

*Process of Appointment of Senior Members of
Government in Selected Countries*

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Prepared by

**Mr Chau Pak-kwan
Mr Cheung Wai-lam**

**Research and Library Services Division
Legislative Council Secretariat**

5th Floor, Citibank Tower, 3 Garden Road, Central, Hong Kong

Telephone : (852) 2869 7735

Facsimile : (852) 2525 0990

Website : <http://www.legco.gov.hk>

E-mail : library@legco.gov.hk

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EXECUTIVE SUMMARY

1. Cabinet Ministers/Secretaries in the United Kingdom (UK), the United States (US), and Singapore are political appointees. In the UK, the Cabinet comprises some 20 Ministers. In the US, a President's Cabinet includes the Vice President and the Heads of 14 executive departments (Cabinet Secretaries). In Singapore, the Cabinet consists of the Prime Minister and 16 other Ministers.
2. In the UK, the US and Singapore, there are generally no specific criteria for a person to be eligible for ministerial posts, except for requirements concerning citizenship and allegiance. In a parliamentary system of government, such as the UK and Singapore, persons who hold ministerial posts are required to possess parliamentary qualification.
3. In the UK, most Cabinet Ministers are career politicians and are drawn from the Shadow Cabinet. In the US, Cabinet Secretaries are drawn from a variety of sources, especially those having close personal ties with the President. In Singapore, Ministers may be handpicked from the private sector by the ruling party to participate in politics.
4. In the US, appointment to a Cabinet office is undertaken only after the 'advice and consent' of the Senate have been obtained, following a detailed pre-checking process. In both the UK and Singapore, ministerial appointment is entirely at the discretion of the Prime Minister based upon the personal and political reputation of a candidate. There is no pre-checking on a candidate's fitness for ministerial office.
5. There is a big difference in ministerial salary levels among the countries covered in this study. Ministerial salaries in Singapore are at the higher end and are pegged with the private sector through a benchmark scheme. Ministerial salaries in both the UK and the US are kept at a more modest level.
6. In the UK, the US and Singapore, ministerial positions are different from civil service posts. Therefore, unlike civil servants, holders of ministerial posts do not have employment contracts. The relationship between the head of government and political appointees is political rather than contractual.
7. As regards the ways to avoid conflicts of interest, there is a fundamental difference among the countries covered in this study owing to the different systems of government adopted. The parliamentary system of government in both the UK and Singapore relies on codes of conduct to regulate Ministers' conflicts of interest. The presidential system of government in the US relies on statutory regulations.
8. In all three countries, ministerial positions are held by politicians and can be removed for political reasons. Conditions of removal are regulated either by constitutional conventions as in the UK or by legal means as in the US.

PROCESS OF APPOINTMENT OF SENIOR MEMBERS OF GOVERNMENT IN SELECTED COUNTRIES

PART 1 - INTRODUCTION

1. Background

1.1 On 21 January 2002, the Panel on Constitutional Affairs requested the Research and Library Services Division (RLSD) of the Legislative Council (LegCo) to conduct a study on the process of appointment of senior members of government in some selected countries. Senior members of government here refer to political appointees such as Cabinet Ministers and Cabinet Secretaries.

2. Scope of Research

2.1 The scope of the research covers:

- Qualification of Senior Members of Government
- Routes to Senior Members of Government
- Appointment Process
- Pay and Benefits
- Terms of Appointment
- Conflicts of Interest
- Removal of Senior Members of Government

2.2 This research studies the appointment process of senior members of government in the United Kingdom (UK), the United States (US) and the Republic of Singapore (Singapore). The UK is chosen because it is worthwhile to see how constitutional conventions have been used to regulate the appointment process. The US is chosen because it is a typical presidential government. The US President, subject to the approval of the US Senate, has the power to appoint Cabinet Secretaries. Singapore is chosen because it can serve as a useful reference in the Asian context.

3. Methodology

3.1 Information for this report is obtained from the Internet, government reports and relevant reference materials. Enquiries were also sent to the relevant authorities in the UK, the US and Singapore.

PART 2 - THE UNITED KINGDOM

4. Background

4.1 The United Kingdom (UK) is a unitary state with a parliamentary system of government. It has a bicameral legislature (the House of Commons and the House of Lords) and a judiciary, with the House of Lords being the highest court of appeal. The Head of State (i.e. the Monarch) is separated from the Head of Government (i.e. the Prime Minister), and the former performs largely ceremonial functions. The Prime Minister leads a Cabinet consisting of members of the legislature.

4.2 The UK does not have a constitution set out in any single document. Instead, its constitution is made up of statute law, common law, and conventions¹.

5. Composition

5.1 All Ministers in the UK are political appointees. The Prime Minister is appointed by the Queen, while the other Ministers are appointed by the Queen on the recommendation of the Prime Minister.

5.2 Departmental Ministers are usually in the Cabinet which comprises some 20 'Secretaries of State' or 'Ministers'. The Prime Minister decides which government departments to be represented in the Cabinet. By convention, certain departments are always represented. For instance, the Chancellor of the Exchequer, the Secretary of State for Foreign and Commonwealth Affairs, the Home Secretary, the Lord Chancellor², the Secretary of State for Defence, the Secretary of State for Scotland and the Leader of the House of Commons always hold seats in the Cabinet. Under the *Ministers of the Crown Act 1975*, certain Cabinet positions including the Lord Chancellor and three other Ministers are allocated to Members of the House of Lords. Cabinet Ministers are Ministers of the Crown and are usually referred to as senior Ministers.

¹ See Geoffrey Marshall, *Constitutional Conventions: The Rules and Forms of Political Accountability*, Oxford: Clarendon Press, 1984, reprinted 2001.

² The Lord Chancellor is both a departmental Minister and the head of the judiciary.

5.3 The Law Officers of the Crown — the Attorney-General and Solicitor-General — are ministerial posts and therefore these two office-holders change with the Government. The Attorney-General deals with questions of law arising on Bills and issues of legal policy, as well as all major international and domestic litigation involving the Government. He has statutory duties in relation to the Crown Prosecution Service.³ The Solicitor-General handles matters delegated to him by the Attorney-General. The current Attorney-General is a member of the House of Lords. There is an opinion that the Attorney-General should not be in the Cabinet because of his quasi-judicial functions with regard to prosecutions, and also because it is desirable to separate the giving of advice from those who decide whether to act on the advice.⁴

5.4 Ministers of State are middle-ranking Ministers, and usually have specific responsibilities (such as Minister for School Standard). The most junior Ministers are Parliamentary Under-Secretaries of State (or simply Parliamentary Secretaries).

5.5 There are some non-departmental Ministers who are holders of various traditional offices. The Prime Minister may wish to give duties to them. For example; the Chancellor of the Duchy of Lancaster is Minister for the Cabinet Office.

5.6 There are in law no limits on the number of Ministers who may be appointed. However, the *House of Commons Disqualification Act 1975* provides that not more than 95 holders of ministerial offices may sit and vote at any time in the House of Commons.⁵ Further, under the *Ministerial and Other Salaries Act 1975*, the size of the Cabinet is indirectly limited by the number of office-holders who may draw Cabinet Minister's salaries (see paragraph 9.2).

5.7 For the purpose of this research, we will focus our discussion on Cabinet Ministers. Matters relating to other Ministers will only be touched upon when appropriate.

³ In the UK, the Cabinet normally has no role on the decision on prosecution. That decision lies initially with the police. If the police feels that there is evidence to justify a prosecution, it will refer the case to the Crown Prosecution Service. The Director of Public Prosecutions is head of that Service and is not a ministerial position. The Attorney-General's role is limited to appointing the Director, determining his salary and the 'superintendence' of the Director. The Attorney-General's consent is required before certain prosecutions, such as offences under the Official Secrets Acts and the Public Order Acts, may be started. See Rodney Brazier, *Constitutional Practice: the Foundations of British Government*, 3rd ed., Oxford: Oxford University Press, 1999, pp. 109-110.

⁴ Paul Jackson & Patricia Leopold, *O. Hood Philips and Jackson: Constitutional and Administrative Law*, 8th ed., London: Sweet & Maxwell, 2001, p. 373.

⁵ The main reason is to strike a balance between the number of Ministers sitting in the House of Commons and the total membership of that House, which is 659.

6. Qualification

Competence and Experience

6.1 Although a person who has experience in a particular field will frequently be appointed to a department that matches his experience, there is no specific requirement for a Minister to have specialist knowledge of a department's work. However, when a Cabinet Minister is summoned to office, he usually has parliamentary experience behind him and has had experience as a junior Minister.

6.2 Despite the lack of formal qualification required of a Lord Chancellor, in practice, the person appointed is always a member of the legal profession.⁶ A Lord Chancellor often has a limited party political experience and little if any parliamentary background.

Parliamentary Qualification

6.3 In the UK, constitutional conventions require that each Minister has or obtains a seat in either House of Parliament. In other words, a potential candidate must not be disqualified from parliamentary membership in the first place.⁷

6.4 In the UK, an alien⁸ cannot sit in either House of Parliament. In addition, a person must be able to take the oath of allegiance to the Crown in order for him to sit in either House, and certain ministerial posts (especially Cabinet posts) require the oath of allegiance to be taken. In other words, for those individuals who could not take the oath, they would be disqualified from both Parliament and the Cabinet.

⁶ Before 1945, being the Attorney-General or the Solicitor-General was seen as the logical first step to becoming the Lord Chancellor. However, this has not been the case since then. See Diana Woodhouse, *The Office of Lord Chancellor*, Portland, Oregon: Hart Publishing, 2001, p.11.

⁷ The disqualifications for the House of Commons are (1) (a) minority (being aged under 21); (b) severe mental illness; (c) peerage (other than an Irish peerage); (d) alienage; (e) imprisonment for more than one year, or for an indefinite term; (f) bankruptcy lasting for more than 6 months; (g) conviction of corrupt or illegal practices; (h) being a clergyman; (i) holding some particular public offices; and (j) expulsion from the House. In the House of Lords, the only disqualifications are (a) minority; (b) alienage; (c) bankruptcy; and (d) conviction for treason.

⁸ No person born outside of the Kingdoms of England, Scotland or Ireland or the dominions shall be capable to be a member of either House of Parliament.

Disqualification

6.5 Although a small number of British civil servants (holding positions where personal unreliability might give rise to serious risks to national security) are subject to security checks, Ministers and potential Ministers are exempt from them.⁹

6.6 The existence of a criminal record may not disqualify a person from ministerial office, but convictions for offences involving corruption, dishonesty, serious violence or serious sexual misconduct could jeopardize a person's prospect of a ministerial career.

6.7 Although peers (Members of the House of Lords) are not disqualified from most ministerial positions, only a limited number of them will be called upon to fill the Cabinet posts. It is more desirable to have Ministers of important government departments to be represented in the House of Commons because it is the representative chamber.

7. Routes

7.1 A Minister appointed to the Cabinet will often possess experience as a junior Minister.¹⁰ In a typical route, a back-bencher might become a Parliamentary Private Secretary¹¹, a Parliamentary Under-Secretary of State, and then a Minister of State, before reaching the Cabinet.

7.2 In the UK, most Cabinet Ministers are drawn from the Shadow Cabinet¹². (see paragraph 8.2) The path which a politician takes to become a senior Minister depends on his party allegiance. If he is a member of the Labour Party, he will need to convince his party colleagues of his qualities to ensure his election to the Shadow Cabinet. If he is a member of the Conservative Party, he will need to provide the party leaders with evidence that his skills are required in the Shadow Cabinet to ensure his selection to the Shadow Cabinet. In both parties, seniority, previous ministerial experience, age, promise, parliamentary and presentation skills will all be considered by those who have the power to place him in the Shadow Cabinet.

⁹ There is a view that probing of politicians' private lives by the Security Service did not and should not take place in the absence of any security risk. See Rodney Brazier, *Ministers of the Crown*, Oxford: Oxford University Press Inc., 1997, p.71.

¹⁰ See Donald D. Searing, "Junior Ministers and Ministerial Careers in Britain," in Mattei Dogan ed., *Pathways to Power: Selecting Rules in Pluralist Democracies*, Boulder, Colorado: Westview Press Inc., 1989, pp. 141-67.

¹¹ Parliamentary Private Secretaries are assistants to Ministers and do not hold ministerial posts. A Parliamentary Private Secretary advises a Minister on the state of parliamentary opinion, acting as a communication medium between Members of Parliament and the Minister.

¹² It is the opposition party Cabinet which mirrors the Cabinet in power.

7.3 Most of the Ministers in the UK are career politicians. A large proportion of Ministers in the UK had a lawyer or business management background, based on statistics between 1945 and 1981.¹³

8. Appointment Process

8.1 The Queen appoints the leader of the political party who can command a majority in the House of Commons as the Prime Minister. The actual choice of the Prime Minister is dictated by the election process within the major political parties and, where relevant, by the result of a general election.

8.2 Other Ministers are appointed by the Queen on the advice of the Prime Minister. In theory, the Prime Minister has considerable freedom to choose his Ministers. In fact, the Prime Minister faces many practical and political constraints, such as those mentioned in paragraph 5.6.¹⁴ A new Prime Minister is compelled—either by party rules or by political traditions—to rely on Shadow Cabinet members to form his first Cabinet. The Labour Party's Standing Orders require members of the Parliamentary Committee (most of its members are elected by the Parliamentary Labour Party) to be included in the Cabinet when the party is in power. Although there are no party rules advising the leader of the Conservative Party about whom to choose for the Shadow Cabinet, it has been a custom that Cabinet members are mostly drawn from Shadow Cabinets when the Conservative Party comes to power.

8.3 Ministers are the Queen's Ministers, as the prerogative gives her the formal legal power to appoint and dismiss Ministers. However, although the Prime Minister recommends and the Queen makes the appointments, the Queen by convention must act on prime ministerial advice. Nevertheless, the Queen may require the Prime Minister to justify a nomination.¹⁵

8.4 Ministers achieve office in law in a variety of ways.¹⁶ New Cabinet Ministers must take the oath of office and kiss the Queen's hands. For those Ministers (such as junior Ministers) that can assume their offices without any special procedure or document, their appointments take effect from the moment the Queen approves the relevant recommendations from the Prime Minister. All Cabinet appointments must be published in the *London Gazette* in order that the Ministers may be paid the appropriate salaries.¹⁷

¹³ See Jean Blondel, *Government Ministers in the Contemporary World*, London: Sage Publications Ltd., 1985, Appendix II.

¹⁴ For further discussion, see Simon James, *British Cabinet Government*, 2nd ed., London: Routledge, 1999, pp. 101-105.

¹⁵ See Rodney Brazier, *Constitutional Practice: The Foundations of British Government*, 3rd ed., Oxford: Oxford University Press Inc., 1999, p. 68.

¹⁶ For more detailed information, see Rodney Brazier, *Constitutional Practice: The Foundations of British Government*, 3rd ed., Oxford: Oxford University Press Inc., 1999, Appendix C.

¹⁷ It is required by the *Ministerial and Other Salaries Act 1975*.

9. Pay and Benefits

Ministers' Pay

9.1 The maximum salaries payable to the Prime Minister and other Cabinet Ministers are prescribed by the *Ministerial and Other Salaries Act 1975*, as varied by subsequent Orders in Council. The making of such an Order in Council is subject to the prior approval of the House of Commons.¹⁸ Ministers' salaries are adjusted annually in line with the average increase in the mid-points of the senior civil service pay bands, with a full review every three years by the Senior Salaries Review Body (SSRB). The SSRB is an independent pay review body which periodically reviews ministerial and parliamentary pay and allowance at the request of the Government.¹⁹

9.2 Under the *Ministerial and Other Salaries Act 1975*, a maximum of 110 persons may be paid as holders of ministerial offices and not more than 21 office-holders can be paid Cabinet Ministers' salaries.

9.3 The Lord Chancellor's salary is determined separately. The *Ministerial and Other Pensions and Salaries Act 1991*, as amended by the *Ministerial and Other Salaries Order 1996*, provides that the Lord Chancellor should receive £2,500 a year more than the salary payable to the Lord Chief Justice.

9.4 All prescribed ministerial salaries are maximum salaries. Ministers may, for whatever reasons, choose to accept lower salary. The House of Commons may exercise its right to reduce a minister's salary in order to call attention to a grievance or to censure the conduct of a department. In 1976, helped by a mix-up in voting, the opposition party carried a resolution calling for a reduction of £1,000 in the salary of the Secretary of State for Industry, which was overridden a week later.

9.5 Ministers who sit in the House of Commons also receive the full parliamentary salary. Ministers in the House of Lords are not entitled to a parliamentary salary, but they receive higher ministerial salary.

¹⁸ For detailed information on the development of ministerial salaries in the United Kingdom, please refer to HC Factsheets – Members Series No 6, *Ministerial Salaries*, available at <http://www.parliament.uk/commons/lib/fs31.pdf>

¹⁹ For detailed information about the SSRB, please see Appendix I.

9.6 The current maximum salaries for some Ministers are as follows (payable from 20 June 2001):

Table 1 - Annual Maximum Salaries of Some Ministers

Office-holders	Ministerial Salary		Total Salary (inc. Full Parliamentary Salary)	
	£	HK \$	£	HK \$
Prime Minister	113,596	1,272,275	165,418	1,852,682
Cabinet Minister	68,157	763,358	119,979	1,343,765
Solicitor General	59,386	665,123	111,208	1,245,530
Lord Chancellor*	173,875	1,947,400	--	--

Remark: * The Lord Chancellor receives £24,343 of his salary from the House of Lords in respect of his Speaker's salary, the remainder (£149,533) is paid from the Consolidated Fund.
1£= HK\$ 11.2

Ministers' Pay Comparison with Private and Public Sectors

9.7 In 2001, the SSRB published a review report on parliamentary pay and allowances (including salaries of Ministers).²⁰ During the review, the SSRB employed a consulting firm, Hay Management Consultants Ltd. (Hay), to study how salaries of Ministers had moved in relation to their counterparts in both the public and private sectors since 1996.

9.8 In the report, Hay provided a job size relativities for ministerial and parliamentary roles and their comparisons with illustrative roles in both the private and public sectors. Table 2 below shows job size relativities for major ministerial roles.

²⁰ Review Body on Senior Salaries, Report No. 48, *Review of Parliamentary Pay and Allowances*, Vol. 1&2, March 2001, Cm 4997 I & II.

Table 2 - Job Size Relativities for Major Ministerial Posts**Responsibility Levels (Estimated)**

Level*	Jobs	Sample Public Sector Comparisons	Sample Private Sector Comparisons
1	Prime Minister	N/A	N/A
2	N/A	N/A	N/A
3	N/A	N/A	Chairman of global companies e.g. in energy
4	N/A	N/A	Chairman of very large international companies
5	Cabinet Minister (large)	N/A	Chairman of biggest UK plcs
6	Cabinet Minister (median)	Cabinet Secretary	Managing Director / Chief Executive of biggest UK plcs
7	Cabinet Minister (smaller)	Permanent Secretary to the Treasury; Chief of the Defence Staff	

Remark: * represents levels of responsibility. The report contains no information on the definition of these levels, and we are awaiting replies from Hay regarding this issue.
plcs--Public Limited Companies

Source: Review Body on Senior Salaries, Report No. 48, *Review of Parliamentary Pay and Allowances*, Vol. 2, March 2001, Cm 4997-II, p.3.

9.9 In the review report, Hay also tried to provide an external market comparison of ministerial salary based on a different set of criteria. The comparables they used in the private sector were exclusively board members and directors of major companies. Table 3 below shows the salary entitlements (not salaries taken) by Ministers with Base Salary data from the Hay Survey of Boardroom Remuneration for 2000. The information in Table 3 represents base salary information only. Most, if not all, comparables would also receive in addition annual bonus payment eligibility, share options and often some form of long-term incentive plan. Hay's findings indicated that ministerial salary relativities with external comparables had increased slightly over a four year period since 1996.²¹

²¹ Review Body on Senior Salaries, Report No. 48, *Review of Parliamentary Pay and Allowances*, Vol. 2, March 2001, Cm 4997-II, Section VI.

Table 3 - Minister External Pay Comparison (Base Pay Only) for 2000*Data from the Hay Boardroom Guide (Survey of Boardroom Remuneration)*

	Salary Entitlement		External Boardroom Remuneration			
	Commons	Lords	1 st Quartile	Median	3 rd Quartile	Average
Prime Minister	£158,658			£585,000*		£654,000*
Cabinet Minister	£114,543	£85,983	£501,000	£555,000	£621,000	

N.B. Salaries in the House of Commons include both the Ministerial and Parliamentary Salaries.

Remark: * In relation to job weights, there is little or no pattern in the external pay market at levels above that of Cabinet Ministers, and there is in any case no direct comparator elsewhere to the job of the Prime Minister. The remuneration figures comparable to that of the Prime Minister are the base salaries of the largest roles in Hay's remuneration databases. Few companies would have pay differentials as narrow as those illustrated if they had jobs as far apart in weight terms as the Prime Minister and Cabinet Ministers.

Source: Review Body on Senior Salaries, Report No. 48, *Review of Parliamentary Pay and Allowances*, Vol. 2, March 2001, Cm 4997-II, p.5.

Ministers' Benefits

9.10 Various allowances covering travel, subsistence and office expenses are available to Ministers.²² There are published guidelines on the use of official cars and on rail and air travel by Ministers.²³

9.11 Some Ministers, including the Prime Minister, the Chancellor of the Exchequer, and the Secretary of State for Foreign and Commonwealth Affairs, have official residences.

9.12 On leaving office, Ministers receive a pension through contributions from their ministerial salaries made to the Parliamentary Contributory Pension Fund. Ministers are also entitled to a severance payment of one quarter of their final salaries when they leave office for whatever reason, providing that the individual has not reached the age of 65 and is not appointed to another paid office in either House within a period of three weeks. The Prime Minister and the Lord Chancellor are not entitled to severance payments under this scheme as they have preferential pension rights.

²² For details, please refer to <http://www.cabinet-office.gov.uk/civilservice/min-mp-pay/allow.htm>.

²³ For details, please refer to <http://www.cabinet-office.gov.uk/central/2001/travel.htm>.

10. Terms of Appointment

10.1 Ministers do not have contracts of employment²⁴ and hold offices at the pleasure of the Queen. They may be removed on political grounds either by Parliament or by the Prime Minister.

11. Conflicts of Interest

Previous Employment

11.1 To avoid conflicts of interest, when Ministers are first appointed, they are expected to relinquish all outside appointments and consequently forgo the salaries they might otherwise have drawn. However, the prohibition of other employments is only based on custom and practice.

Declaration of Interest

11.2 On appointment to each new office, Ministers are required to provide Permanent Secretaries with a full list in writing of all interests which might give rise to a conflict. The list covers not only the Minister's personal interests, but also those of a spouse or partner, of children who are minors, of trust of which the Minister or a spouse or partner is a trustee or beneficiary, or closely associated persons.

11.3 The interests to be declared cover financial instruments and partnerships, financial interests such as unincorporated businesses and real estate, as well as relevant non-financial private interests such as links with outside organisations, and previous relevant employment.

11.4 The personal information which Ministers disclose is treated in complete confidence and may not be disclosed without their permission.

11.5 Both the House of Commons and the House of Lords maintain a Register of Members' Interests. Ministers who are members of either House have to file their returns.

²⁴ Robert Watt, "The Crown and its Employees," in Maurice Sunkin & Sebastian Payne, *The Nature of the Crown: A Legal and Political Analysis*, Oxford: Oxford University Press, 1999, pp. 283-314 at p. 313.

General Principles

11.6 There are rules specifically designed to ensure that no conflict arises between Ministers' public duties and their private financial interests. These rules are codified in Section 9 of the *Ministerial Code*²⁵. The main rules are as follows:

- (a) Ministers must order their affairs so that there is no conflict between their private interests and their public duties. They must not take an active part in any undertaking which may have contractual or other relations with any government department. This could arise not only if the Minister had a financial interest in such an undertaking, but also if he was associated with any body (even of a philanthropic character) which might have dealings or disputes with the government.
- (b) On assuming office, Ministers must resign *all* directorships which they hold in *any* company, as well as any directorships or offices held in any philanthropic undertaking if there is any risk of conflict arising through such an undertaking.
- (c) Ministers who are partners in professional firms, such as solicitors or accountants, must on taking office cease to play any day-to-day part in their firms' affairs—although they do not need to dissolve the partnership or let any practising certificate lapse.
- (d) Ministers are not expected to dispose of all their investments, but if they hold a controlling interest in a company, a conflict of interest could then arise similar to those attaching to a directorship and such a controlling interest should be disposed of. If shares are held in any company which could have dealings with the Minister's department, then, again, there could be a conflict of interest and those shares should be sold.
- (e) No Minister should accept a gift or services which would place him under an obligation to a commercial undertaking.

²⁵ In the UK, major principles of ministerial conduct are regulated through the *Ministerial Code: A Code of Conduct and Guidance on Procedures for Ministers*. In February 2001, the House of Commons Public Administration Select Committee in its report '*The Ministerial Code: Improving the Rule Book*', claimed that this document has become one of public constitutional significance. It recommended that the Parliamentary Ombudsman should have powers to investigate alleged breaches of the Code and report to the Prime Minister; that investigations should *not* be carried out by the Cabinet Secretary; that the Parliamentary Commissioner for Standards should advise Ministers on their responsibilities under the Code; that the Prime Minister should be responsible to Parliament for upholding the Code; and that a further freestanding code of ethical principles for Ministers should be drawn up, with the formal Code being presented to Parliament within three months of a general election.

11.7 In the event of doubt about any of these rules, Ministers should consult the Prime Minister, who will be the final judge, with the advice of the Secretary of the Cabinet.

Post-Office Employment Restriction²⁶

11.8 On leaving office, Ministers should seek advice from the independent Advisory Committee on Business Appointments about any appointments they wish to take up within two years of leaving office, other than unpaid appointments in non-commercial organisations or appointments in the gift of Government, such as Prime Ministerial appointments to international organisations. Specific guidelines are developed to monitor the acceptance of appointments or employment outside Government by former Ministers, which is provided in Appendix II.

Disclosure of Government Information After Office

11.9 Papers or information relating to the proceedings of Cabinet or Cabinet Committees, or any briefing or correspondence relating to them, are classified and must not be made public.

11.10 Ministers relinquishing office without a change of Government should hand over to their successors those Cabinet documents required for the current administration and should ensure that all others are destroyed. On a change of Government, the outgoing Prime Minister issues special instructions about the disposal of the Cabinet papers of the outgoing administration.²⁷

11.11 While serving as Ministers, they may not enter into any agreement to publish their memoirs on leaving their ministerial positions, without the agreement of the Prime Minister. If former Ministers decide to publish memoirs, they are required to submit their manuscripts to the Secretary of the Cabinet and to conform to some specific principles. A Minister may not receive payment for a book written before becoming a Minister if the decision to publish is taken afterwards.

²⁶ For more detailed information, please refer to, "Restrictions on Activities of Former Heads of Government and Former Senior Members of Government," Research and Library Services Division, Legislative Council Secretariat, January 2002.

²⁷ *The Ministerial Code: A Code of Conduct and Guidance on Procedures for Ministers*, para. 19-20.

12. Removal

12.1 Since all Ministers hold office at the Queen's pleasure, their removal can be determined by her on the Prime Minister's advice at any time. A Minister may be removed in the following situations:

- (a) when a whole Government resigns;
- (b) in a ministerial reshuffle;
- (c) when he fails to fulfil the requirements of collective responsibility²⁸; and
- (d) when he breaches the requirements of individual responsibility²⁹.

12.2 If a Government is defeated at a general election and one opposition party is returned with a majority of seats in the House of Commons, the whole Government (all the Ministers) is to resign. Additionally, if a Government loses a vote of confidence³⁰ in the House of Commons, the Prime Minister must resign and the whole Government will resign with him.³¹

12.3 In the situation of reshuffling, a Minister might be removed simply because his performance is below expectations or the requirements of the Prime Minister, or he is politically unpopular, or he may be too old.

12.4 When a Minister feels that he profoundly disagrees with a policy, or no longer identifies with the Prime Minister's general policy orientation, the doctrine of collective ministerial responsibility requires him to resign from the government.

²⁸ For more detailed information, please refer to "Systems of Government in Some Foreign Countries: The United Kingdom," Research and Library Services Division, Legislative Council Secretariat, April 2000.

²⁹ For more detailed information, please refer to "Supplementary Information: Systems of Government in Some Foreign Countries," Research and Library Services Division, Legislative Council Secretariat, June 2000.

³⁰ For further discussion about confidence motions in the UK, please refer to "Confidence Motions," Research Paper 95/19, House of Commons Library, February 1995.

³¹ A Prime Minister may be forced to go through illness or old age, or may die in office, or he may be replaced in the party leadership election. Then the Prime Minister may offer his resignation to the Queen. However, this does not cause or represent the removal or resignation of any other Ministers.

12.5 The individual responsibility of Ministers for the work of their departments means that they have a duty to Parliament to account, and to be held account, for the policies, decisions and actions of their departments and agencies. Under the *Ministerial Code*, Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister.³²

12.6 A Minister is also expected to be responsible for his personal conduct, such as conduct in relation to sexual and financial matters. When a Minister leaves the government for breaching of the requirements regarding such responsibility, it can be seen as a punishment for his misbehaviour. Considerable pressure may have been put on him — by his ministerial colleagues, his parliamentary party, his constituency and particularly the media — to take responsibility for his actions and to resign.

12.7 There are very few constitutional or legal formalities which are required for a Minister to vacate his office. The Prime Minister's advice to the Queen to appoint a replacement is all that is required to remove a Minister from office.

12.8 When the government as a whole is leaving office, the Prime Minister's resignation carries with it the resignation of all Ministers. In other cases, as a matter of custom, an outgoing Minister usually submits a letter of resignation to the Prime Minister. The letter, together with the Prime Minister's reply, are published in a press release from the Prime Minister's Office.

³² *The Ministerial Code*, Section 1.

PART 3 - THE UNITED STATES OF AMERICA

13. Background

13.1 The United States (US) Constitution applies the doctrine of separation of powers, which means that the three branches of government, the executive, the legislature and the judiciary, are separated from one another with divided mandate of power conferred by the Constitution.

13.2 The President of the US is both the Head of State and Head of Government. The Executive Office of the President consists of 14 executive departments and a number of staff organizations. The executive departments are created with the approval of the Congress to carry out day-to-day enforcement and administration of federal laws.

13.3 The Congress is a bicameral legislature, which is composed of the House of Representatives and the Senate. The Congress possesses legislative powers, the powers to approve budget, to scrutinize the executive branch and to propose constitutional amendment.

14. Composition

14.1 The United States Constitution makes no provision for a presidential Cabinet. The Constitution only provides that the President may ask opinions, in writing, from the principal officer in each of the executive departments on any subject in their areas of responsibility. The Cabinet has no collective responsibility for policy and is not a decision-making body. It is only one of many sources of advice to the President.

14.2 A President's Cabinet includes the Vice President and the Heads of 14 executive departments — the Secretaries of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Labor, State, Transportation, the Treasury and Veterans Affairs, and the Attorney General. All of these Heads are created by statutes.³³ They are chosen by the President and subject to the approval of the Senate. When the President leaves office, his Cabinet members are expected to resign.

³³ Secretary of Agriculture: 7 U.S.C. §2202, Secretary of Commerce: 15 U.S.C. §1501, Secretary of Defense: 10 U.S.C. §113(a), Secretary of Education: 20 U.S.C. §3411, Secretary of Energy: 42 U.S.C. §7131, Secretary of Health & Human Services: 42 U.S.C. §3501, Secretary of Housing & Urban Development: 42 U.S.C. §3532, Secretary of the Interior: 43 U.S.C. §1451, Attorney General: 28 U.S.C. §503, Secretary of Labor: 29 U.S.C. §551, Secretary of State: 22 U.S.C. §2651, Secretary of Transportation: 49 U.S.C. §102, Secretary of the Treasury: 31 U.S.C. §301, and Secretary of Veterans Affairs: 38 U.S.C. §303.

15. Qualification

Constitution

Incompatibility Clause

15.1 Clause 2, Section 6, Article I of the US Constitution, states that no officer "shall be a Member of either House during his Continuance in Office."³⁴ This clause is commonly known as the "Incompatibility Clause".

Ineligibility Clause

15.2 Clause 2, Section 6, Article I of the US Constitution prohibits Members of Congress from being appointed to any federal office created during their term of office, and to any federal office whose salary was increased during their term of office.³⁵ This clause is commonly known as the "Ineligibility Clause".

Statutes

15.3 There is no statutory qualification for a Cabinet Secretary candidate, except that the candidate of the Secretary of Defense must be a civilian.³⁶

Custom

15.4 When choosing his Cabinet Secretaries, the President must respect the custom in respect of selecting certain positions. Custom all but requires that the Attorney General - who heads up the Department of Justice - must be a lawyer. The Secretary of Agriculture must be either a farmer or from a state with significant farming interests such as Texas or Kansas. The Secretary of the Treasury, Secretary of Labor and Secretary of Commerce should have the confidence of the financial, organized labour and business sectors respectively. The Secretary of Education has been the preserve of educators.³⁷

³⁴ The President may still offer a post to a Member of Congress. If the offer is accepted, the member will have to resign his congressional seat. Anthony J. Bennett, *The American President's Cabinet*, New York: St. Martin's Press, 1996, pp. 19 & 128-130.

³⁵ Congress can reduce the salary of an executive position to permit someone from Congress to be appointed to the post, e.g. Senator Bentsen to become Secretary of the Treasury during the Clinton administration in 1993. Louis Fisher, *Constitution Conflicts Between Congress and The President*, 4th ed., US: University Press of Kansas, 1997, p. 25.

³⁶ Sec.113(a), Title 10 of the *United States Code*.

³⁷ Anthony J. Bennett, *op. cit.*, pp. 16-23.

16. Routes

16.1 When selecting Cabinet Secretaries, a President tends to first evaluate potential candidates from previous administrations of the same party.³⁸ From 1961 to 1992, the Presidents chose over 60% of their Cabinet Secretaries from the recruitment pool of those who had executive branch experience. The figure rose to more than 70% if replacement appointments during a presidential term were included.³⁹

16.2 Studies reveal that the second set of potential candidates of Cabinet Secretaries comprises friends and supporters of a President. They were usually involved in the personal campaign organizations of the President at both state and national levels. The personal ties with the President may be of great variety, such as personal lawyers, former classmates, state campaign chair and staff when the President was a state governor.⁴⁰

16.3 The legal profession has long been a training ground for political offices in the US, and legal practitioners find more opportunities under the Democratic than the Republican administrations. Meanwhile, the commerce and finance sectors provide specialists whom a President needs to head departments such as the Treasury and Commerce. On elective politics,⁴¹ Presidents have found more success in recruiting staff from the House of Representatives and state politics, rather than from the Senate. Recent Presidents have placed a good deal of importance on recruiting prominent academics as Cabinet members.⁴²

17. Appointment Process

17.1 The appointment process of Cabinet Secretaries can be divided into five stages — “selection”, “clearance”, “nomination”, “confirmation” and “appointment”.

³⁸ Jean Blondel & Maurizio Cotta, *Party and Government : An Inquiry into the Relationship Between Governments and Supporting Parties in Liberal Democracies*, New York: St. Martin's Press, 1996, pp. 207-211.

³⁹ Anthony J. Bennett, *op. cit.*, p. 126.

⁴⁰ Jean Blondel & Maurizio Cotta, *op.cit.* pp.207 and Judith E. Michaels, *The President's Call*, Pittsburgh: University of Pittsburgh Press, 1997, p.123.

⁴¹ The composition of elective politics includes Congressmen, State Governors, State Lieutenant Governors, State Legislators and City Mayors.

⁴² Anthony J. Bennett, *op. cit.*, pp. 221-222.

Selection

17.2 There are two distinct types of selection. First, there are those made at the beginning of a new administration by a newly elected President. Second, there are those appointments made during a presidential term.

New Cabinet

17.3 Between election day and inauguration day, the President-elect will select some 30 people to serve in his Cabinet and as his top White House staff. This process varies with Presidents-elect. In 1980, the selection of President-elect Reagan's Cabinet was entrusted to a talent-hunting group of old and trusted friends.⁴³ The selection process by President-elect Clinton in 1992 was reported as "a small group of people sat around a six-foot round table in the [Clinton's] family room, off the dining room, picked the Cabinet."⁴⁴ Overall, the selection process of the candidates at the beginning of a new administration is described as "a complicated process, largely conducted behind closed doors."⁴⁵

⁴³ The hunting group was headed by Reagan's personal attorney. The group advisors were amongst those who first persuaded Reagan to run for public office in California back in 1966. Anthony J. Bennett, *op. cit.*, pp. 79-80.

⁴⁴ The team consisted of President Clinton and his wife; Vice President; former Johnson and Carter administration official Warren Christopher; Vice President's Chief of Staff; a Little Rock attorney and the chief executive of an Arkansas gas company (both of them being President Clinton's friends). Anthony J. Bennett, *op. cit.*, pp. 199-200.

⁴⁵ Stephen Hess, "First Impression," *Brookings Review*, Spring 2001, Vol. 19, No.2, p. 28.

Replacement

17.4 For those appointments made during a presidential term, the selection process is organized under the White House Office of Presidential Personnel (the Presidential Personnel Office). The Presidential Personnel Office plays the lead by preparing a list of potential candidates for each vacancy, and its director recommends the top choices to the President. A former Director of the Presidential Personnel Office⁴⁶ offers this overview of the typical selection process:

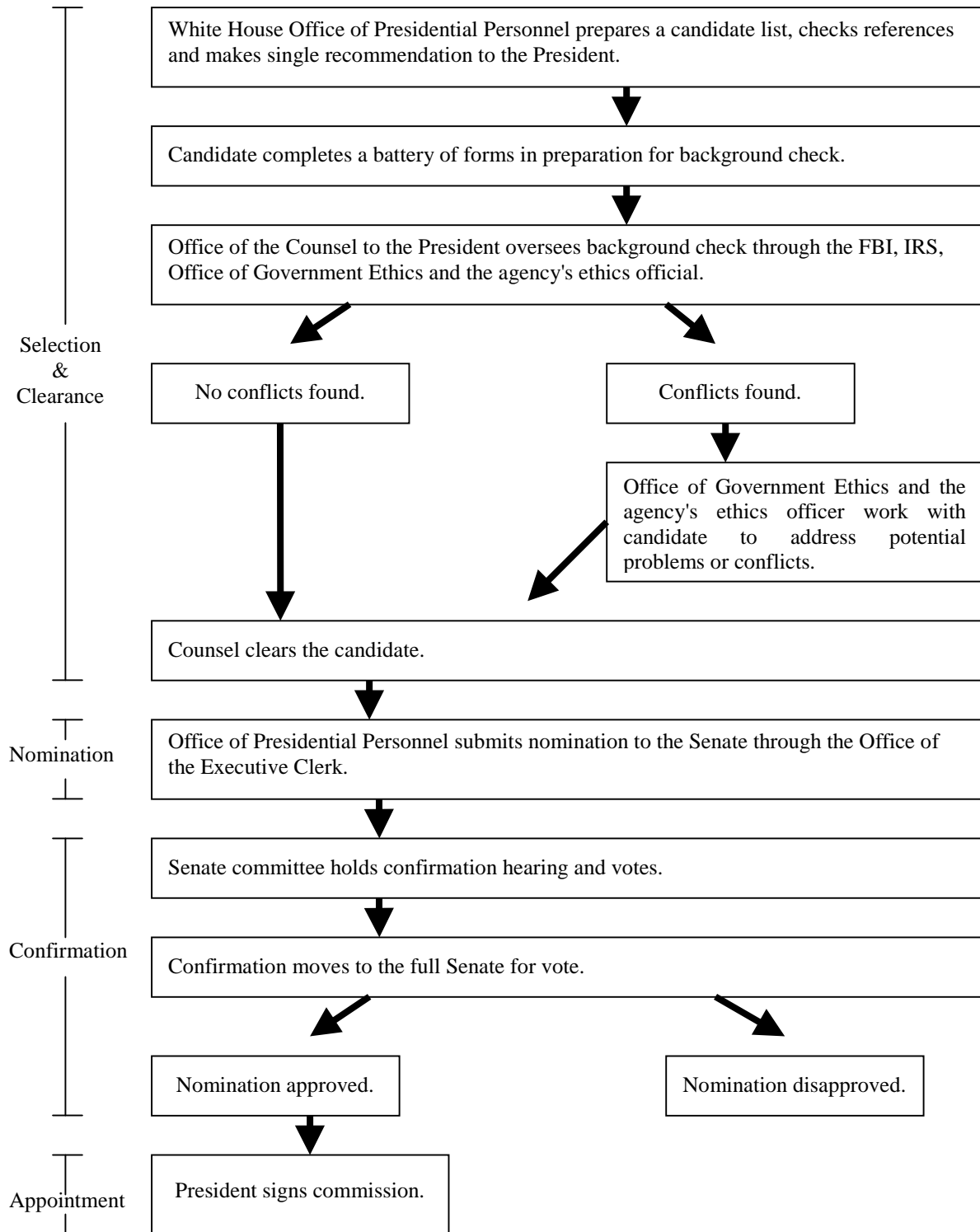
*"We get recommendations from everywhere — Senators, Congressmen, White House staff, interest groups, associations, all these different sources — when we have a vacancy..... When we get to a short list, we [might] do a Lexis-Nexis search, depending on how important the nomination is, because you want to see what they have written and said in major publications. We take all that information, and then I make a recommendation to the President through the Chief of Staff's Office; usually we are of one accord. It says: "Mr. President, I recommend this person for this position...." I send the President no more than a two-page description of the position, the person's background and why I recommended him or her. "*⁴⁷

The process of appointment is summarized in Figure 1.

⁴⁶ Bob Nash, the Director of the Presidential Personnel Office from 1994 under the Clinton's administration.

⁴⁷ *A Survivor's Guide for Presidential Nominee*, US: The Brookings Institution, November 2000, pp. 32-33, available at <http://www.appointee.brookings.org/>.

Figure 1- Overview of the Process of Appointment



Source: *A Survivor's Guide for Presidential Nominee*, US: The Brookings Institute, November 2000.

Clearance

17.5 With the President settling on a choice, the focus shifts to the Office of the Counsel to the President which oversees the clearance process. The Office will closely scrutinize the candidate's background, and if there are potential conflicts of interest, arrangements are made to address them.

17.6 If the candidate is an intended nominee for a Senate-confirmed post, he will receive a packet of forms from the White House. The forms include:

- (a) The White House's "Personal Data Statement Questionnaire," a confidential document that the candidate will be asked to fill out within 24 hours. The questions run from the candidate's medical condition to whether he ever hired a nanny, had a traffic ticket of US\$100 (HK\$780)⁴⁸ or more, or did anything that could embarrass himself, his family or the President.⁴⁹
- (b) The US Office of Personnel Management's Standard Form 86 (SF86), "Questionnaire for National Security Positions."⁵⁰ This form is needed for a candidate's security clearance and is the springboard for the Federal Bureau of Investigation's (FBI) full-field background investigation. Among other things, SF86 asks where the candidate lived, worked and went to school; about all foreign trips he took; and whether he ever consulted a mental health professional, had a criminal record, used controlled substances illegally, received treatment for alcohol abuse or filed for bankruptcy. The White House asks candidates to fill out SF86 within two weeks.⁵¹
- (c) The Office of Government Ethics' Standard Form 278 (SF278), "Public Financial Disclosure Report" for executive branch personnel, which requires an exhaustive listing of all assets, liabilities, jobs and board memberships. This form will be made public in its entirety upon request. Details of this form will be discussed in paragraph 20.2.⁵²

⁴⁸ The exchange rate in December 2001 was HK\$7.8 = US\$1. Census and Statistics Department, *Hong Kong Monthly Digest of Statistics*, December 2001.

⁴⁹ Please refer to *A Survivor's Guide for Presidential Nominee* for a sample of the questionnaire. The report can be downloaded from the following web site:

<http://www.appointee.brookings.org/survivorsguide.htm>

⁵⁰ SF86 generally is not made public, but will be forwarded to the Senate at a later stage. Some Senate committees may publish some or all of the candidate's answers with the hearing record, which is a public document.

⁵¹ SF86 can be downloaded from the following web site:

<http://www.opm.gov/forms/pdfimage/sf0086.pdf>

⁵² SF278 can be downloaded from the following web site:

http://www.usoge.gov/ogeforms/sf278_00.pdf

- (d) A consent form for the FBI investigation of the candidate's background.
- (e) A separate form allowing a check of the candidate's credit record.
- (f) An authorization for the release of medical information.
- (g) A "tax check waiver" allowing the Internal Revenue Service (IRS) to check the candidate's tax returns for the last three years and tell the White House whether he/she paid his/her taxes on time. The candidate will also be fingerprinted after the clearance and before the nomination.

17.7 Once the candidate has completed these forms, lawyers in the Office of the Counsel to the President will examine them. The Office will send the original financial disclosure form (SF278) to the Ethics Office of the candidate's future department and a copy to the US Office of Government Ethics (OGE). Lawyers from all three offices will confer on whether any of the candidate's holdings or activities pose potential conflicts of interest.⁵³ (Details please refer to paragraph 20.4.)

Nomination

17.8 All Cabinet Secretaries are nominated by the President. With the FBI background investigation finished, the financial forms completed and any potential problems addressed, the Office of the Counsel will notify the Director of Presidential Personnel Office that the candidate has been cleared. The Director of Presidential Personnel Office then sends a memorandum to the President through the Office of the Executive Clerk, which prepares a small nomination parchment with the candidate's name, home state and job. After the President has signed the document, it is hand-delivered to the Senate and the candidate is now formally nominated.

Confirmation

17.9 The Constitution provides that only the Senate's "Advice and Consent" are necessary for the appointments of "Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers" of the United States. The Senate acts in a unicameral capacity when it confirms presidential nominations.

⁵³ If necessary, the lawyers will negotiate with the candidate over steps to take to avoid conflicts if confirmed, which may include divesting stock, putting assets into a blind trust or signing a recusal not to take part in certain matters.

Senate Standing Committees

17.10 When a presidential nomination arrives in the Senate, the Executive Clerk of the Senate refers the nomination to one of the standing committees.⁵⁴ Table 4 shows the list of standing committees responsible for processing the nomination of Cabinet Secretaries.

Table 4 - List of Senate Standing Committees Responsible for Processing the Nomination of Cabinet Secretaries

Senate Standing Committee	Cabinet Secretaries
Committee on Agriculture, Nutrition, and Forestry	Secretary of Agriculture
Committee on Armed Services	Secretary of Defense
Committee on Banking, Housing, and Urban Affairs	Secretary of Housing & Urban Development
Committee on Commerce, Science, and Transportation	Secretary of Commerce and Secretary of Transportation
Committee on Energy and Natural Resources	Secretary of Energy and Secretary of the Interior
Committee on Finance	Secretary of the Treasury and Secretary of Health & Human Services (referred informally to Health Committee)
Committee on Foreign Relations	Secretary of State
Committee on Health, Education, Labor and Pensions	Secretary of Education and Secretary of Labor
Committee on the Judiciary	Attorney General
Committee on Veterans' Affairs	Secretary of Veterans Affairs

⁵⁴ The referral is guided by Senate Rule XXV, which lists the subject matter under each committee, by precedent or, when necessary, by the Senate leadership. Rogelio Garcia, "Presidential Appointee Positions Requiring Senate Confirmations and Committees Handling Nominations," *CRS Report for Congress*, Congressional Research Service, 7 May 2001.

17.11 The standing committee will get copies of the nominee's SF278 financial disclosure form, any ethics agreement the nominee made⁵⁵ and the SF86 questionnaire for sensitive positions, e.g. Secretary of Defense. Then the committee sends the nominee its own list of questions asking the nominee to recap his/her schooling, career and accomplishments all over again. (Please refer to Appendix III for examples of questions asked by some committees.) The committee will not schedule a hearing without the letter from the Office of Government Ethics attesting that the nominee are in compliance with the conflict-of-interest laws.⁵⁶

17.12 The committee staff may conduct their own investigation into the nominee's background.⁵⁷ If the committee asks to see the nominee's FBI background report, the Office of the Counsel to the President will deliver the report to the committee chairman and the ranking minority member to examine in private.

17.13 Each committee follows its own rules for handling nominations. Normally, there is a specified interval of days between the confirmation hearing and the actual vote to recommend a nomination favorably or, in rare instances, disapprove it. After the confirmation hearing, Committee members will vote on the nomination.

17.14 A senator may place a "hold" on a nomination during the committee stage. A hold is an informal Senate practice that permits any senator to delay a final vote on a nomination simply by informing the majority leader of his or her desire to do so. Sometimes such holds are placed while a senator gathers more information to help in deciding how to vote on the nomination. More often, holds are used to delay the final action on a nomination while a senator engages in a negotiation with the administration on some unrelated matters or seeks to get action on another nomination.⁵⁸ After the committee has completed the process, the nomination goes before the full Senate.

⁵⁵ Before a candidate is nominated by the President, he/she may be asked by agencies to sign an ethics agreement which will be forwarded to the Senate along with a letter from the Office of Government Ethics stating that the nominee is in compliance with the conflict-of-interest laws and regulations. Please refer to para. 20.2 for details. *A Survivor's Guide for Presidential Nominee*, p. 34.

⁵⁶ Most of the conflict-of-interest laws can be found in Title 5 of the *Code of Federal Regulations* and Section 207, Title 18 of the *United States Code*.

⁵⁷ For details of the investigation conducted by the committee staff, please refer to "The Process of Appointment of Judges in Some Foreign Countries: The United States," Research and Library Services Division, Legislative Council Secretariat, November 2000, para.10.3-10.5.

⁵⁸ *A Survivor's Guide for Presidential Nominee*.

The Full Senate

17.15 The Senate considers nominations in executive sessions, which are public and can occur any time the Senate is in session. Most nominations are approved by a voice vote without dissension, rather than by a roll call vote in which the numbers of yeas and nays are recorded. When that vote is finally cast, the Senate Clerk sends a confirmation resolution to the White House Executive Clerk stating that the Senate has advised and consented to the nomination.

17.16 Only on rare occasions does the Senate reject a Cabinet Secretary nomination, the most recent example being the disapproval of John G. Tower in 1989 to the position of the Secretary of Defense. The Senate rejected Mr. Tower's nomination after questions were raised about his personal behaviour and his linkage with defence contractors.⁵⁹ Prior to this rejection, the Senate had rejected only eight other Cabinet Secretary nominees since 1789.⁶⁰

Appointment

17.17 The White House Executive Clerk sends the commission to the President for his signature — the last step required to make the appointment official.

Oath

17.18 The oath of office, prescribed by the United States Constitution, is taken by the President and Vice President, as well as all Members of Congress, and also by all executive and judicial officers, as well as all federal government employees. It reads as follows:

"I do solemnly swear (or affirm) that I will faithfully execute the Office of (the appropriate office), and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

⁵⁹ A *Survivor's Guide for Presidential Nominee*, p. 129 and Anthony J. Bennett, *op. cit.*, p. 114.

⁶⁰ Anthony J. Bennett, *op. cit.*, p. 114 and Louis Fisher, *op.cit.*, p. 36.

18. Pay and Benefits

18.1 Salaries payable to Cabinet Secretaries are prescribed by Section 5312, Title 5 of the US Code. Cabinet Secretaries are placed at a pay rate equivalent to the Executive Schedule Level I.⁶¹ In 2002, the annual pay rate for the Executive Schedule Level I is US\$166,700 (HK\$1,300,260).

18.2 The salaries of Cabinet Secretaries are statutorily linked to the salaries of Members of Congress and federal judges.⁶² Table 5 shows the salary linkage among high-ranking federal officials, Members of Congress and federal judges.

Table 5 - Salary Linkage Among President, Vice President, High-level Federal Officials, Members of Congress and Federal Judges*

President, Vice President and High-level Federal Officials	Members of Congress	Federal Judges	Salary	
			US\$	HK\$
President #	N/A	N/A	400,000	3,120,000
Vice President	Speaker of House	Chief Justice of the Supreme Court	192,600	1,502,280
Cabinet Secretaries, Federal Reserve Chairman	President pro tempore of the Senate, Majority and Minority Leaders of the Senate and the House of Representatives	N/A	166,700	1,300,260
Deputy Cabinet Secretaries, Central Intelligence Agency Director	Senator, Member of House of Representatives	N/A	150,000	1,170,000

Remarks: * Effective on 1 January 2002.
 # The President's salary traditionally sets the upper limit for the salaries of top officials across the executive, legislative and judicial branches, and it was doubled in 2001 from US\$200,000 to US\$400,000. *3 U.S.C. § 102.*⁶³
 N/A Not applicable.

⁶¹ Executive Schedule has five Levels: Levels I through V (the lowest). Cabinet Secretaries are placed in Level I, Deputy Secretaries are in Level II, and Under Secretaries are in Level III.

⁶² Denise Cardman and Bruce Moyer, *Federal Judicial Pay Erosion*, US: The American Bar Association and The Federal Bar Association, February 2001, p. 1.

⁶³ *Ibid.*

18.3 According to "Forbes 800 Best Paid CEOs", the average annual salary of the 100 highest-paid executives in the US was US\$40 million (HK\$312 million) in year 2001.⁶⁴ According to Towers Perrin, the average annual salary of a Chief Execution Officer was US\$1.93 million (HK\$15.1 million) in 2001.⁶⁵

18.4 Under Section 356, Title 2 of the *United States Code*, the Citizens' Commission on Public Service and Compensation (the Commission)⁶⁶ reviews the salaries of high-ranking federal officials, Members of Congress and federal judges annually, and reports to the President the results of the review and its recommendations.⁶⁷ After considering the Commission's report, the President transmits to the Congress his recommendations with respect to the exact salaries which he considers to be fair and reasonable, the prevailing market value of the services rendered in the offices and positions involved, the overall economic conditions of the country, and the fiscal conditions of the Federal Government. The President's recommendations require the approval of the Congress.

18.5 Cabinet Secretaries can accrue pension benefits, and it generally takes five years to qualify for a pension. They are also eligible for health insurance. Nonetheless, they do not earn annual or sick leave, and are not charged leave for absence from work. Any leave is given at the discretion of the President.

19. Terms of Appointment

19.1 Generally speaking, Cabinet Secretaries serve as long as the President who appointed them remains in office. Cabinet Secretaries serve at the pleasure of the President and may be removed any time. Their appointments have no fixed term nor have a secure tenure.⁶⁸

⁶⁴ Salary included annualized bonus. Please refer to the following web site for details: <http://www.forbes.com/>

⁶⁵ Towers Perrin, *Worldwide Total Remuneration 2001-2002*, p. 20.

⁶⁶ Under Section 352, Title 2 of the *United States Code*, the Commission shall be composed of 11 members. Of the 11 members, six are appointed by leaders of the three branches and five are selected from the public at large; the names of these latter individuals are drawn by the Administrator of General Services from voter registration lists.

⁶⁷ Regarding the annual salary review, the Commission takes the Employment Cost Index (ECI) and provisions under Section 702 or 703 of the *Ethics Reform Act of 1989* into consideration. ECI is a quarterly index measuring the change in wages and salaries paid to private sector employees. Section 346, Title 2 of the *United States Code*.

⁶⁸ Committee on Governmental Affairs, *Policy and Supporting Positions*, United States Senate, November 2000.

20. Conflicts of Interest

20.1 The United States Office of Government Ethics (OGE) provides overall policy leadership for executive branch departments and agencies in the conduct of their ethics programmes. The OGE reviews public financial disclosure reports of Presidential appointees requiring Senate confirmation to determine if any entries on the forms may give rise to potential or actual violations of applicable laws or regulations and to recommend any appropriate actions.⁶⁹

Declaration of Interest

Public Financial Disclosure Report (SF278)

20.2 Persons who are nominated by the President for positions requiring confirmation by the Senate, i.e. Cabinet Secretaries, are required by law⁷⁰ to file the "Public Financial Disclosure Report" — SF278. SF278 is a public document listing the income, assets and liabilities of senior federal officials. As it is a public document, any individual can file a request to see a copy of an official's SF278. A nominee must report the following information in SF278:

Schedule A - Assets and Income

- a nominee must identify each asset held by him, his spouse or his dependent children worth more than US\$1,000 (HK\$7,800);
- a nominee must list assets having generated more than US\$200 (HK\$1,560) in income and list their value and type by category (dividends, rent and royalties, interest, capital gains, excepted investment fund, excepted trust or qualified trust); and
- a nominee has to disclose whether his income is: US\$1,000,001 (HK\$7,800,001) - US\$5 million (HK\$39 million), or over \$5 million (HK\$39 million).

Schedule B -Transactions and Gifts and Travel Expenses (A nominee need not complete Schedule B, but once confirmed, the official must report those transactions and gifts.)⁷¹

⁶⁹ *Transition Guidance*, The Office of Personnel Management, August 2000, p. 4.

⁷⁰ *5 C.F.R. part 2634*. It also states that senior officials by law must also file updates on 15 May of each year and when they leave government employment.

⁷¹ Once confirmed, the official is required to disclose any sale, purchase or exchange of stocks, bonds, properties, commodity futures and other securities that exceeded US\$1,000 (HK\$7,800), and to report any gifts and travel expenses of US\$260 (HK\$2,028) or more from a source.

Schedule C - Liabilities

- a nominee must report all his liabilities over US\$10,000 (HK\$78,000) that he, his spouse or children owe, excluding the mortgage on his home;
- a nominee must report all his credit card debts over US\$10,000 (HK\$78,000);
- a nominee must list other loans by date, interest rate and term; and
- a nominee must also report agreements or arrangements for any ongoing participation in a pension; severance payments; leaves of absence; and arrangements for future employment.

Schedule D - Outside Positions

- a nominee must report any positions outside government that he held at any point over the past two calendar years, paid or unpaid;
- a nominee must also report positions with any corporation, firm, partnership, business, non-profit organization and education institution;
- a nominee must report, for the two prior calendar years, the name of each client and customer for whom he personally performed more than US\$5,000 (HK\$39,000) worth of services; and
- a nominee must briefly describe these services, although he does not have to divulge the total amount paid.

Remedial Measures to Resolve Conflict-of-interest

20.3 Before certifying that a nominee is in compliance with the conflict-of-interest laws, the OGE and departmental lawyers often require a nominee to sign an ethics agreement that commits the official to take “remedial” measures to resolve the conflict within 90 days of being sworn in. These remedial measures include recusal agreements, waivers, qualified trusts and divestitures. Here is a brief description of each:⁷²

- (a) Recusal: the nominee agrees to recuse or disqualify himself or herself from participating in any discussion or decision on a matter that could affect the person’s financial interests.

⁷² Abstracted from *A Survivor's Guide for Presidential Nominee*, p. 43.

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- (b) Waivers: officials may grant an individual a waiver of the conflict-of-interest laws when the holding in question is not substantial. For example, the OGE might grant a waiver if an official owned only a few shares of a particular stock.
 - (c) Trusts: a blind trust may be set up as a remedy for a potential conflict of interest. It must include certain provisions and has an independent trustee approved by the OGE. Blind trusts are complex and seldom resorted to, except for nominees with considerable wealth or complicated holdings.
 - (d) Certificates of Divestiture: the OGE, under the 1989 Ethics Reform Act, is empowered to issue certificates permitting federal officials to defer paying capital gains taxes on assets they must sell to comply with ethics programme requirements. The certificate of divestiture must be obtained from the OGE before the sale occurs.

Post-office Employment Restriction

Section 207, Title 18 of the United State Code (18 U.S.C. § 207)

20.4 Some parts of this criminal law apply to all former executive branch employees, while others restrict only former senior officials. The following overview highlights the limitations on Cabinet Secretaries' employment activities after they leave the executive branch services:⁷³

- (a) They are restricted from making representational contacts for one year with any Executive Schedule employee (i.e. Cabinet Secretaries, Deputy Secretaries, Under Secretaries, and Assistant Secretaries, etc.) serving in any agency.
- (b) They are subject to a one-year ban on assisting a foreign government or foreign political party, with an intent to influence any executive branch employee.
- (c) They are barred permanently from representational contacts with the entire executive branch and all federal courts on a matter (such as a contract, grant, or lawsuit) which they worked on while they were government employees. If they have merely supervised others who worked on that matter during their last year of service, they are restricted from making representational contacts for only two years.

⁷³ Abstracted from United States Office of Government Ethics, "Understanding the Revolving Door," available at <http://www.usoge.gov/>.

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-
- (d) If they have worked on certain trade or treaty negotiations during their final year of government services and have had access to certain restricted information, they are also barred for one year from assisting anyone other than the United States concerning those negotiations, on the basis of the restricted information.

*The Ethics Pledge, Executive Order 12834*⁷⁴

20.5 In 1993, President Clinton issued an Executive Order 12834, which has applied to all senior appointees, i.e. Cabinet Secretaries, who served in the Clinton Administration. The restrictions in this contractual ethics pledge are more restrictive than that stipulated in Section 207, Title 18 of the United State Code:

- (a) They are barred for 5 years from lobbying any employee of their former agency and any other agency for which they have had personal and substantial responsibility as senior appointees.
- (b) They are barred permanently from activity on behalf of any foreign government or foreign political party that would require them to register under the Foreign Agents Registration Act.

Disclosure of Government Information After Office

20.6 Official records must remain in the custody of the federal agency. There are criminal penalties for the unlawful removal or destruction of federal records and the unlawful disclosure of national security information.⁷⁵

Professions of Cabinet Secretaries Immediately Upon Leaving Cabinet

20.7 From 1961 to 1993⁷⁶, 147 appointments were made to Cabinet Secretaries, which involved 132 different men and women.⁷⁷ Of these 132 persons, the immediate whereabouts of 105 upon leaving office were identified.⁷⁸ Table 6 shows the distribution of professions of these Cabinet Secretaries immediately upon leaving Cabinet.

⁷⁴ An executive order is enforceable through agency debarment proceedings or civil action by the Attorney General. The following statements are abstracted from a pamphlet prepared by the United States Office of Government Ethics.

⁷⁵ Sections 793, 794, 798 and 2071, Title 18 of the *United States Code*.

⁷⁶ Anthony J. Bennett, *op. cit.*, pp. 46, 68, 78, 104 & 119.

⁷⁷ Some people were nominated to head different departments either under the same President or in later administrations. Please refer to Anthony J. Bennett, *op. cit.*, p. 125 for details.

⁷⁸ One died in office and others either retired or their immediate whereabouts were unknown.

**Table 6 - Professions of Cabinet Secretaries Immediately Upon Leaving Cabinet
between 1961 and 1993**

Professions	Commerce and finance	Elective politics*	Non-elective politics#	Academia	Law	Total
Number of persons (percentage of total)	39 (37%)	2 (2%)	29 (28%)	19 (18%)	16 (15%)	105 (100%)

Remarks: * Elective politics: Congressmen, State Governors, State Lieutenant Governors, State Legislators and City Mayors.
Non-elective politics include presidential appointments with or without Senate confirmation, i.e. White House Staff, Cabinet Secretaries, etc.

21. Removal

21.1 The United States Constitution permits two means of removing Cabinet Secretaries and executive officers: at the President's discretion and on impeachment by the Congress.

Removal by the President

21.2 There is nothing in the Constitution relating to the President's power of removal of Cabinet Secretaries and executive officers. It was not until 1926 that the Supreme Court, in the case of *Myers v. United States*, concluded that "[R]emoval of executive officials from office is an executive function; the power to remove, like the power to appoint, is part of the Executive power."⁷⁹

21.3 Moreover, in the above case, the Supreme Court recognized that executive officers "might be removed by the President after notice and opportunity for public hearing for inefficiency, neglect of duty or malfeasance in office but for no other cause."

⁷⁹ *Myers v. United States*, 272 U.S. 52 (1926).

Impeachment by the Congress

21.4 Impeachment is the constitutional process by which the President, Vice President, and civil officers of the United States may be removed from office by the Congress. The Constitution stipulates that the power to impeach is given to the House of Representatives, and cases of impeachment are tried before the Senate.⁸⁰ Once convicted, an official is immediately removed from office, and may be subject to criminal prosecution if warranted.⁸¹

Conditions

21.5 Article II, Section 4 of the United State Constitution states that:

"The President, Vice President and all Civil Officers of the United States, shall be removed from Office on Impeachment for and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

21.6 Treason is defined in the Constitution as follows: "Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort."⁸² Bribery is not defined constitutionally, but the term appears in Section 201 of Title 18, *United States Code*.⁸³

21.7 "High crimes and misdemeanors" are not defined in the Constitution or by statute. Some scholars suggest that "other" means that the crimes and misdemeanor contemplated by the framers must be of similar magnitude to treason or bribery. They also suggest that "high" modifies "crimes" and "misdemeanors," meaning that ordinary crimes and misdemeanors are not necessarily impeachable offences.⁸⁴

⁸⁰ Article I, Section 2, Clause 5; Article I, Section 3, Clauses 6 and 7, the United States Constitution.

⁸¹ David C. Huckabee & et al., "Impeachment: Frequently Asked Questions," *CRS Report for Congress*, Congressional Research Service, The Library of Congress, 8 January 1999, p. 1.

⁸² Article III, Section 3, Clause 1, the United States Constitution.

⁸³ David C. Huckabee & et al., "Impeachment: Frequently Asked Questions," *CRS Report for Congress*, Congressional Research Service, The Library of Congress, January 8, 1999, p. 2.

⁸⁴ Other scholars of the impeachment clause set a lower bar for impeachment: misconduct in office, including moral turpitude, or a criminal violation would qualify as a high crime or misdemeanor under this interpretation. David C. Huckabee & et al., "Impeachment: Frequently Asked Questions," *CRS Report for Congress*, Congressional Research Service, The Library of Congress, 8 January 1999, p. 3.

21.8 In history, the House of Representatives voted to impeach only one Cabinet Secretary.⁸⁵ The House of Representatives voted in 1876 to impeach the Secretary of War, General William Belknap, with acceptance of bribes. However, he resigned prior to the House's formal vote on impeachment.⁸⁶

⁸⁵ The House of Representatives voted to impeach 17 officials, which included 13 judges, two Presidents, one Senator and one Cabinet Secretary. David C. Huckabee, "Impeachment: Days and Dates of Consideration in the House and Senate," *CRS Report for Congress*, Congressional Research Service, The Library of Congress, 25 April 2000, pp. 1 & 4.

⁸⁶ The formal articles of impeachment charged the Secretary of War, General William Belknap, with acceptance of bribes. Although he resigned prior to the House's formal vote on impeachment, the trial before the Senate proceeded. In the end, the two-third required for conviction was not met in the Full Senate, and Belknap was acquitted. Michael J. Gerhardt, *The Federal Impeachment Process*, Princeton, New Jersey, Princeton University Press, 1996, pp. 23 & 51-52.

PART 4 - SINGAPORE

22. Background

22.1 In Singapore, the Head of State is the President, who is separated from the Head of Government — the Prime Minister. The President is elected by universal adult suffrage with a fixed term of six years. The President exercises his functions under the Constitution with the advice of the Cabinet or of a Minister acting under the authority of the Cabinet. The President is vested with limited power of veto in financial matters, public appointments and detention for reasons of national security.

22.2 Singapore has a unicameral Parliament which is elected by direct universal suffrage for five-year terms, unless dissolved earlier. The Parliament comprises three categories of members: the Elected Members, the Non-Constituency Members and the Nominated Members. Members of Parliament stand for election in either Single-Member Constituencies or Group Representation Constituencies.

23. Composition

23.1 The Prime Minister is one who, in the judgement of the President, is likely to command the confidence of a majority of Members of Parliament. The Cabinet consists of the Prime Minister and other Ministers, who are to have general direction and control of the government and be collectively responsible to the Parliament.

23.2 There are 16 Ministers⁸⁷ in the Cabinet, in charge of the Ministries of Community Development and Sports; Defence; Education; Environment; Finance; Foreign Affairs; Health; Home Affairs; Information, Communications and the Arts; Manpower; Law; National Development; Prime Minister's Office; Trade and Industry and Transport.

23.3 In Singapore, the Minister for Law's primary responsibility involves formulating and implementing the broad legal policies of the government. This role is distinct from that of the Attorney-General who is the government's legal advisor and the Public Prosecutor. The Attorney-General is not a Cabinet Minister or a Member of Parliament. For the purpose of this research, we will focus our discussion on Cabinet Ministers. Matters relating to the Attorney-General will be touched upon when appropriate.

⁸⁷ The 15 Ministers plus the Senior Minister. New Singapore Government Cabinet, *Singapore Government Press Release*, 20 November 2001.

24. Qualification

Competence and Experience

24.1 There is no specific requirement of appointment for a ministerial post. However, the Minister for Law is traditionally a legally-trained Member.⁸⁸

24.2 Under Article 35(1) of the Constitution, the Attorney-General is to be a person who is qualified for appointment as a Judge of the Supreme Court.

Parliamentary Qualification

24.3 Under Article 25(1) of the Constitution, a Minister must be a Member of Parliament. In other words, a potential candidate must not be disqualified from parliamentary membership in the first place.⁸⁹

Disqualification

24.4 Under Article 33 of the Constitution, a member of the Cabinet shall not hold any office of profit and shall not actively engage in any commercial enterprise.

⁸⁸ Reply received from the Cabinet Office on 7 February 2002.

⁸⁹ A person shall not be qualified to be a Member of Parliament who (a) is and has been found or declared to be of unsound mind; (b) is an undischarged bankrupt; (c) holds an office of profit; (d) having been nominated for election to Parliament or the office of President or having acted as election agent to a person so nominated, has failed to lodge any return of election expenses required by law within the time and in the manner so required; (e) has been convicted of an offence by a court of law in Singapore or Malaysia and sentenced to imprisonment for a term of not less than one year or to a fine of not less than S\$2,000 (HK\$8,600) and has not received a free pardon: provided that where the conviction is by a court of law in Malaysia, the person shall not be so disqualified unless the offence is also one which, had it been committed in Singapore, would have been punishable by a court of law in Singapore; (f) has voluntarily acquired the citizenship of, or exercised rights of citizenship in, a foreign country or has made a declaration of allegiance to a foreign country; or (g) is disqualified under any law relating to offences in connection with elections to Parliament or the office of President by reason of having been convicted of such an offence or having in proceedings relating to such an election been proved guilty of an act constituting such an offence. Article 45(1), Constitution of the Republic of Singapore.

25. Routes

25.1 The Prime Minister, Mr. Goh Chok Tong, in an interview, described himself like a chief head-hunter for Singapore.⁹⁰ Mr. Goh said, "we have a system where we track young people...in their early 30s, with high prospects for themselves to becoming chief executive officers of banks or multinational companies." Mr. Goh further said, "I invite people for tea on the basis of recommendations...I shortlisted some people. They'll be invited for further tea sessions by other ministers." They will observe and study potential candidates for a few years, then invite them to take part in politics.

25.2 Apart from tracking young people from the private sectors, the People's Action Party also recruits potential candidates from the civil servants and academics. Those with outstanding qualities were taken into the government to be thoroughly trained and tutored to eventually assume responsibility for ruling Singapore.⁹¹ In a typical route, a potential candidate will be elected to Parliament, and then become a Minister, before reaching the Cabinet. For instance, the current Minister for Law was the Dean of Law Faculty before he was appointed as a Minister. Approximately half of the present Cabinet Ministers were civil servants before they were elected to Parliament.

26. Appointment Process

Appointment Process

Appointment by the President

26.1 Under Article 25(1) of the Constitution, the President is conferred with the power to appoint a Member of Parliament as the Prime Minister, who, in the judgement of the President, is likely to command the confidence of a majority of Members of Parliament. Under the same Article, the President appoints Ministers on the advice of the Prime Minister, in accordance with the Constitution.

⁹⁰ Transcript of Prime Minister Goh Chok Tong's interview with Mr. Max Christern of NRC Handelsblad on 30 September 1996 at the Istana.

⁹¹ Raj Vasil, *Governing Singapore: Democracy and National Development*, St Leonards, Australia: Allen & Unwin, 2000, p. 177.

26.2 Under Article 35(1) of the Constitution, the Attorney-General is appointed by the President, "if he, in his discretion, concurs with the advice of the Prime Minister."⁹²

26.3 Under Article 27 of the Constitution, the Prime Minister and every other Minister shall, before entering on the duties of his office, take and subscribe before the President the Oath of Allegiance and the appropriate Oath for the due execution of his office.⁹³

27. Pay and Benefits

Salary

27.1 The Prime Minister is paid at a fixed salary point with a fixed bonus, and his salary is set at a ratio of the Ministers' benchmark.⁹⁴ (Please refer to paragraph 27.8 for details of the benchmark.)

27.2 The salaries of other Ministers comprise two parts: a monthly salary and a variable pay of annual salary. The variable pay of annual salary makes up about 50% of the total annual pay of a Minister. The variable pay of annual salary includes a "Non-Pensionable Annual Allowance (NPAA)", an "Annual Variable Component (AVC)", a "GDP-related bonus" and a Performance bonus.

27.3 The Non-Pensionable Annual Allowance (NPAA) is similar to the 13th month pay in the private sector. This component is paid in December every year and can be removed in times of poor economic performance.

27.4 The Annual Variable Component (AVC) is built up from the National Wage Council wage adjustments. The AVC is paid in two installments and can be removed in times of poor economic performance.

⁹² If the President does not concur with the Prime Minister's recommendations, he may refuse to appoint the Prime Minister's nominee, but he is obliged to consult the Council of Presidential Advisors before so doing (Article 21 read with Article 22). Before making his recommendation, the Prime Minister must, under Article 35(2), consult the incumbent, the Chief Justice and the Chairman of the Public Service Commission (except where the office of Attorney-General is vacant by reason of the incumbent's death). The Council for Presidential Advisors consists of six members appointed by the President, two are appointed at the discretion of the President, two on the advice of the Prime Minister, one on the advice of the Chief Justice, and one on the advice of the Chairman of the Public Service Commission (Article 37B). Tan, Kevin YL & Thio Li-ann, *Constitutional Law in Malaysia & Singapore*, 2nd ed., Singapore: Butterworths Asia, 1997, p. 406.

⁹³ Article 27, *Constitution of the Republic of Singapore*.

⁹⁴ The methodology of determining the ratio is unknown. *Ministerial Statement*, 29 June 2000, para. 110.

27.5 The “GDP-related bonus” is calculated based on real economic growth. The bonus will be one month of the monthly salary if the Singapore economy grows by five percent in the calendar year. It will be zero month (the minimum) if the economy grows by two percent or less, and two months (the maximum) if the economy grows by eight percent or more. In between the two growth rates, it will vary linearly with GDP growth.

27.6 The Performance bonus links a Minister's pay with his performance on the job. The amount of bonus a Minister receives varies from person to person. Those with unsatisfactory performance will receive no bonus, while an outstanding officer will receive much more than the average quantum. Ministers received an average Performance bonus of five months of salary in 2000.⁹⁵

27.7 In 2000, the salary structures of Ministers were changed from salary points to salary ranges to allow more flexibility in personnel management, and "officers could be rewarded with merit increments within their salary range each year, depending on their assessed potential and demonstrated performance."⁹⁶ The entry salary range for Ministers is MR4. The salary ranges for Ministers are MR4 (minimum) to MR1 (maximum). Details of the salary ranges are in table 7.⁹⁷

Table 7 - Salaries of the Prime Minister, Ministers and Members of Parliament*

Position	Salary Ranges	Monthly Salary		Annual Salary #		Rankings [^]
		S\$	HK\$	S\$	HK\$	
Prime Minister	N/A	85,300	366,790	1,940,000	8,342,000	63
Deputy Prime Minister/Minister	MR1	Unknown ⁹⁸		Unknown		Unknown
Minister	MR2	Unknown		Unknown		Unknown
Minister	MR3	44,600-55,700	191,780-239,510	1,138,000-1,422,000	4,893,400-6,114,600	239-137
Minister	MR4	37,900-47,400	162,970-203,820	968,000-1,210,000	4,162,400-5,203,000	367-206
Member of Parliament	N/A	11,900	51,170	176,000	756,800	>1,000

Remarks: * June 2000 data.
annual salary includes monthly salary, NPAA, AVC, GDP-related bonus and Performance bonus.
^ ranking among private sector earners, computed by the Inland Revenue Authority of Singapore.
N/A Not Applicable

⁹⁵ The Public Service Division of the Prime Minister's Office is responsible for determining the Performance bonus of Ministers.

⁹⁶ *Ministerial Statement*, 29 June 2000, para. 83.

⁹⁷ *Ministerial Statement*, 29 June 2000, Annex 2 & 3.

⁹⁸ Emails were sent to the Cabinet Office asking for the salaries of these Ministers and, as of the date of the publication of this report, we have not received any reply from the Office.

Salary Benchmark Formula

27.8 The 1994 *White Paper on Competitive Salaries for Competent and Honest Government* established two private sector salary benchmarks to peg Ministers' and Administrative Officers' salaries.⁹⁹ The benchmarks were based on the salaries of top earners from a basket of six professions, chosen as comparable as possible to the nature of work performed by Ministers and senior civil servants. The six professions were: bankers, accountants, engineers, lawyers, multi-national corporation (MNC) executives, and local manufacturers.¹⁰⁰

27.9 The salary for a Minister was pegged at "two-thirds the average principal earned income of the top four individuals from each of the six professions." The principal earned incomes included stock option gains because they were often not fully captured in Inland Revenue Authority of Singapore (IRAS) returns.¹⁰¹

27.10 During the parliamentary debates on the *White Paper* in 1994, the Prime Minister explained the reasons of comparing Ministers with top professionals being that "the Ministers have larger and more demanding responsibilities than those top professionals, and we [the government] wanted Ministers of the calibre who would rise to the top if they were in the private sector."¹⁰² Moreover, the one-third discount was "a fair sacrifice to ask of Ministers."¹⁰³

27.11 The formula was reviewed in 2000. The six professions and 2/3 discounts factor remained unchanged. To broaden the base of the benchmark, the top "four" earners were changed to the top "eight" earners. To eliminate extremely high incomes in the group, the "average income" was changed to "median income" of the group. To allow for the uncertainty and volatility related to stock options, any stock option gains were discounted by half before computing the median income. In the end, the formula was changed to "two-thirds the median principal earned income of the top eight individuals from each of the six professions."

⁹⁹ The benchmark for senior civil servants is on a similar basis as the Ministers' benchmark. Senior civil servants' incomes are compared with the same six professions used in the Ministers' benchmark. However, instead of comparing against the top earners in the six professions regardless of age, their incomes are compared within the same age group. The Prime Minister's Office, *White Paper on Competitive Salaries for Competent and Honest Government (White Paper)*, 1994, p.12.

¹⁰⁰ Owners of banks, manufacturing companies, oil companies and MNCs are excluded, so are expatriates and individuals in speculative activities like foreign exchange dealers and stockbrokers. Additionally, only principal earned incomes are included. *White Paper 1994*, p. 9.

¹⁰¹ Overseas incomes were excluded because they routinely formed part of compensation packages, particularly for bankers, architects and MNC executives. *White Paper 1994*, p. 9

¹⁰² *Parliamentary Debates Singapore*, Vol. 63, No. 7, 31 October 1994, p. 657.

¹⁰³ *Ibid.*

27.12 The IRAS computes the ranking of the salaries of the Prime Minister and Ministers among the private sector earners. In 2000, the Prime Minister's salary was the 63rd highest among private sector earners. Please refer to table 7 for details.

Review Mechanism

27.13 The Public Service Division of the Prime Minister's Office oversees the setting of salaries for most of the jobs in the civil service, including the ministerial salaries.¹⁰⁴ The annual adjustment is taken in line of the economic performance, individual's performance and the private sector salary benchmark.

28. Terms of Appointment

28.1 The Ministers' terms of appointment are usually for a period of five years from the date they are sworn into office after a general election, or a shorter period depending on when they are being appointed, or at the discretion of the Prime Minister.¹⁰⁵

28.2 The Attorney-General, who is not a Cabinet Minister, has security of tenure. Under Article 35(4) of the Constitution, the Attorney-General shall "hold office until he attains the age of 60 years." The Attorney-General's appointment may be for a specific period and he will relinquish his office at the end of such period, but if no particular period is specified, he may not retire until he is 60 years old.

29. Conflicts of Interest

Declaration of Interest

29.1 Ministers are required to declare in writing to the Prime Minister details of their personal assets and previous sources of incomes at the beginning of their appointments. The declaration is not a public document. It is classified as confidential and is made known only to the Prime Minister and the President. No annual updating is required of the Ministers.¹⁰⁶

¹⁰⁴ A Permanent Secretary heads the Public Service Division of the Prime Minister's office with the assistance of two Deputy Secretaries.

¹⁰⁵ Reply received from the Cabinet Office on 7 February 2002.

¹⁰⁶ Reply received from the Cabinet Office on 22 February 2002.

General Principles

29.2 Ministers are governed by the Code of Conduct for Ministers.¹⁰⁷ The Code of Conduct for Ministers is publicized to provide rules governing the question of the participation by Ministers in business and professional capacities.¹⁰⁸ The Code of Conduct for Ministers contains 12 rules which are as follows:

- (i) A Minister must disclose to the President in confidence full particulars of his sources of income and a full list of his holdings of stocks or shares in all companies and of his interests in any professional practice whether the undertakings concerned are or are not at the time parties to Government contracts.
- (ii) A Minister must use the strictest discretion in deciding, in circumstances where private interest and public duty conflict, whether he can properly continue to hold such stocks or shares.
- (iii) A Minister should not hold any directorships in public companies or participate actively in any professional practice. Nor should he be associated in a formal or advisory capacity with any commercial undertakings or receive any remuneration from them.

Except that the Prime Minister may authorise a Minister to hold such office or participate in or be associated with any of the aforesaid activities where he considers it in the national interest for the Minister so to do. The Prime Minister's authorization shall be published in the *Gazette*.

- (iv) Honorary directorships, directorships in any philanthropic undertaking or in a private company where public duty and private interests are unlikely to conflict, may be retained.
- (v) Interests under sub-paragraph (iv) above must be publicly declared in the *Gazette*.
- (vi) A Minister ought not to enter into any transactions whereby his private pecuniary interests might even conceivably, come into conflict with his public duty.
- (vii) No Minister is justified in any circumstances in using official information that comes to him as a Minister for his own private profit or for that of his friends.

¹⁰⁷ *Code of Conduct for Ministers*, Cmd. 2 of 1979, Cmd. 4 of 1989 and Cmd. 3 of 1997.

¹⁰⁸ *Code of Conduct for Ministers*, Cmd. 2 of 1979.

- (viii) No Minister ought to put himself or allow himself to be put in a position to be tempted to use his official influence in support of any scheme or the furtherance of any contract in regard to which he has an undisclosed private interest.
- (ix) No Minister should use his official influence to support the candidature of any person for admission to or promotion within the Civil Service - except that when a candidate for first appointment is known to him personally there would be no objection to a Minister giving him a written testimonial.
- (x) No Minister ought to accept any kind of favour from persons who are in negotiation with or seeking to enter into contractual or proprietary or pecuniary relations with the Government.
- (xi) A Minister should scrupulously avoid speculative investments and securities as to which, from his position and special means of early or confidential information, he has or may have an advantage over other people in anticipating market changes.
- (xii) A Minister should not practise journalism in respect of any matter affecting public affairs while he is holding office.

Post-office Employment Restriction

29.3 There are no regulations on post-office employment.¹⁰⁹

Disclosure of Government Information After Office

29.4 Ministers are required to take an Oath of Office not to disclose any classified information or the proceedings of the Cabinet.¹¹⁰

30. Removal

30.1 Under Article 26 of the Constitution, the President can declare the office of the Prime Minister vacant or revoke the office of a Minister (acting on the advice of the Prime Minister). Since Singapore adopts a parliamentary system of government similar to the UK, the removal of Cabinet Ministers is also similar to the situation in the UK. (Please refer to paragraph 12.1 for details.)

¹⁰⁹ Reply received from the Cabinet Office on 7 February 2002.

¹¹⁰ *Ibid.*

30.2 Under Article 35(6)(a) of the Constitution, the Attorney-General may be removed from office by the President "acting in his discretion, concurs with the advice of the Prime Minister... or for misbehaviour." The Prime Minister's advice under this article is limited to the Attorney-General's inability to discharge his functions of office, either by reason of "infirmity of body or mind or any other cause."¹¹¹

¹¹¹ Before the Attorney-General is removed from office, a tribunal, consisting of the Chief Justice and two other judges of the Supreme Court (nominated by the Chief Justice) must be established to determine whether he should be removed. Articles 35(6)(a) & 35(6)(b), *Constitution of the Republic of Singapore*.

**PART 5 - COMPARISON OF THE VARIOUS ATTRIBUTES OF THE
PROCESS OF APPOINTMENT OF SENIOR MEMBERS OF
GOVERNMENT**

31.1 Table 7 presents some basic facts of the three countries studied and Hong Kong. Table 8 to Table 14 summarize various attributes of the process of appointment of senior members of government in the three countries studied and Hong Kong. The information regarding Hong Kong refers to the practice applicable to existing principal officials.

Table 7 - Basic Information of Selected Countries and Hong Kong

Country	Population (million)	GDP per capita (HK\$)	Number of Civil Servants	Number of Seats in the Legislature	Cost of Living [#]	Salaries of Cabinet Ministers / Secretaries (in millions of HK\$)
UK	59.1	190,242	460,000 [^]	The House of Lords: 670 The House of Commons: 659	99	1.344 [@]
US	272.9	261,612	2,218,000 ⁺	The Senate: 100 The House of Representatives: 435	100	1.300
Singapore	3.2	205,608	63,300 [*]	85	97	6.114 - 4.162
Hong Kong	6.9	180,258	187,000 ^{**}	60	117	N/A

Remarks: [#] New York=100, December 1999.
[^] *Civil Service Year Book 2001*, The Stationery Office.
[@] including full parliamentary salary.
⁺ *World Almanac 2001*, World Almanac Books.
^{*} *Singapore 2001*, Ministry of Information and Arts.
^{**} *Establishment of the Civil Service*, Civil Service Bureau web site, The Government of the HKSAR, March 2001.

Source: Unless otherwise indicated, all data is abstracted from *The Economist Pocket World in Figures 2002*.

Table 8 - Qualification of Senior Members of Government

Country	General Requirements	Specific Requirements for Particular Offices	Parliamentary Qualification	Disqualification Criteria
UK	<ul style="list-style-type: none"> - Must be able to take the oath of allegiance to the Crown - Must not be an alien* - Member of Parliament 	<ul style="list-style-type: none"> - Nil - Except that the Lord Chancellor is traditionally held by a member of the legal profession 	<ul style="list-style-type: none"> - By convention, each Minister has or obtains a seat in either House of Parliament 	<ul style="list-style-type: none"> - Nil - But a serious criminal record could jeopardize a person's prospect of a ministerial career
US	<ul style="list-style-type: none"> - Must be a US citizen 	<ul style="list-style-type: none"> - Nil - Except that a candidate of the Secretary of Defense must be a civilian 	<ul style="list-style-type: none"> - Not Required 	<ul style="list-style-type: none"> - No officer shall be Member of either House simultaneously - Prohibits Members of Congress being appointed to any office created during their term
Singapore	<ul style="list-style-type: none"> - Must be a Singapore citizen - An elected Member of Parliament 	<ul style="list-style-type: none"> - Nil - Except that the Minister of Law is traditionally a legally-trained Member 	<ul style="list-style-type: none"> - By convention, Cabinet Ministers are elected Members of Parliament 	<ul style="list-style-type: none"> - A Minister will be disqualified if he has a criminal record or is declared bankrupt - Cabinet Ministers shall not hold any office of profit and shall not actively engage in any commercial enterprise**
Hong Kong	<ul style="list-style-type: none"> - (1) A Chinese citizen; - (2) A permanent resident of Hong Kong; - (3) No right of abode in any foreign country; and - (4) Ordinarily resided in Hong Kong for a continuous period of not less than 15 years - Swear to uphold the Basic Law and swear allegiance to the HKSAR 	<ul style="list-style-type: none"> - Nil 	<ul style="list-style-type: none"> - Not Required 	<ul style="list-style-type: none"> - Nil

Remarks: * persons born outside of the Kingdoms of England, Scotland or Ireland or the dominions.
 ** the "Code of Conduct for Ministers" provides rules governing the question of the participation by Ministers in business and professional activities. Please refer to para. 29.2 for details.

Table 9 - Routes to Senior Members of Government

Country	Typical Routes	Typical Social Background
UK	- A back-bencher → a Parliamentary Private Secretary → a Parliamentary Under-secretary of State → a Minister of State → a Cabinet Minister	- Lawyers and businessmen
US	- From departments of previous administrations - Early or long-term friends and supporters of a President	- Lawyers, civil servants and businessmen
Singapore	- May be handpicked by the People's Action Party → a Member of Parliament → a Minister → a Cabinet Minister	- Executives of banks or multi-national companies, civil servants and academics
Hong Kong	- Administrative Officer - Ms Elsie Leung (Secretary for Justice) -- a private practice solicitor before assuming her post - Dr E K Yeoh (Secretary for Health and Welfare) -- Chief Executive of the Hospital Authority before assuming his post - Mr Anthony Leung (Financial Secretary) -- Chairman of a major international bank before assuming his post	- Public Servants

Table 10 - Appointment of Senior Members of Government

Country	Appointment Process			Role of Parliament	Whether Senior Members Must Be Member of Parliament
	Nomination	Clearance	Approval		
UK	Prime Minister	No	Queen	No	Must be, by convention
US	President	Yes	Approved by the Senate and appointed by the President	Advice and Consent by the Senate	No
Singapore	Prime Minister	No	President	No	Must be, by constitution
Hong Kong	Chief Executive	Yes	Appointed by the Central Government	No	No

Table 11 - Salary Determination of Senior Members of Government

Country	Regulatory Framework	Determination Criteria	Annual Adjustment	Review Body
UK	<i>The Ministerial and Other Salaries Act 1975</i>	Past history and comparison with their counterparts in the private and public sectors	Yes, in line with senior civil service pay bands	A full review every three years by the Senior Salaries Review Body
US	<i>Section 5312, Title 5 of the US Code</i>	Linked to the salaries of Members of Congress and federal judges	Yes, in line with the Employment Cost Index	Citizen's Commission on Public Service & Compensation
Singapore	No specific legislation subject to Parliament's approval	Pegged with private sector benchmarks	Yes, in line with the economic performance, individual's performance and the private sector salary benchmark adjustment	Public Service Division of the Prime Minister's Office
Hong Kong	No specific legislation subject to LegCo's approval	Broadly comparable with the private sector	Yes, follows the Pay Trend Survey	No

Table 12 - Comparison of Annual Salary (in millions of HK\$)

Office-holders		UK	US	Singapore	Hong Kong
Prime Minister/President/ Chief Executive		1.272 (1.853 [@])	3.120	8.342 [*]	3.412
Cabinet Ministers/ Cabinet Secretaries		0.763 (1.344 [@])	1.300	4.162 - 6.115	Not applicable
Permanent Secretaries/ Directors/ Secretaries of Departments and Directors of Bureaux		1.168 - 2.005	0.881 - 1.014	3.165 - 4.369	2.281 - 2.729 [~]
Members of Parliament/ Members of Congress/ Legislative Councilors		0.622 [#]	1.170 ⁺	0.757	0.699 [^]
Chief Executive Officers in the Private Sector ^{**}	Total Remuneration	5.215	15.074	5.037	5.745
	Basic Compensation	2.243	4.221	2.367	2.356

- Remarks: @ including full parliamentary salary.
 * salary of the Prime Minister.
 ~ Secretaries of Departments refer to DL7, D9 and D10; Directors of Bureaux refer to D8.
 # basic annual salary, not including allowances.
 + members are not permitted to take part in business activities.
 ^ not including operating expenses.
 ** Towers Perrin, *Worldwide Total Remuneration 2001-2002*.

Table 13 - Ways to Prevent Conflicts of Interest of Senior Members of Government

Country	Major Regulatory Framework	Declaration of Interest	Interests to be Declared	Post-office Employment
UK	- <i>The Ministerial Code: A Code of Conduct and Guidance on Procedures for Ministers</i>	- Make declaration to Permanent Secretaries - Make returns to both Houses as Parliamentarian	- Cover financial instruments and partnerships, financial interests such as unincorporated businesses and real estate, also relevant non-financial private interests and previous relevant employment - Not only personal interests, but also those of spouses, children or closely associated persons	- Monitored by the <i>Advisory Committee on Business Appointments</i> - <i>Guidelines on the Acceptance of Appointments or Employment Outside Government by Former Ministers of the Crown</i>
US	- <i>The Ethics in Government Act of 1978 and Executive Order</i>	- <i>Public Financial Disclosure Report</i>	- Cover assets, transactions, liabilities, outside positions and compensation in excess of \$5,000 paid by one source, etc. - Spouses and dependent children are required to declare interests on assets, transactions, gifts and liabilities, etc.	- By legislative and executive means
Singapore	- <i>The Code of Conduct for Ministers</i>	- Declare in writing to the Prime Minister details of their personal assets and previous sources of incomes at the beginning of appointments	- Confidential and not available to the public	- No regulations
Hong Kong	- A declaration of Interests system for senior civil servants - <i>Civil Service Regulations</i> - A mechanism for Members of Executive Council to declare their interests in matters laid before the Council	- Make declaration to the Civil Service Bureau	- All investments in/or outside Hong Kong (annually) - Any investment transaction equivalent to or exceeding HK200,000 (within 7 days) - Register annually certain financial interests* for public inspection - Only required to report the occupation of their spouses, no need to declare financial interests of their spouses and children	- Required to seek prior approval from the Government within one year after completion of their agreements, before taking up any outside employment or engaging in any business the principal part of which is carried out in Hong Kong.

Remarks: * including 1) land and building; 2) proprietorships or directorships of companies; and 3) shareholding of 1% or more of the issued share capital in any listed, public or private company.

Table 14 - Removal of Senior Members of Government

Country	Conditions	Role of Parliament	Removal Process
UK	<ul style="list-style-type: none"> - When a whole government resigns - In a reshuffle - Fails to fulfil the requirements of collective responsibility - Breaches the requirements of individual responsibility 	- Vote of confidence	- Hold office at the Queen's pleasure, their removal is determined by her on the Prime Minister's advice at any time
US	<ul style="list-style-type: none"> - By the President after notice and opportunity for public hearing for inefficiency, neglect of duty or malfeasance - By the Congress through impeachment for conviction of treason, bribery, or other high crimes and misdemeanors 	- Impeachment	- The Constitution stipulates that the power to impeach is given to the House of Representatives, and cases of impeachment are tried before the Senate
Singapore	<ul style="list-style-type: none"> - Similar to the UK - The Cabinet of Singapore is, by Constitution, collectively responsible to Parliament 	- Vote of confidence	- Only the President can declare the office of the Prime Minister vacant, or revoke the office of a Minister, acting on the advice of the Prime Minister
Hong Kong*	<ul style="list-style-type: none"> - Misconduct - Criminal conviction - Public interest 	- No	- CE recommends to the central government to remove principal officials.

Remark: * Public Service (Administration) Order 1997.

PART 6 - REFERENCE FOR HONG KONG

Introduction

32.1 Based on the findings in this study, the followings are some issues which Members of the Panel on Constitutional Affairs may wish to consider regarding the appointment of principal officials under the proposed accountability system in the Hong Kong Special Administrative Region (HKSAR).

Qualification—The Rule of Incompatibility

32.2 Among the countries studied, there are generally no specific criteria for a person to be eligible for ministerial posts, except for requirements concerning citizenship and allegiance. In Hong Kong, similar requirements are written into the Basic Law regarding the eligibility of principal officials.¹¹² In a parliamentary system of government, such as the UK and Singapore, persons who hold ministerial posts are required to possess parliamentary qualification.

32.3 In Hong Kong, Article 79 of the Basic Law provides that the President of the Legislative Council (LegCo) shall declare that a Member to be disqualified, among other conditions, when he or she accepts a *government appointment* and becomes a public servant.¹¹³

32.4 Although principal officials under the proposed accountability system would be appointed on terms different from those in the civil service, the Government's position is that they should be considered as public servants based on Article 101 of the Basic Law.¹¹⁴

Issue to be considered

32.5 When a LegCo Member is appointed as a principal official, he or she becomes a public servant. However, since the appointment is made by the Central Government and not by the HKSAR Government, the applicability of Article 79 in that regard needs examination.¹¹⁵

¹¹² Please see Articles 61 and 104 of the Basic Law. To be a principal official, an individual must be (1) a Chinese citizen; (2) a permanent resident of Hong Kong; (3) no right of abode in any foreign country; and (4) ordinarily resided in Hong Kong for a continuous period of not less than 15 years.

¹¹³ Article 79 of the Basic Law has been integrated into Section 15 of the *Legislative Council Ordinance*. Article 99 of the Basic Law provides that "public servants serving in all government departments of the HKSAR must be permanent residents of the Region,...."

¹¹⁴ Please see LegCo Paper CB(2)693/01-02(01).

¹¹⁵ There are also legal restrictions on the participation of public officers in a LegCo election. Section 39 of the *Legislative Council Ordinance* stipulates that any person holding an office, whether permanent or temporary in a Government department or bureau and employed in the department or bureau, is disqualified from being nominated as a candidate at a LegCo election, and from being elected as a LegCo Member.

Appointment Process

32.6 In the US, appointment to a Cabinet office is undertaken only after the 'advice and consent' of the Senate have been obtained. A candidate's suitability will be severely tested by a detailed pre-checking process. In the UK and Singapore, ministerial appointment is entirely at the discretion of the Prime Minister based upon the personal and political reputation of a candidate. There is no pre-checking on a candidate's fitness for ministerial office.

32.7 In Hong Kong, the employment procedure of civil servants, including integrity checking, is applicable to principal officials. LegCo's Panel on Constitutional Affairs has expressed a concern regarding "*whether it is a matter of government policy for integrity checking of principal officials to be completed prior to the appointment by the Central Government.*"¹¹⁶

Issue to be considered

32.8 In Hong Kong, if principal officials are to be drawn from a variety of sources, Members may wish to consider whether some form of pre-appointment vetting should be introduced.

Levels of Payment

32.9 There is a big difference in ministerial salary levels among the countries covered in this study. Ministerial salaries in Singapore are at the higher end and are pegged with the private sector through a benchmark scheme. Ministerial salaries in both the UK and the US are kept at a more modest level.

32.10 There are different rationales behind the financial rewards to which Ministers are entitled in these selected countries. Singapore Government considers that ministerial salaries comparable to private sector levels¹¹⁷ are essential to attract capable persons from the private sector to become Ministers and to minimize the financial sacrifice of their joining the Government.¹¹⁸ The levels of salaries in both the UK and the US are aimed at providing a necessary barrier to possible corruption and an adequate compensation for Ministers to devote all their time to official duties without having recourse to other employment.

¹¹⁶ Please see LegCo Paper CB(2)1969/00-01.

¹¹⁷ Please refer to Table 6 regarding the salaries of Ministers.

¹¹⁸ The Prime Minister's Office, *White Paper on Competitive Salaries for Competent and Honest Government*, 1994, pp. 1-2.

Issues to be considered

32.11 Members may wish to consider whether most of the posts of principal officials should be filled by individuals from the private sector and whether salaries would be the determining factor for persons to become principal officials under the proposed accountability system. Members may also wish to consider whether a comparatively low salary package for principal officials may become an obstacle to attract capable persons from the private sector to join the HKSAR Government.

32.12 In addition, Members may wish to compare the payment schedule for principal officials under the proposed accountability system with that for the existing Secretaries of Departments and Directors of Bureaux.

Specific Legislation to Govern Principal Officials' Salaries

32.13 Both the UK and the US have used specific legislation to govern the levels of salary payable to ministerial posts. Parliamentary approval is required for changes in payment levels.

32.14 In Hong Kong, LegCo can approve salary increases of government officials through the established legal mechanisms.

Issue to be considered

32.15 Members may wish to take reference from the cases of both the UK and the US in monitoring principal officials' salaries.

Conflicts of Interest

32.16 As regards the ways to avoid conflicts of interest, there is a fundamental difference among the countries covered in this study owing to the different systems of government adopted. The parliamentary system of government in both the UK and Singapore relies on codes of conduct to regulate Ministers' conflicts of interest. The presidential system of government in the US relies on statutory regulations.

32.17 Despite this difference, the two systems share a common pattern, which is, a detailed and open set of rules is formulated so as to provide clear guidelines to avoid possible conflicts of interest.

32.18 In both the UK and the US, the declaration of interests made by the Cabinet Ministers/Secretaries covers not only their own personal interests, but also those of their spouses and children.

32.19 In Hong Kong, there is a declaration of interests system for senior civil servants. In addition, there are separate rules and guidelines in the *Civil Service Regulations* governing civil servants' possible conflicts of interest.¹¹⁹ Principal officials who are appointed on civil service agreement terms are required to seek prior approval from the Government within one year after completion of their agreements, before taking up any outside employment or engaging in any business the principal part of which is carried out in Hong Kong.

Issues to be considered

32.20 Under the proposed accountability system, principal officials would be appointed in terms different from those in the civil service.¹²⁰ Members may wish to consider whether a new system should be devised to monitor the possible conflicts of interest of principal officials appointed under the proposed accountability system, especially if some principal officials may be appointed from outside the civil service.

32.21 Members may also wish to consider whether the declaration of interests for principal officials under the proposed accountability system should cover not only their own personal interests, but also those of their spouses and children.

Terms of Appointment

32.22 In the UK, the US and Singapore, ministerial positions are different from civil service posts. Therefore, unlike civil servants, holders of ministerial posts do not have employment contracts. The relationship between the head of government and political appointees is political rather than contractual.

32.23 However, the Hong Kong Government has maintained that principal officials under the proposed accountability system will be appointed on specific terms. Their appointment contracts would clearly state their rights and obligations.¹²¹ In particular, their term of office would not exceed that of the Chief Executive (CE) who nominates them.

32.24 The term of office of principal officials under the proposed accountability system is another important issue. The Basic Law has no provision on this aspect. While principal officials may be appointed by CE to be Members of the Executive Council, there is a provision in the Basic Law that the term of office of Members of the Executive Council does not exceed that of CE who appointed them.¹²²

¹¹⁹ For more detailed information, please refer to, "Declaration of Interests by Senior Civil Servants in Some Overseas Countries" Research and Library Division, Legislative Council Secretariat, March 2000 and LegCo paper CB(1)816/00-01(04).

¹²⁰ *The 2001 Policy Address*, HK: the Printing Department, 2001, para. 134.

¹²¹ *Ibid.*

¹²² Article 55 of the Basic Law.

Issues to be considered

32.25 In view of the overseas practice, Members may wish to consider whether a contractual arrangement is appropriate for the relationship between CE and principal officials under the proposed accountability system.

32.26 If there will be appointment contracts for principal officials under the new accountability system, Members may wish to know whether those contracts represent agreements between CE and the principal officials or between the Central Government and the principal officials.

32.27 In addition, Members may wish to consider whether those rights and obligations in the appointment contracts should be publicized.

32.28 Since principal officials are appointed by the Central Government, Member may wish to consider whether employment contracts between CE and the principal officials can be used to define their term of office.

Removal of Principal Officials

32.29 In the UK, the US and Singapore, ministerial positions are held by politicians and can be removed for political reasons. Conditions of removal are regulated either by constitutional conventions as in the UK or by legal means as in the US. All legislatures in the three countries have played certain roles in the process of removal. Both the UK and Singapore rely on the vote of confidence, while the US relies on the impeachment mechanism.

32.30 In Hong Kong, Article 48(5) of the Basic Law stipulates that CE has the power to recommend to the Central People's Government the removal of the principal officials. The Basic Law has no provision for the legislature to remove a principal official through a vote of no confidence. Although LegCo is provided with the power to impeach CE¹²³, principal officials are not accounted for. At the same time, the HKSAR Government is required to be accountable to LegCo.¹²⁴

32.31 In 2000, LegCo's Panel on Constitutional Affairs published a report entitled "The Development of the Political System of Hong Kong Special Administrative Region." In the report, the Panel recommended, inter alia, the Government should

"Explore the feasibility of developing constitutional conventions under which principal officials shall voluntary resign as a result of having committed serious mistakes in the formulation or implementation of government policies."

¹²³ Article 73(9) of the Basic Law.

¹²⁴ Article 64 of the Basic Law.

Issues to be considered

32.32 Under the proposed accountability system, principal officials are accountable to CE and take orders from him. CE alone has the power to recommend the removal of principal officials. Members may wish to consider what courses of actions can be taken if a principal official commits a serious policy mistake but CE refuses to recommend his removal.

32.33 Members may wish to consider whether LegCo should play a role in the process of removal of a principal official under the proposed accountability system.

Appendix I

The Review Body on Senior Salaries

The Review Body on Top Salaries (TSRB) was appointed in May 1971 and renamed the Review Body on Senior Salaries (SSRB) in July 1993, with revised terms of reference. The terms of reference were again revised in 1998 as a consequence of the Government's Comprehensive Spending Review.

The terms of reference are:

- (a) The Review Body on Senior Salaries provides independent advice to the Prime Minister, the Lord Chancellor and the Secretary of State for Defence on the remuneration of holders of judicial office; senior civil servants; senior officers of the armed forces; and other such public appointments as may from time to time be specified.
- (b) The Review Body also advises the Prime Minister from time to time on the pay and pensions of Members of Parliament and their allowances; on Peers' allowances; and on the pay, pensions and allowances of Ministers and others whose pay is determined by the Ministerial and Other Salaries Act 1975. If asked to do so by the Presiding Officer and the First Minister of the Scottish Parliament jointly; or by the Speaker of the Northern Ireland Assembly; or by the Presiding Officer of the National Assembly for Wales; or by the Mayor of London and the Chair of the Greater London Assembly jointly; the Review Body also from time to time advises those bodies on the pay, pensions and allowances of their members and office holders.
- (c) In reaching its recommendations, the Review Body is to have regard to the following considerations:
 - the need to recruit, retain and motivate suitably able and qualified people to exercise their different responsibilities;
 - Government policies for improving the public services including the requirement on departments to meet the output targets for the delivery of departmental services;
 - the funds available to departments as set out in the Government's departmental expenditure limits;
 - the Government's inflation target.

- (d) In making recommendations, the Review Body shall consider any factors that the Government and other witnesses may draw to its attention. In particular it shall have regard to:
- differences in terms and conditions of employment between the public and private sector and between the remit groups, taking account of relative job security and the value of benefits in kind;
 - changes in national pay systems, including flexibility and the reward of success; and job weight in differentiating the remuneration of particular posts; and
 - the need to maintain broad linkage between the remuneration of the three main remit groups, while allowing sufficient flexibility to take account of the circumstances of each group.
- (e) The Review Body may make other recommendations as it sees fit:
- to ensure that, as appropriate, the remuneration of the remit groups relates coherently to that of their subordinates, encourages efficiency and effectiveness, and takes account of the different management and organisational structures that may be in place from time to time;
 - to relate reward to performance where appropriate;
 - to maintain the confidence of those covered by the Review Body's remit that its recommendations have been properly and fairly determined; and
 - to ensure that the remuneration of those covered by the remit is consistent with the Government's equal opportunities policy.
- (f) The Review Body will take account of the evidence it receives about wider economic considerations and the affordability of its recommendations.

Appendix II

Guidelines on the Acceptance of Appointments or Employment Outside Government by Former Ministers of the Crown*

Introduction

1. It is the public interest that former Ministers with experience in government should be able to move into business or into other areas of public life. It is equally important that when a former Minister takes up a particular appointment there should be no cause for any suspicion of impropriety. Arrangements have been made therefore to enable former Ministers to seek advice from the independent and impartial Advisory Committee on Business Appointments.
2. The use of the term 'appointment' in these guidelines should be taken generally to include all forms of employment including the practice of a profession, apart from unremunerated appointments in non-commercial organisations or appointments in the gift of the Government.
3. The guidelines seek to counter suspicion that:
 - (a) the statements and decisions of a serving Minister might be influenced by the hope or expectation of future employment with a particular firm or organisation; or
 - (b) an employer could make improper use of official information to which a former Minister has had access; or
 - (c) there may be cause for concern about the appointment in some other particular respect.

The Guidelines

4. Former Ministers should ask the Advisory Committee about any appointment (as defined in paragraph 2) they wish to take up outside Government within two years of leaving office. The Committee will consider details of the appointment and any contact the former Minister (or his or her former department) has had with the prospective employer or with competitors (the attached request form will be a convenient way of providing this information). If necessary, the Committee will seek, in confidence, information from senior officials of a former Minister's former department(s) about the nature of any contractual, regulatory or other relationships which the department(s) have or have had with the prospective employer.

* Source: Central Office of Information, *The Advisory Committee on Business Appointments: Fourth Report 2000-2001*, 2001, Annex A.

5. The Advisory Committee will consider each appointment on its merits, against specific tests relating to the following:

- i to what extent, if at all, has the former Minister been in a position which could lay him or her open to the suggestion that the appointment was in some way a reward for past favours?
- ii has the former Minister been in a position where he or she has had access to trade secrets of competitors or knowledge of unannounced Government policy which would give his or her company an unfair advantage?
- iii is there another specific reason why acceptance of the appointment would give rise to public concern of a degree or character to justify advising the former Minister that there should be a delay or another condition in taking up the appointment, or that the appointment is unsuitable?

6. The Advisory Committee will need to balance any points under these tests against the desirability of former Ministers being able to move into business or other areas of public life, or the need for them to be able to start a new career or resume a former one.

7. The Advisory Committee may advise that they see no objection to the appointment, or they may recommended a delay of up to two years running from the date of leaving office before it is taken up, or that for a similar period the former Minister should stand aside from certain activities of the employer. They may also advise that an appointment is unsuitable.

8. A three-month waiting period from the date of leaving office will normally be expected when the former Minister is of Cabinet rank, unless the Advisory Committee advise a longer waiting period in particular circumstances. The Advisory Committee may waive this automatic waiting period if, for example, the former Minister is returning to a family business or to the practice of a profession (eg farming, medicine or teaching) where the appointment is not connected with his or her Ministerial knowledge, and no considerations of improper advantage could apply.

Publicising the Advisory Committee's advice

9. All approaches to the Advisory Committee will be considered in strict confidence, and will remain confidential if the appointment is not taken up. When a former Minister takes up a post which the Advisory Committee have scrutinised, the Committee's advice will be available for publication. The Advisory Committee will produce an annual report, summarising the cases with which they have dealt in the previous year.

Appendix III**Sample Questions Asked by Senate Committees**
The Office of Government Ethics
(Abstracted from *A Survivor's Guide for Presidential Nominee*,
The Brookings Institution, November 2000)

Each of the 16 Senate committees that handles nominations has its own questionnaire for nominees. Many committees pose similar, if not identical, questions. The questions also are similar, but not identical, to the ones asked of nominees on other forms. Here's a selection of questions committees have posed in the past. Different questions may be asked of future nominees.

Agriculture, Nutrition and Forestry

- What is the present state of your health?
- Have you severed all connections with your immediate past private sector employers, business firms, associations, and/or organizations?
- List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, incompleting contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers.
- Do you, or does any partnership or closely held corporation in which you have an interest, own or operate a farm or ranch?
- Have you ever participated in federal commodity price support programs? Provide all details for the past five years.
- Have you ever received payments for crop losses from the Federal Crop Insurance program?
- If confirmed, do you have any plans, commitments, or agreements to pursue outside employment or engage in any business or vocation, with or without compensation, during your service with the government? If so, explain.
- Do you have any plans to resume employment, affiliation, or practice with your previous employers, business firms, associations, or organizations after completing government service?
- Has anyone made a commitment to employ you or retain your services in any capacity after you leave government service?
- Identify all investments, obligations, liabilities, or other relationships which involve potential conflicts of interest in the position to which you have been nominated.
- Have you ever received a government guaranteed student loan? If so, has it been repaid?
- If confirmed, explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

Armed Services

- List all jobs held since college or in the last 10 years, whichever is less.
- List all offices with a political party you held or any public office for which you were a candidate.
- Itemize all political contributions of \$100 or more for the past five years to any individual, campaign organization, political party or political action committee.
- Provide two copies of any formal speeches you delivered during the last five years on topics relevant to the position for which you have been nominated.
- Do you agree, if confirmed, to appear and testify upon request before any duly constituted committee of the Senate?
- Will you sever all business connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?
- Is your spouse employed and, if so, where?
- If confirmed, do you expect to serve out your full term or until the next presidential election?
- Describe any activity during the past 10 years in which you sought to influence the passage, defeat or modification of any legislation or affect the administration and execution of law or public policy.
- Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by any court, administrative agency, professional association or disciplinary committee?
- Have you ever been investigated, arrested, charged or held by any federal, state, or other law enforcement authority for violation of any federal, state, county or municipal law, regulation or ordinance, other than a minor traffic offense?
- Have you or any business of which you are or were an officer ever been involved in any administrative agency proceeding or civil litigation?
- Have you ever been convicted (including a plea of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?
- Please advise the committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.
- Have you or your spouse ever represented in any capacity, with or without compensation, a foreign government or an entity controlled by a foreign government?
- If you or your spouse has ever been formally associated with a law, accounting, public relations firm or other service organization, have any of your or your spouse's associates represented, in any capacity, with or without compensation, a foreign government or an entity controlled by a foreign government?
- During the past 10 years have you or your spouse received any compensation from, or been involved in any financial or business transactions with, a foreign government or an entity controlled by a foreign government?

- Have you filed a federal income tax return for each of the past 10 years? If not, please explain.
- Have your taxes always been paid on time?
- Were all your taxes, federal, state and local, current (filed and paid) as of the date of your nomination?
- Has the Internal Revenue Service ever audited your federal tax return? If so, what resulted from the audit?
- Have any tax liens been filed against you or against any property you own?

Energy and Natural Resources

- If you are a partner in a law firm or other organization, provide the committee with a list of all clients whom you have personally represented, and all clients the firm has represented within the past five years and a brief description of the nature of the representation. If you wish the list to be kept confidential, so indicate.

Finance

- Itemize all political contributions of \$50 or more for the past 10 years.
- State what, in your opinion, qualifies you to serve in the position to which you have been nominated.
- Provide a complete and current financial net worth statement that itemizes in detail the identity and value of all assets held, directly or indirectly, with a value in excess of \$1,000. Household furnishings, personal effects, clothing, and automobiles need not be reported. Also, identify each liability in excess of \$1,000.
- Provide a list of all transactions in securities, commodities futures, real estate, or other investments, valued at \$10,000 or more, in the last 12 months.
- Have you ever been late in paying court-ordered child support? If so, provide details.
- Provide two copies of your federal income tax returns for the past three years.

Foreign Relations

- List all foreign languages spoken and provide a self-assessment of your ability to speak, write and understand each language.
- Are you or your spouse now in default on any loan, debt or other financial obligation? Have you or your spouse been in default on any loan, debt or other obligation in the past five years?
- Have you ever declared bankruptcy? If so, describe the circumstances and the status and disposition of the case.
- Have you, your spouse or your dependents received gift(s) exceeding \$1,000 per annum from anyone other than family members within the last three years?
- List all political contributions during this calendar year and the four preceding years.

- Have you ever run for political office at any level? Did your campaign committee file all required campaign contribution and expenditure reports on time?
- Have you read and do you understand Section 208 of Title 18 of the United States Code? [Section 208 is the conflict of interest statute for federal employees.]
- Have you been interviewed or asked to supply any information for a congressional or grand jury investigation with the past five years, except routine congressional testimony? If so, provide details.
- Have you ever been discharged from employment, resigned after being informed that your employer intended to discharge you or resigned after allegations of misconduct?
- Are there any issues regarding your personal integrity that may be an issue in the committee's consideration of your nomination?
- Please advise the committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

Governmental Affairs

- Are these answers your own? Have you consulted with [the department] or any other interested parties? If so, please indicate which entities.

Judiciary

- Describe chronologically your law practice and experience after graduation from law school including: whether you served as clerk to a judge; whether you practice alone; firms, companies or agencies with which you have been connected and the nature of your connection; what the general character of your law practice has been; your typical former clients; whether you appeared in court frequently, occasionally, or not at all.
- Describe the most significant legal activities you have pursued.... Omit any information protected by the attorney-client privilege (unless the privilege has been waived).
- The American Bar Association's Code of Professional Responsibility calls for "every lawyer...to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities.
- Do you belong or have you belonged to any organization which discriminates on the basis of race, sex, or religion — through either formal membership requirements or the practical implementation of membership policies? What have you done to try to change these policies?
- Advise the committee of any unfavorable information that may affect your nomination.

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