested that the Panel should draw up a meeting schedule for the purpose of discussing the proposed system.

7. Miss Margaret NG said that before the Panel could decide on a meeting schedule, members had to get a fuller understanding of the details of the proposed system and how the system would function in practice. In her view, the Administration should justify the urgency of implementing the proposed system by 1 July 2002. She said that in view of the complexities of the proposed system which involved matters of great public interest, in-depth discussion should not be sacrificed for the sake of expediency, and appropriate procedures had to be followed. She pointed out that matters such as the proposed legislative amendments to effect transfer of substantive powers and functions to the future principal officials and the proposed merging and splitting of policy bureaux under the new accountability system had to be thoroughly studied.

8. Mr CHEUNG Man-kwong doubted the practicality of implementing the accountability system by 1 July 2002. He said that given the importance and complexity of the matter, it would be undesirable to rush through discussion in haste without careful examination of the issues involved. He queried the need to set 1 July 2002 as the target date for implementation of the accountability system.

9. Mr Albert HO shared the view that sufficient time should be provided for members to consider the details of the proposed system, inter alia, the proposal to effect the transfer of statutory functions to the principal officials by means of subsidiary legislation.

10. SCA said that the Administration would go through all the necessary procedures with a view to implementing the new system on 1 July 2002. He reiterated that it would be helpful if the Panel could set in train a series of meetings to discuss the new system as soon as possible.

11. Ms Emily LAU, Ms Cyd HO and Mr Albert HO considered that it was necessary to conduct wide consultation now that details of the proposed accountability system had been announced by the CE. Ms Emily LAU doubted whether LegCo Members would be fully prepared for the motion debate on 29 May 2002 without thorough discussion on the matter. In her view, the Administration had not done enough public consultation before finalising the proposed system.

12. Mr LEE Cheuk-yan said that given the importance of the accountability system, the Administration should conduct an extensive public consultation exercise to solicit the community's views on the matter. He said that he saw no reason for the Administration to "bull-doze" the implementation of the proposed system hastily without proper consultation.

13. SCA responded that since CE announced the plan to review the accountability system for principal officials in his Policy Address in October 2000, the Administration had been soliciting views from the community through various channels. The Administration had had extensive discussions with the Panel on Constitutional Affairs, attended public consultation meetings conducted by the Panel, and exchanged views with academics and interested parties. He said that the Administration had carefully taken note of the views expressed in formulating the proposed system, and would continue to explain the details of the proposed system to the public at large. However, he had no objection for the Panel to consult the public on the new system.

14. Mr CHAN Kam-lam opined that the proposed accountability system should be implemented without delay. He supported a motion debate on the proposed system as suggested by the Administration.

15. Mr YEUNG Yiu-chung and Mr Howard YOUNG agreed that a meeting schedule should be drawn up to facilitate timely and systematic discussion of the proposed accountability system by members.

16. After some discussion, the Chairman decided to defer a decision on a meeting schedule for discussing the proposed accountability system.

Preliminary discussion on issues relating to the proposed accountability system

Constitutionality of the proposed system and related issues

17. Miss Margaret NG said that the proposed accountability system for principal officials was an important reform to the political system of Hong Kong, as it introduced substantive changes to the structure of the Government and the civil service. In her view, issues relating to the constitutionality of the proposed system in the context of consistency with the Basic Law and the appropriate means for implementation of the system should be studied in detail with full consultation.

18. Ms Emily LAU said that the Administration should explain in what way would the proposed system ensure that the Government of the Hong Kong Special Administrative Region was accountable to LegCo, and implement the Basic Law principle of gradual and orderly progress in the democratic development in Hong Kong.

19. SCA said that a blueprint for political and constitutional development in Hong Kong was prescribed under the Basic Law. The Administration would take necessary steps to ensure that the relevant Basic Law requirements would be followed.

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20. Ms Emily LAU pointed out that there were views that the proposed change from the existing procedure of CE appointing some of the principal officials to the ExCo to one under which all the politically appointed principal officials would automatically become members of ExCo was not consistent with the Basic Law. She said that the Administration should respond to this query. Moreover, the Administration should explain the changes, if any, to the functions and operation of ExCo brought about by the proposed system.

21. SCA said that the role of ExCo was clearly laid down in Article 54 of the Basic Law, and that role would not be changed under the accountability system. In the view of the Administration, the appointment of all principal officials under the accountability system as members of ExCo would not be in contravention of the Basic Law. Such arrangement would also improve the relationship between the Executive and the Legislature.

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22. SCA added that the Administration would prepare a paper on constitutionality of the accountability system for members' reference as soon as possible.

Political neutrality of the civil service and conflict of interest

23. Mr CHEUNG Man-kwong said that under the proposed accountability system, the civil service posts in bureaux at the rank of D8 would be re-titled as Permanent Secretaries and their statutory functions would be transferred to the respective new principal officials concerned. The Permanent Secretaries would work to their respective principal officials. Whereas the Permanent Secretaries would remain as civil servants, the principal officials whom they would assist might be appointed from outside the civil service. Mr CHEUNG asked the Administration to clarify -

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- (a) whether mechanisms were in place to protect the political neutrality of the civil service;
- (b) whether a Permanent Secretary could refuse to carry out instructions from a principal official if the former considered the instructions to be unlawful, or the carrying out of such instructions would be contrary to his conscience; and
- (c) whether the Permanent Secretary would be required to resign from office if he refused to carry out the instructions, and if so, whether the Permanent Secretary would be prohibited from revealing the reasons for his refusal to carry out the instructions after leaving office.

24. Secretary for the Civil Service (SCS) said that CE had clearly stated that under the accountability system, the civil service would continue to remain permanent, honest, meritocratic and politically neutral. He said that there were institutional safeguards within the civil service in the form of Civil Service Regulations and established guidelines. There were also formal and transparent complaints handling procedures and redress systems to ensure the proper discharge of the duties of civil servants. If civil servants felt aggrieved when being asked to act in any way which conflicted with their role as civil servants, they should report the matter through the established procedures for follow-up action. Also, where civil servants had knowledge of incidents which were considered to be criminal or corrupt, they were duty bound to report such incidents to the relevant enforcement authorities.

25. Mr CHEUNG Man-kwong said that the Administration should consider promulgating a code similar in nature to the Civil Service Code in the United Kingdom (UK). The Chairman added that the UK Code was in the process of being transformed into statute. In his view, consideration could be given to enacting the Civil Service Regulations into legislation.

26. Mr Albert HO said that the new accountability system, being a major reform to Hong Kong's system of Government, should be implemented and regulated by legislation. Moreover, as the principal officials under the proposed system would be politically appointed and vested with substantive powers, legislative safeguards against conflict of interest and abuse of powers and for the protection of people trying to unveil incidents of such misconduct should be introduced.

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27. The Administration was requested to explain the reasons for not proposing legislation to deal with the issue of conflict of interest.

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Appointment of principal officials from within the civil service

28. Mr James TIEN said that under the proposed accountability system, the principal officials might be appointed from within or outside the civil service, on terms different from the civil servants. They would be required to accept total responsibility for the success or failure of the outcome of policies falling within their respective portfolios. He asked whether the Administration would foresee some principal officials appointed from within the civil service having difficulties coping with such major changes.

29. SCS responded that the terms and conditions of employment as well as the duties and responsibilities of the principal officials under the accountability system would be clearly stipulated and made known to the appointees before the appointments were formally made. Except for the office-holder of the post of the Secretary for the Civil Service, who would come from the civil

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service and would not have to leave the civil service before taking up the appointment, all the other principal officers appointed from within the civil service would be required to sever their link with the civil service permanently. It was a matter for the individual officials concerned to decide whether to take up the appointment after taking into account all the circumstances.

Transfer of statutory functions

Adm 30. Referring to the LegCo Paper on the proposed accountability system prepared by the Constitutional Affairs Bureau, Miss Margaret NG said that the Administration should explain the justifications for the proposal to effect the transfer of statutory functions to the principal officials by way of a resolution under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1), and not by means of primary legislation.

Reorganisation of bureaux

Adm 31. The Chairman said that the proposed splitting and merging of the existing policy portfolios under the proposed accountability system would result in substantive changes to the Government structure. The grounds for introducing such major re-structuring should be clearly explained.

Adm 32. Mr HUI Cheung-ching pointed out that there were different views as to whether the proposed re-organisation of policy bureaux under the proposed system was appropriate. He suggested that the Administration should consider merging the portfolios of Commerce and Industry with Economic Services and Financial Services into one bureau.

V. Way forward

Clerk 33. Miss Margaret NG suggested that the Secretariat should prepare a list of issues raised by the Panel at previous discussions and that the Administration should provide a written response to these issues.

Clerk 34. Members agreed that a list of areas for study should be drawn up by the Secretariat to facilitate the discussion of the Panel on the proposed accountability system.

35. Members also agreed that another meeting should be held on 22 April 2002 at 8:30 am to continue discussion.

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36. There being no other business, the meeting ended at 6:50 pm.

(Post-meeting note - At the special House Committee meeting on 19 April 2002, a Subcommittee to Study the Proposed Accountability System for Principal Officials and Related Issues was formed to consider issues relating to the proposed accountability system for principal officials. The meeting of the Panel scheduled for 22 April 2002 was subsequently cancelled.)

Council Business Division 2
Legislative Council Secretariat
27 May 2002