

立法會
Legislative Council

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**Report of Panel on Constitutional Affairs
for submission to the Legislative Council**

Purpose

The report gives an account of the work of the Panel on Constitutional Affairs for tabling at the meeting of the Legislative Council (LegCo) on 3 July 2002 in accordance with Rule 77(14) of the Rules of Procedure of the Legislative Council (LegCo).

The Panel

2. The Panel was formed by a resolution of this Council on 8 July 1998 and as amended on 20 December 2000 for the purpose of monitoring and examining Government policies and issues of public concern relating to constitutional affairs. The terms of reference of the Panel are in **Appendix I**.

3. The Panel comprises 11 members. Hon Andrew WONG Wang-fat and Hon Emily LAU Wai-hing were elected Chairman and Deputy Chairman of the Panel respectively. A membership list of the Panel is in **Appendix II**.

Major work

System of accountability for principal officials

Background

4. In the 1999-00 legislative session, the Panel presented the "Report on the Development of the Political System of the Hong Kong Special Administrative Region" to the Council. A motion calling upon the Government to consider the views of Members on the Report and related issues was moved for debate and passed by the Council on 14 June 2000.

5. One of the recommendations made in the Report was that the Administration should consider implementing a more flexible contract system

for the appointment of principal officials so that they could be held politically accountable for their decisions.

6. In his Policy Address delivered in October 2000, the Chief Executive (CE) announced that the Government would consider how to enhance the accountability of principal officials at Secretaries and Directors of Bureau level for their respective policy portfolios by devising a compatible system of appointment for these principal officials. In his Policy Address in October 2001, CE outlined the proposed system of accountability applicable to the top three Secretaries and other Directors of Bureau. Under the proposed system, these principal officials would be appointed on terms different to those in the civil service. They would each be responsible for the policy portfolios designated to them by CE, and be held accountable for the success or failure of their policies.

Progress of deliberation of the Panel

7. Meetings to discuss the subject matter with the Administration and to seek public views were held by the Panel. A delegation of the Panel comprising Hon Andrew WONG Wang-fat, Chairman of the Panel, Hon HUI Cheung-ching and Hon YEUNG Yiu-chung also made a duty visit to the United Kingdom (UK), France and Germany during the period from 13 to 24 June 2001 to obtain first-hand information on the systems of executive accountability in these countries. A report on the duty visit prepared by the delegation was presented to the Panel and the House Committee on 27 August 2001 and 5 October 2001 respectively. The report was also provided to the Administration for its consideration.

8. The issue of whether it was appropriate to include the post of Secretary for Justice (SJ) in the proposed accountability system for principal officials was raised by the Panel. Some members expressed concern similar to that raised by the Hong Kong Bar Association that having the post of SJ filled by a political appointee would undermine the independence and impartiality of the post as an institutional safeguard for upholding justice. A member suggested that if SJ was to be politically appointed, the quasi-judicial functions of SJ and the power to take prosecution decisions independently and free from interference should be transferred to the Director of Public Prosecutions.

9. The Panel also requested the Research and Library Services Division to conduct two research projects, one on "Restrictions on Activities of Former Heads of Government and Former Senior Members of Government", and the other on "Process of Appointment of Senior Members of Government in Selected Countries".

10. The Research Report on "Restrictions on Activities of Former Heads of Government and Former Senior Members of Government" was presented to the

Panel at its meeting on 21 January 2002. The Report examined and compared the post-office arrangements applicable to former head of government and former senior members of government, including ministers, political appointees and senior civil servants in France, UK, the United States (US), California and Ontario. At its meeting on 18 February 2002, the Panel received views from academics on the introduction of an appropriate monitoring mechanism for regulating post-office activities of CE and principal officials so as to avoid possible conflict of interest. It was the view held by some members and academics that any restrictions on post-office activities should be promulgated before the implementation of the accountability system. Such restrictions should also be clearly stipulated in the employment contracts of the principal officials. Some members considered that legislation should be introduced for the monitoring of post-office activities of senior members of government.

11. The Research Report on "Process of Appointment of Senior Members of Government in Selected Countries" was presented to the Panel at its meeting on 18 March 2002. The Report detailed the appointment process of senior members of government, including political appointees (such as Cabinet Ministers and Cabinet Secretaries) in the UK, US and Singapore. It also identified a number of issues for the consideration of the Panel and the Administration relating to appointment and removal of principal officials.

12. The Panel was concerned about the timeframe for implementing the accountability system as CE had indicated his intention to have the system put in place by 1 July 2002. The Panel asked the Administration to provide details of the proposed system as soon as they were finalised. It also urged the Administration to ensure that there would be sufficient time for LegCo and the public to consider the proposed system in detail, and for the proposals to go through the necessary procedures, before the system was implemented.

13. The details of the proposed accountability system were announced by CE at the Council meeting on 17 April 2002. The Secretary for Constitutional Affairs also gave a briefing on the proposed accountability system to the Panel on 18 April 2002. At the meeting, which was also attended by non-Panel Members, the Panel identified a number of specific issues for study. At the special House Committee meeting on 19 April 2002, Members decided to set up a subcommittee to study the proposed accountability system for principal officials and related issues, as Members considered that the subject matter straddled a number of policy areas.

Application of certain provisions of the Prevention of Bribery Ordinance (POBO) (Cap. 201) to CE

14. In February 1999, the Panel requested the Administration to review whether certain provisions of POBO should be applicable to CE. Following a number of meetings of the Panel, the Administration agreed to introduce

legislative amendments to set out in separate provisions the bribery offences for exclusive application to CE. However, despite strong views from members that the relevant amendments should be introduced into LegCo for enactment as soon as possible so that the new regulatory mechanism could apply to the CE election in March 2002, the Administration had failed to provide a legislative timetable for the consideration of the Panel.

15. At the request of the Panel, the Chairman of the House Committee raised the matter with the Chief Secretary for Administration (CS) in June 2001. The Director of Administration subsequently responded that the Administration would proceed with the legislative amendment exercise with priority, and further consult the Panel once a proposal had been worked out.

16. At the meeting on 21 January 2002, the Administration informed the Panel that it was still examining the control framework under POBO, including all those provisions applicable to public servants and government officers. The Administration further advised that in considering applying the bribery prevention provisions to CE, it was necessary to take into account CE's unique constitutional position and the relevant Basic Law provisions. It was also necessary to reconcile CE's status under POBO, namely, CE was neither a government officer nor a public servant as defined in POBO. The Administration explained that in view of the complexities involved, more time was required to decide how the problems identified could be resolved, and whether any legislative provisions for exclusive application to CE should be given effect through amendments to POBO or other legislative vehicles. The Administration undertook to introduce the legislative proposal into LegCo in the next legislative session.

17. The majority of Panel members were dissatisfied with the situation. They considered that legislative changes should be introduced as a matter of urgency so that the same regulatory framework applicable to government officers and public servants under POBO should also apply to CE. They urged that the legislative proposal should be introduced into LegCo within the current legislative session. A report was made to the House Committee on 25 January 2002. At the Panel's request, the matter was raised with CS again by the Chairman of the House Committee.

Proposed election expense limit for the CE election

18. The Panel discussed the Administration's proposal to set the election limit for the CE election at \$9.5 million. According to the Administration, as the candidates for the CE election needed to carry out territory-wide campaigns, the election expense limit should be sufficient for the candidates to publicise their election platform to the public at large.

19. The Panel was of the view that an election expense limit should be

realistically set because an exceedingly high limit could have the effect of deterring people with insufficient means to stand for election. Some members considered that the proposed limit was too high, having regard to the fact that the Election Committee, which were responsible for electing CE, only comprised 800 members. Moreover, as CE was not elected by universal suffrage, the argument that the candidates running for the election of CE had to publicise their election platform to the public at large did not stand.

20. A member opined that the setting of an election expense limit for the CE election should take into account the constitutional role of CE as the head of the Hong Kong Special Administrative Region Government. In view of the important position of CE, it was acceptable for candidates to incur election expenses sufficient for the carry out of territory-wide campaigns. Another member was of the view that it was not necessary to prescribe an election expense limit, provided that an effective mechanism was put in place to ensure high transparency in the reporting of election expenses by the candidates.

21. The Administration explained that the setting of an election expense limit was to allow candidates to use as much financial resources as they were entitled to use to promote their election, subject to realistic estimates of the expenses which they could reasonably be expected to incur. The proposed amount only represented the upper limit, as opposed to the actual level, of election expenses that would be incurred by the candidates. Moreover, to safeguard against possible abuses, the Electoral Affairs Commission (EAC) had promulgated detailed guidelines to regulate conduct at election, which applied to all candidates including an incumbent CE seeking re-election.

22. The Maximum Amount of Election Expenses (Chief Executive Election) Regulation, which was gazetted on 9 November 2001, was scrutinised by a subcommittee set up on 12 October 2001 to examine all items of subsidiary legislation relating to the CE election.

Development of a new electoral and registration system

23. The Administration briefed the Panel on the development of an enhanced Electoral and Registration System (EARS), which was expected to be brought into operation by the end of 2003 and implemented for the 2004 LegCo elections. With enlarged capacity, the new EARS would be a multi-purpose system capable to maintain a comprehensive database on electoral records and other relevant information on electoral arrangements, such as election expenses incurred by election candidates. In addition, the new system would enable the existing arrangements for inter-departmental data matching with Immigration Department and Housing Department to be extended to other departments like the Transport Department and the Post Office.

24. As regards the life-span of EARS, the Administration advised that it was anticipated that the new system could be used for more than 10 years, depending on whether there would be significant changes to the electoral system in the future.

25. The Panel supported the proposed system and urged that it should be implemented as soon as possible.

Issues relating to employees of subvented organisations taking up public offices

26. Following discussion on the subject at previous meetings, the Administration informed the Panel in February 2002 that the Social Welfare Department had issued a set of guidelines in the context of "Good Practices" for reference by subvented non-government organisations (NGOs) in the welfare sector. The Administration maintained its stance that whether employees of subvented NGOs should be permitted to take up public offices and whether their remuneration should be reduced as a result were matters between the management of the bodies and their employees. It was the Government's subvention policy that flexibility should be given to those organisations in determining how they should operate, particularly in terms of manpower and financial practices. The Administration also pointed out that similar views had been expressed by the Hong Kong Council of Social Service on the matter.

27. Some members expressed dissatisfaction at the Administration's reluctance to change its position, despite the Panel's repeated requests urging the Administration to issue guidelines for subvented welfare NGOs on adjustment of salary of their staff taking up remunerated public offices, along the lines of those promulgated by the Hospital Authority (HA) and tertiary institutions funded by the University Grants Committee (UGC). They were of the view that as the use of public money was at stake, the taxpayers could hardly accept a situation where any employees of subvented organisations concurrently taking up two remunerative offices were allowed to receive full salary for both. Some members opined that although organisations in the subvented welfare sector should have independence in managing their staff and financial affairs, the impression should not be given that their employees were a privileged class as compared with those of other subvented bodies.

28. Another member pointed out that a distinction should be made between public office and private office. She was of the view that while the Government should study the desirability of introducing guidelines for subvented organisations, over-rigid requirements which might deter employees from engaging in public services should be avoided.

29. The Administration responded that most subvented welfare NGOs were

not fully funded by the Government. A direct comparison of these organisations with HA and the UGC-funded institutions was therefore not appropriate. In addition, welfare NGOs were providing a wide diversity of specialised services to the public. From the Administration's point of view, the crucial object which had to be met was that the services (and their quality) which the Government expected from the subvented organisations were actually delivered to the service recipients. The Government would review the subvention policy if the services failed to meet the set standards.

30. The Panel would take up the issue again with the Administration in the next session.

Composition of the second term District Councils (DCs)

31. The Panel held a joint meeting with the Panel on Home Affairs on 4 June 2002 to consider the proposals of the Administration concerning the composition of the second term DCs. The Administration proposed to maintain the status quo for the second term DCs, pending a comprehensive review of DCs to be conducted after the second term DC elections in 2003. In overall terms, it proposed to retain the existing district boundaries of the 18 DCs, which would continue to be made up of 390 elected members, 102 appointed members and 27 ex-officio members. Due to an overall population increase in the territory, the population quota for each District Council constituency would be increased from the existing 17 000 to 17 635. The size of elected membership for each district would also be maintained at the existing level. Before finalising the proposals, EAC would conduct a one-month public consultation in September 2002 to solicit views on the Administration's recommendations.

32. Some members of the Panels considered that in view of the sharp population increases in some districts and to be fair to the residents in the districts concerned, the number of elected seats for the districts should be increased. This would also assist EAC in its task of drawing up constituency boundaries in accordance with the population quota.

33. Some members also expressed dissatisfaction at the Administration's refusal to remove all appointed seats of the DCs, increase the number of directly elected seats and provide greater powers and responsibilities to DCs so as to enhance their roles and functions in the management of district affairs. In response to members, the Administration advised that these issues would be examined in the context of the comprehensive review of DCs to be conducted in 2003.

Other issues

34. The Panel was also briefed on the EAC's Report on the 2001 Legislative Council By-election and the Hong Kong 2001 Population Census - Maps and Tables for District Council Districts.

Panel meetings

35. From October 2001 to June 2002, the Panel held a total of 10 meetings, including one joint meeting with the Panel on Home Affairs.

Council Business Division 2
Legislative Council Secretariat
28 June 2002

Legislative Council Panel on Constitutional Affairs

Membership List

Chairman	Hon Andrew WONG Wang-fat, JP
Deputy Chairman	Hon Emily LAU Wai-hing, JP
Members	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 (Total : 11 Members)
Clerk	Mrs Percy MA
Legal Adviser	Mr Jimmy MA
Date	11 October 2001

Legislative Council

Panel on Constitutional Affairs

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to implementation of the Joint Declaration and the Basic Law, relations between the Hong Kong Special Administrative Region Government and the Central People's Government and other Mainland authorities, electoral matters and district organizations.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.