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Panel on Constitutional Affairs

Background Brief prepared by Legislative Council Secretariat

Implementation of the Accountability System for Principal Officials

PURPOSE

The new accountability system for principal officials (POs) was implemented on 1 July 2002, and the Administration has undertaken to review the implementation of the system within 12 months. In response to Members' request, the Administration has agreed to provide a progress report on the review to the Panel on Constitutional Affairs in six months' time. Members have requested that the progress report should cover all aspects of the accountability system, including financial and staffing matters, the operation of the new system as well as the working relationship between POs and civil servants under the system.

2. To assist Members in considering the Administration's review of the implementation of the accountability system for POs, this paper highlights the issues previously raised by Members which require follow-up actions by the Administration. This paper also summarizes the developments subsequent to the implementation of the accountability system on 1 July 2002.

MAIN FEATURES OF THE ACCOUNTABILITY SYSTEM

3. The Chief Executive (CE) announced at the Legislative Council (LegCo) meeting on 17 April 2002 the framework of the new accountability system for POs. Details of the accountability system are set out in the paper entitled "Accountability System for Principal Officials" issued by the Constitutional Affairs Bureau (CAB) to Members on the same day. Under the accountability system, a total of 14 POs, i.e. three Secretaries of Departments and 11 Directors of Bureau, are appointed on contract. They are not civil servants and their terms and conditions are different from those of the civil service. The term of their contract do not exceed the term of the CE who nominated them for appointment. They are appointed to the Executive Council (ExCo) and accountable to CE for

the success or failure of matters falling within their respective portfolios. They are responsible for formulating, explaining and defending government policies as well as canvassing support from the public and LegCo. In extreme cases, they may have to step down for serious failures relating to their respective portfolios.

4. The post titles of the 14 POs are as follows -

Secretaries of Department

- (a) Chief Secretary for Administration (CS);
- (b) Financial Secretary (FS);
- (c) Secretary for Justice (SJ);

Directors of Bureau

- (d) Secretary for the Civil Service;
- (e) Secretary for Commerce, Industry and Technology;
- (f) Secretary for Constitutional Affairs;
- (g) Secretary for Economic Development and Labour;
- (h) Secretary for Education and Manpower;
- (i) Secretary for the Environment, Transport and Works;
- (j) Secretary for Financial Services and the Treasury;
- (k) Secretary for Health, Welfare and Food;
- (l) Secretary for Home Affairs;
- (m) Secretary for Housing, Planning and Lands; and
- (n) Secretary for Security.

5. Civil servants at D8 rank in bureaux work to their respective POs. They are to support their Directors of Bureau in running the bureaux and departments. Officers holding these posts are retitled as Permanent Secretaries. The number of Permanent Secretaries under each Director of Bureau is as follows -

	Directors of Bureau	No. of Permanent Secretary (portfolio)
(a)	Secretary for the Civil Service	1
(b)	Secretary for Commerce, Industry and Technology	1 (Commerce and Industry) 1 (Information, Technology and Broadcasting)
(c)	Secretary for Constitutional Affairs	1
(d)	Secretary for Economic Development and Labour	1 (Economic Development) 1 (Labour)
(e)	Secretary for Education and Manpower	1
(f)	Secretary for the Environment, Transport and Works	1 (Environment) 1 (Transport and Works)
(g)	Secretary for Financial Services and the Treasury	1 (Financial Services) 1 (Treasury)
(h)	Secretary for Health, Welfare and Food	1
(i)	Secretary for Home Affairs	1
(j)	Secretary for Housing, Planning and Lands	1 (Housing) 1 (Planning and Lands)
(k)	Secretary for Security	1

6. Under the accountability system, the civil service is to remain permanent, meritocratic and politically neutral. The system of appointment, posting, promotion and disciplinary action is to remain unchanged.

SCRUTINY BY THE LEGISLATIVE COUNCIL

7. At the House Committee meeting on 19 April 2002, a subcommittee was formed to study the proposed accountability system and related issues. The subcommittee, entitled Subcommittee to Study the Proposed Accountability System for Principal Officials and Related Issues, held 14 meetings to discuss various aspects of the accountability system and received views from 128 organizations and individuals. A list of the major issues discussed by the Subcommittee is in the **Appendix**. The detailed deliberations of the Subcommittee are contained in its three separate reports submitted to the House Committee on 24 May, 7 and 14 June 2002 respectively (LC Paper Nos. CB(2)2015/01-02, CB(2)2171/01-02 and CB(2)2277/01-02 refer).

8. At the Council meeting commencing on 29 May 2002, the Secretary for Constitutional Affairs moved a motion "that this Council supports the accountability system for principal officials" for debate. The motion was passed by the Council with 34 Members voting in favour of the motion, 19 Members voting against it, and one Member abstained from voting.

9. On 6 June 2002, the Establishment Subcommittee (ESC) endorsed a proposal to facilitate implementation of the accountability system for POs, including -

- (a) the creation of 14 non-civil service positions for POs, offset by the deletion of the three civil service directorate posts of CS, FS and SJ; and
- (b) the creation of one non-civil service position of Director of CE's Office, offset by the deletion of one civil service post of Information Coordinator.

The net additional full annual average staff cost of the proposal, including salaries and staff-on-cost, is \$42.228 million.

10. On 14 June 2002, the Finance Committee (FC) approved, inter alia, a supplementary provision of \$37.642 million in 2002-03 for the purpose of implementing the accountability system for POs.

11. At the Council meeting commencing on 19 June 2002, the Secretary for Constitutional Affairs moved a proposed resolution made under section 54A of Cap. 1 to effect the transfer of statutory functions exercisable by the relevant bureau secretary to the POs who would take charge of the relevant policy responsibilities following the reorganization of policy bureaux with effect from 1 July 2002. The resolution was passed by the Council with 36 Members voting in favour of it, and 21 Members voting against it.

12. The Interpretation and General Clauses Ordinance (Replacement of Schedule 6) Order 2002 which sought to repeal and replace Schedule 6 to Cap. 1 for the purpose of including newly appointed public officers in the list of public officers empowered to signify the exercise of statutory powers and the performance of statutory duties by CE was gazetted on 28 June 2002 and tabled in Council on 3 July 2002. The Order which was subject to negative vetting by LegCo came into effect on 1 July 2002.

FINANCIAL IMPLICATIONS OF THE ACCOUNTABILITY SYSTEM

13. In announcing the details of the accountability system at the Council meeting on 17 April 2002, CE had said that "there has been quite a lot of attention on the financial implications of introducing the accountability system. The Hong Kong Special Administrative Region (HKSAR) Government intends to make the introduction of the accountability system cost-neutral within one year through internal redeployment of savings."

14. Paragraph 49 of CAB's paper on "Accountability System for Principal Officials" issued to Members on the same day states that "subject to the approval of the Finance Committee, additional expenditure of about \$42 million will be incurred to meet the costs of the 14 new principal official positions (CS, FS, SJ and 11 Directors of Bureau), partially offset by the deletion of the three civil service posts of CS, FS and SJ."

15. The Administration has undertaken that once the accountability system is in place, POs would, as a matter of priority, conduct a review of the role of bureaux vis-à-vis departments within their respective portfolios. Paragraph 36 of CAB's paper states that "the review would be completed within 12 months. Together with the review of the staffing and structure of the policy bureaux including the number of D8 civil service posts in bureaux. We expect to effect sufficient savings to make the introduction of the accountability system a cost neutral exercise." The Administration has repeated the same undertaking in its papers submitted to ESC and FC on 6 and 14 June 2002 respectively.

16. At the meeting of the Subcommittee to Study the Proposed Accountability System for Principal Officials and Related Issues on 4 June 2002, the Administration had advised Members that the additional costs of \$42 million for implementation of the accountability system would be offset by staff savings, at the directorate level, in the next financial year.

DEFINING THE RESPONSIBILITIES OF PRINCIPAL OFFICIALS UNDER THE ACCOUNTABILITY SYSTEM

17. In response to Members' questions on how he would do in case LegCo

passed a vote of no confidence in respect of a certain PO at the Council meeting on 17 April 2002, CE had replied that "..... my principle will be that I will first try to find out in detail why LegCo has moved such a motion and how it is passed. This will certainly be one of my considerations, but not the only consideration influencing my final decision."

18. In the course of discussing the Report of the Panel of Inquiry on the Penny Stocks Incident, the Panel on Financial Affairs noted that the Report had adopted four broad categories of responsibilities for assessing the responsibilities of the concerned individuals and officials in the incident, i.e. policy responsibility, executive responsibility, systemic responsibility and personnel responsibility. The Panel on Financial Affairs had questioned the propriety of adopting the four categories of responsibilities as it appeared that the Administration had not explained such categorizations during the Council's deliberations on the accountability system. The issue of how to define the responsibilities of POs under the accountability system was subsequently referred to the Panel on Constitutional Affairs for follow up.

19. The Panel on Constitutional Affairs discussed the matter on 18 November 2002. The Administration has advised the Panel that the four broad categories of responsibilities are only categorizations adopted by the Panel on Inquiry on Penny Stocks Incident. The Administration has reiterated its view that POs under the accountability system are responsible for all aspects of their portfolios : from determining policy objectives and goals, to policy initiation, policy formulation, policy implementation and policy outcome. More specifically, they have to, among other things, oversee the executive departments under their purview and ensure the effective implementation of policies and the delivery of satisfactory services to the public. They are accountable to CE for matters within their respective portfolios. They shoulder total responsibility for the success or failure of their policies and, in extreme cases, may have to step down for serious policy failures relating to their portfolios. A paper provided by the Administration on "Responsibilities of principal officials under the accountability system" for the meeting of the Constitutional Affairs Panel on 18 November 2002 was issued vide LC Paper No. CB(2)114/02-03(02) on 19 October 2002.

ISSUES AND MATTERS WHICH REQUIRE FOLLOW-UP ACTIONS BY THE ADMINISTRATION

Issues and matters

20. Issues and matters which require follow up actions by the Administration include the following -

- (a) Review of relationship between bureaux and departments (paragraphs 21 - 31);

- (b) Permanent Secretary posts (paragraphs 32 - 40);
- (c) Conflict of interest (paragraphs 41 - 44);
- (d) Leave relief arrangements for POs and attendance of POs at meetings of committees, subcommittees and Panels (paragraphs 45 - 47);
- (e) Amalgamation of bureaux (paragraphs 48 - 50);
- (f) Review of the roles and functions of advisory/statutory bodies and committees (paragraphs 51 - 58);
- (g) Preserving the integrity and political neutrality of the civil service (paragraphs 59 - 60);
- (h) Review of statutory functions of CS and FS (paragraphs 61 - 62); and
- (i) Administrative support for Directors of Bureau (paragraphs 63 - 66).

Review of relationship between bureaux and departments

Objective and work progress

21. The Administration has undertaken that once the accountability system is in place, POs would, as a matter of priority, conduct a review of the staffing and structure of the policy bureaux and the working relationship between the policy bureaux and executive departments within their respective portfolios. The overall direction would be to streamline the structure and working relationship between the two, merging and integrating similar functions being performed by both, making better use of resources and enhancing the efficient and effective implementation of policy and delivery of services to the public. The review would be completed within 12 months with a view to effecting sufficient savings to make the introduction of the accountability system a cost neutral exercise.

22. Following implementation of the accountability system, the Administration has reviewed the relationship of the Housing Bureau (HB) and the Housing Department (HD), and that of the Education and Manpower Bureau (EMB) and the Education Department (ED). The relevant reorganization proposals were submitted to ESC and FC for endorsement and approval in November and December 2002 respectively. Details are summarized in paragraphs 23 - 29 below.

Reorganization of HB and HD

23. The Administration has proposed to reorganize HB and HD into a single organization with effect from 1 January 2003. On 20 November 2002, ESC endorsed, inter alia, the creation of three permanent directorate posts, offset by the deletion of seven directorate posts, including the post of the Director of Housing (D of H) (EC(2002-03)7 refers). The savings in full annual average staff cost, including salaries and staff on-cost amount to \$10.72 million. The proposal will also result in the deletion of 20 non-directorate posts at savings in full annual average staff cost of \$15.26 million. The recommendation of ESC was approved by FC on 6 December 2002 (FCR(2002-03)42 refers).

24. At the ESC meeting on 20 November 2002, Members pointed out that although seven directorate posts had been identified for deletion upon reorganization, three other directorate posts were proposed to be created and another three posts had been deployed to offset the creation of permanent directorate posts under the purview of the Planning and Lands Branch of the Bureau which was approved by FC on 8 November 2002 (FCR(2002-03)38 refers). As a result, the proposal had resulted in the net deletion of only one directorate post. Some Members considered that the reduction was nominal and disproportionate to the size of the directorate structure of HB and HD comprising some 78 directorate posts. These Members expected that there should be further reduction in both the directorate and non-directorate establishment.

25. The Administration had made the following response to Members' queries -

- (a) the current directorate structure of HB and HD was sizable and there was room for downsizing. The present proposal, which removed the distinct layer of bureau/department, would streamline the organizational structure;
- (b) the reorganization would be carried out in stages. The present proposal was the first stage of the reorganization. The second stage of the reorganization and review would be completed in a year's time and would cover all ranks in HB and HD, both directorate and non-directorate; and
- (c) the Administration would report progress of further streamlining initiatives to the Panel on Housing in six months' time, but it might not be in a position to provide concrete staffing proposals.

Reorganization of EMB and ED

26. The Administration has proposed to merge EMB and ED into a new EMB with effect from 1 January 2003. On 20 November 2002, ESC endorsed, inter alia, the deletion of five directorate posts, including the Director of Education (D

of E), offset by the creation of one directorate post (EC(2002-03)6 refers). The net savings in full annual average staff cost of the proposal, including salaries and staff on-cost amount to \$12.194 million. The reorganization will also bring about savings in the order of \$2 million per annum in departmental expenses. The recommendation of ESC was approved by FC on 6 December 2002 (FCR(2002-03)42 refers).

27. At the ESC meeting on 20 November 2002, some Members expressed disappointment about the scale of the downsizing vis-a-vis the establishment size of EMB/ED. They were particularly concerned about the need to trim down the non-directorate establishment and achieve a more flattened EMB/ED hierarchy for the sake of administrative efficiency.

28. The Administration explained that there were a total of 36 permanent civil service directorate posts in EMB and ED. The proposed merger of EMB and ED had already resulted in the net reduction of five directorate posts, which represented some 14% cut in the directorate establishment of EMB and ED. At the same time, there had been an upsurge of workload since 2000 as a result of a series of education reform initiatives, the setting up of the Manpower Development Committee and the administration of the Continuing Education Fund, etc. The Administration had undertaken to review the directorate structure in two years in the light of operational experience, and identify scope for further savings in staff cost at non-directorate level and other operating costs in the new EMB.

29. The Education Reorganization (Miscellaneous Amendments) Bill 2002, which seeks, inter alia, to transfer the functions of D of E to Permanent Secretary for Education Manpower (PSEM) and transfer the functions of ED to EMB, was introduced into LegCo on 20 November 2002. A Bills Committee has been set up to study the Bill.

Financial implications

30. As detailed in paragraph 9 above, the net additional full annual average staff cost for implementation of the accountability system, including salaries and staff on-cost, is 42.228 million. The Administration has undertaken that measures will be taken to make the introduction of the accountability system cost neutral (paragraphs 13 - 16 above refer).

31. Details of the total staff cost savings (in terms of full annual average staff cost, including salaries and staff on-cost) brought so far about by the reorganization of HB/HD and EMB/ED (paragraphs 23 and 26 above refer) are as follows -

Reorganisation	Annual staff cost savings at directorate level (\$ million)	Annual staff cost savings at non-directorate level (\$ million)	Total annual staff cost savings (\$ million)
HB/HD	10.72 *	15.26	25.98
EMB/ED	12.194	-	12.194
	22.914	15.26	38.174

* Part of the savings may have to be offset by the creation of three permanent directorate posts under the purview of the Planning and Lands Branch of the Bureau which was approved by FC on 8 November 2002 (paragraph 24 above refers))

Permanent Secretary posts

Provision of Permanent Secretary posts

32. Under the accountability system, the 16 civil service D8 posts heading 16 policy bureaux are retained and retitled as Permanent Secretaries. The Administration considers that 11 of the 16 D8 posts would continue to take on substantially the same functions and duties and no redeployment of posts is involved. However, five supernumerary directorate posts need to be created under delegated authority of FS to be held against five permanent D8 vacancies for 12 months in order to effect the temporary deployment of the five D8 posts which involved substantive changes in functions and responsibilities under the accountability system. Details are as follows -

- (a) one existing post D8 post to take up matters relating to education and manpower but will be relieved of the responsibility for labour issues;
- (b) one existing post D8 post to take up matters relating to health and welfare as well as food safety;
- (c) one existing post D8 post to take up matters relating to transport and works;
- (d) one existing D8 post to take up matters relating to environmental protection and conservation; and
- (e) one existing D8 post to take up matters relating to labour issues.

33. In the LegCo Brief on "Principal Officials under the Accountability System" issued by CAB on 24 June 2002, Members were advised of the appointments of POs under the accountability system and 14 Permanent Secretaries, excluding the Permanent Secretary posts in CAB, the Civil Service Bureau and Security Bureau. Members were also advised that these three posts would not be filled substantively for the time being. Internal staff arrangements would be made for the necessary functions of these posts to be covered.

34. As announced in two Gazette Notices (G.N. (E.) 25 and 27 of 2002) dated 1 July 2002, CE approved the following appointments of Permanent Secretaries or appointments for administrative convenience with effect from 1 July 2002 -

Name and Rank	Appointment with effect from 1 July 2002	Remarks
Miss Denise YUE Chung-yee AO Staff Grade A1(D8)	Permanent Secretary for Commerce, Industry and Technology (Commerce and Industry)	
Mrs Fanny LAW Fan Chiu-fun AO Staff Grade A1(D8)	Permanent Secretary for Education and Manpower	
Mr Alan LAI Nin AO Staff Grade A1(D8)	Permanent Secretary for Financial Services and the Treasury (Treasury)	
Mr LEE Shing-see AO Staff Grade A1 (D8) Mr LO Yiu-ching, Director of Highways, was appointed to act as AO Staff Grade A1(D8) w.e.f. 1-9-02 vice Mr LEE Shing-see on pre-retirement leave (G.N.5413 refers)	Permanent Secretary for the Environment, Transport and Works (Transport and Works)	
Mr John Anthony MILLER AO Staff Grade A(D6)	Permanent Secretary for Financial Services and the Treasury (Financial Services)	
Ms Shelley LEE Lai-kuen AO Staff Grade A(D6)	Permanent Secretary for Home Affairs	

Mrs Carrie YAU TSANG Ka-lai AO Staff Grade A(D6)	Permanent Secretary for Health, Welfare and Food	
Mrs Rita LAU NG Wai-lan AO Staff Grade A(D6)	Permanent Secretary for the Environment, Transport and Works (Environment)	
Mr Francis HO Suen-wai AO Staff Grade A(D6)	Permanent Secretary for Commerce, Industry and Technology (Information and Technology and Broadcasting)	
Ms Sandra LEE Suk-yee AO Staff Grade A(D6)	Permanent Secretary for Economic Development and Labour (Economic Development)	
Mr Matthew CHEUNG Kin-chung AO Staff Grade A(D6)	Permanent Secretary for Economic Development and Labour (Labour)	
Mr LEUNG Chin-man AO Staff Grade A(D6)	Permanent Secretary for Housing, Planning and Lands (Housing)	
Mr John TSANG Chun-wah AO Staff Grade A(D6)	Permanent Secretary for Housing, Planning and Lands (Planning and Lands)	
Mr Clement MAK Ching-hung AO Staff Grade B1(D4)	Permanent Secretary for Constitutional Affairs in addition to his appointment as Deputy Secretary for Constitutional Affairs	Doubling up AO Staff Grade A1(D8)
Ms Anissa WONG Sean-yee AO Staff Grade B1(D4)	Permanent Secretary for the Civil Service in addition to her appointment as Deputy Secretary for the Civil Service	Doubling up AO Staff Grade A1(D8)

Mr Timothy TONG Hin-ming AO Staff Grade B(D3)	Permanent Secretary for Security in addition to his appointment as Deputy Secretary for Security	Doubling -up AO Staff Grade A1 (D8)whilst acting AO Staff Grade B1(D4)
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Previous concerns of Members

35. Members noted that the measures taken by the Administration for achieving the policy objective of providing Permanent Secretary posts for the bureaux under the accountability system was permissible from the legal point of view. However, some Members expressed reservations that the Administration had regarded the proposed arrangements for the Permanent Secretary posts a re-titling exercise. They considered that the Permanent Secretary posts were in fact a new creation in the civil service which should be scrutinized by ESC and FC.

36. Members had also expressed concerns about the number and ranking of the Permanent Secretary posts. Some Members queried whether the number of Permanent Secretary posts should be reduced to 11 to tie in with the number of bureaux under the accountability system. A Member considered that the Permanent Secretary posts should be of a sufficiently senior rank in order to preserve the status, professionalism and impartiality of civil servants under the accountability system. Some other Members, however, questioned the need for pitching the Permanent Secretary posts at D8 level having regard to their changed responsibilities after the addition of a new layer of POs.

37. Some Members were of the view that the distribution of duties among the 16 Permanent Secretary posts was very uneven. They noted that two Permanent Secretary posts would be provided to bureaux which would oversee different policy areas, such as the Economic Development and Labour Bureau, the Housing, Planning and Lands Bureau, and the Financial Services and the Treasury Bureau. However, only one Permanent Secretary would be provided for the Health, Welfare and Food Bureau which had an annual expenditure of more than \$70 million and a staff of about 19,000. In addition, the respective portfolios of the Permanent Secretaries responsible for constitutional affairs and civil service matters would be comparatively lighter.

Response of the Administration

38. The Administration had explained that all the 16 D8 civil service posts would have to be retained, to ensure that POs would be given the maximum support in the bureaux when they assumed office. It would be for POs to review and determine the structure and staffing of their respective bureaux and departments, including the number and ranking of the Permanent Secretaries working to them.

39. At the meeting of the Subcommittee to Study the Proposed Accountability System for Principal Officials and Related Issues on 4 June 2002, the Administration had assured Members that officers acting in the D8 Permanent Secretary posts would normally have to act for at least 12 months before they were considered for promotion. If these posts were filled by acting appointment, it would be purely for administrative convenience and would not affect the review of the ranking. The Administration had also confirmed that the five supernumerary posts (detailed in paragraph 32 above) would not be substantively filled and extended beyond 12 months without the endorsement of ESC and the approval of FC.

Recent developments

40. Members are invited to note the following developments -

- (a) following the reorganization of HB and HD and the deletion of the post of D of H (D7), the Permanent Secretary for Housing, Planning and Lands (Housing) (D8) will also assume the role of the D of H;
- (b) following the merger of EMB and ED and the deletion of the post of D of E (D7), the PSEM (D8) will also assume the role of D of E;
- (c) according to press reports dated 20 November 2002, the following Administrative Officers filling the posts of Permanent Secretary have been promoted to the rank of D8 -
 - (i) Mrs Carrie YAU TSANG Ka-lai, Permanent Secretary for Health, Welfare and Food (one of the five supernumerary posts detailed in paragraph 32 above);
 - (ii) Ms Sandra LEE Suk-yee, Permanent Secretary for Economic Development and Labour (Economic Development);
 - (iii) Mr John TSANG Chun-wah, Permanent Secretary for Housing, Planning and Lands (Planning and Lands);
- (d) according to press reports dated 20 November 2002, Mr Clement MAK Ching-hung, Permanent Secretary for Constitutional Affairs, has been promoted from the rank of D4 to D6; and
- (e) according to press reports dated 3 January 2003, Mr Timothy TONG Hin-ming, Permanent Secretary for Security, has been promoted from the rank of D3 to D4.

Conflict of interest

41. To address the concerns of Members about possible conflict of interest on the part of POs, the Administration had advised that the employment contract of POs would stipulate a requirement for POs to observe the rules and principles contained in a Code for POs. The Code would set out the basic principles which POs should follow in the performance of their duties. A copy of the draft Code was provided to the Subcommittee to Study the Proposed Accountability System for Principal Officials and Related Issues for information.

42. In response to the comments of Members on the draft Code regarding the measures that should be put in place to guard against conflict of interest, the Administration had included the following provisions in the Code for POs which was published in the Government Gazette on 28 June 2002 for public information -

- (a) POs shall declare whether they are members of any political party. They shall also declare any change in their status in relation to their membership with any political party;
- (b) POs shall not use any public resources for non-government purposes, including purposes relating to activities of political parties;
- (c) POs, when considering to become a member of any political party or taking part in any political activities, must ensure that no conflict of interest with the business of the Government or the official duties of the POs shall arise, they must also ensure that no conflict shall arise with the oaths to uphold the Basic Law and the oaths of allegiance to the HKSAR Government made by them when they assume office;
- (d) apart from being appointed to the relevant board of directors in their official capacity or holding honorary post in non-profit making organizations or charitable bodies, POs shall not hold office as directors of other companies;
- (e) prior permission from CE shall be sought for POs to accept an invitation from any organization or foreign government to make a sponsored visit; and
- (f) POs should observe certain requirements in relation to travel arrangements in and outside Hong Kong.

A copy of the Code for POs was issued to Members vide LC Paper No. CB(2)2462/01-02(01) on 29 June 2002.

Recent developments

43. The Panel on Constitutional Affairs held meetings on 9 July, 7 and 21 October 2002 to discuss, inter alia, prevention of conflict of interest and related issues. Members, in particular, focused on the provisions in Chapter 5 of the Code for POs which deals specifically with prevention of conflict of interest. The issues considered by the Panel include timing for making public declarations of interest, interests to be declared, information on properties, company directorships, use of British Virgin Islands companies to hold assets, declaration on liabilities, blind trusts, prevention of conflict of interest in participating in ExCo business, and the ties of the Secretary for Education and Manpower (SEM) with the Chinese University of Hong Kong. A Background Brief summarizing the main views and concerns raised by Members regarding prevention of conflict of interest of POs and related issues was issued to Members vide LC Paper No. CB(2)726/02-03 on 19 December 2002.

44. Members may wish to note that Hon Emily LAU had also raised a written question on "Use of flight awards earned from government passages" at the Council meeting on 11 December 2002.

Leave relief arrangements for POs and attendance of POs at meetings of committees of LegCo

45. In response to Members' concerns, the Administration had set out the leave relief arrangements for POs and the responsibility of POs in relation to LegCo, such as attendance of POs at meetings of the Council and its committees in the Code for POs.

46. In the light of experience since 1 July 2002, some Members have raised concern about the leave relief arrangements during temporary absence of POs, and attendance of POs at meetings of committees of LegCo, such as the Public Works Subcommittee.

47. The Panel on Constitutional Affairs will discuss the leave relief arrangements for POs and attendance of POs at meetings of committees of LegCo on 20 January 2003. A Background Brief summarizing the past discussions of Members was issued to Members vide LC Paper No. CB(2)654/02-03(03) on 12 December 2002.

Amalgamation of bureaux

48. Members had expressed serious concern about problems which might arise from the amalgamation of certain policy portfolios under the revised proposal. They pointed out that policies falling within the purview of some reorganized bureaux such as the Environment, Transport and Works Bureau and the Economic Development and Labour Bureau were likely to affect different sectors with

conflicting interests. They queried how the relevant POs, in formulating and implementing policies in the respective policy areas, could successfully balance the interests of all parties. Some Members had expressed concern about the creation of "super bureau" and pointed out that the Health, Welfare and Food Bureau and the Environment, Transport and Works Bureau would have an annual expenditure of about \$70 million and \$50 million and a staff size of 25,000 and 19,000 respectively.

49. Although some Members considered it slightly excessive for the Administration to appoint 11 Directors of Bureau, they supported the Administration's decision. However, they requested the Administration to conduct a review of the reorganized bureaux with a view to streamlining the structure by 2007.

50. The Administration responded that it had considered the views of Members and different sectors of the community in deciding on the revised amalgamation of the various policy portfolios. However, the Administration would not rule out the possibility of making changes to the areas of responsibilities of the reorganized bureau in future, if considered necessary.

Review of the roles and functions of advisory/statutory bodies and committees

Background

51. The Administration had advised the Subcommittee to Study the Proposed Accountability System for Principal Officials and Related Issues that POs would review the role and functions of advisory and statutory bodies (ASBs). The aim would be to ensure the effectiveness of the advisory bodies, so that the Administration would be able to tap the best talents and advice from a wide spectrum of the community and maintain a free flow of opinion and innovative ideas. The Administration had advised that in general, the statutory bodies should not derogate from the role, authority, responsibility and accountability of POs.

52. In late 2001, the Home Affairs Bureau (HAB) completed a survey and collected information on 634 ASBs including their subcommittees. One of the improvement measures recommended by HAB is that the bureaux and departments should critically review the need to revamp or abolish any ASB which no longer achieve the role or functions it is set up for, is not performing effectively, or overlaps the functions of other ASBs. The results of the survey and the improvement measures recommended by HAB were discussed by the Panel on Home Affairs at its meeting on 12 March 2002 (LC Paper No. CB(2)1276/01-02(01) refers). The Panel was of the view that the Administration should undertake a comprehensive review of the ASB system and provide a detailed report on the review for future discussion. The Administration had advised the Panel that the report should be ready for discussion in May 2003.

Recent developments

Review of Housing Authority (HA)

53. The Panel on Housing was briefed on the reorganization of the former HB and HD at its meeting on 4 November 2002 (LC Paper No. CB(1)149/02-03(06) refers). A Member had taken the opportunity to ask the Administration whether a review of the structure and role of the HA, a financial autonomous statutory body, would be conducted in the context of the second phase of the review of the new organization.

54. The Administration had advised that the review of HA would take considerable time and could not be undertaken in parallel with the reorganization of former HB/HD, which was a mammoth task.

55. The Housing (Amendment) Bill 2002 was introduced into LegCo on 4 December 2002. The Bill seeks to make a public officer who is a member of HA also eligible for appointment by CE as Chairman of HA, and transfer to CE the power of the Secretary for Housing, Planning and Lands to appoint a panel for hearing tenancy appeals. The Bills Committee formed to study the Bill has been placed on the waiting list.

Proposal to merge Education Commission (EC) and Board of Education (BoE)

56. On 18 November 2002, the Administration briefed the Panel on Education on the proposed merger of EC and BoE with effect from 1 January 2003 (LC Paper No. CB(2)296/02-03(01) refers). BoE, a statutory body, was established in 1920 to advise D of E on educational matters. EC, a non-statutory body, was set up in 1984 to advise the Government on education objectives and policies as well as to coordinate advice on education objectives and policies as well as to coordinate advice on education at all levels. In line with the objective of integrating policy making and implementation by merging EMB and ED, and following abolition of the post of D of E, the Administration had proposed to merge BoE with EC to establish a new EC.

57. According to the Administration, in the light of the accountability system, the new EC would advise SEM, instead of CE. On major policy issues, SEM would continue to consult CE and the ExCo on the recommendations of EC. SEM would also be given the flexibility to refer educational issues to the new EC for advice, if necessary.

58. As mentioned in paragraph 29 above, the Education Reorganization (Miscellaneous Amendments) Bill 2002 was introduced into LegCo on 20 November 2002 and seeks, inter alia, to abolish BoE and to transfer the functions of BoE to EC, a non-statutory body. A Bills Committee has been set up to study the Bill.

Preserving the integrity and political neutrality of the civil service

59. In response to the concern of the Subcommittee to Study the Proposed Accountability System for Principal Officials and Related Issues about preserving the integrity and political neutrality of the civil service, the Administration had briefed Members on the draft circular to be issued to civil servants on their role and responsibilities in relation to POs under the accountability system. The circular aimed to set out the mechanism for upholding and promoting the integrity, impartiality and honesty of the civil service.

60. On 9 July 2002, the Administration advised the Panel on Constitutional Affairs that the circular had been promulgated on 28 June 2002 for circulation to each and every member of the civil service. A copy of the circular was provided for Members' reference vide LC Paper No. CB(2)2467/01-02(01) issued on 29 June 2002. Having regard to the comments previously made by the Members, the Administration had spelt out clearly the working relationship between civil servants and the Director of CE's Office in the circular. In addition, the following paragraph of the draft circular (paragraph 12) which some Members found inappropriate -

"Civil servants should conduct themselves in such a way as to deserve and retain the confidence of the principal officials who are appointed from time to time. They should comply with the rules governing the participation of civil servants in political activities. The conduct of members of the civil service should be such that principal officials can be sure that the civil service will faithfully fulfil its duties and obligation to, and impartially assist, advise and carry out the policies of the HKSAR Government headed by the Chief Executive of the day."

had been re-cast as follows -

"Civil servants should conduct themselves in a professional manner at all times. They should comply with the rules governing the participation of civil servants in political activities. The conduct of members of the civil service should be such as to instil confidence in the principal officials that the civil service will faithfully fulfil its duties and obligation to, and impartially assist, advise and carry out the policies of the HKSAR Government headed by the Chief Executive of the day."

Review of statutory functions of CS and FS

61. During the deliberations of the Subcommittee to Study the Proposed Accountability System for Principal Officials and Related Issues, it had noted that under Cap. 1, the term FS meant FS and the Secretary for the Treasury (S for Try). With the transfer of statutory functions from S for Try to the Secretary for

Financial Services and the Treasury (SFST), SFST could exercise some of the statutory functions currently exercisable by FS. This raised the question of whether it was appropriate for another PO to be able to exercise the statutory functions of FS who was also a PO and did not have a supervisory role over the other PO.

62. The Administration had explained that the resolution on transfer of statutory functions did not cover CS and FS. Both CS and FS would continue to exercise the statutory functions vested in them. The Administration had undertaken to review the statutory functions currently vested in CS and FS to see if any such functions should be transferred or delegated to the relevant bureau secretaries. The review would include an examination of the definition of FS in section 3 of Cap. 1.

Administrative support for Directors of Bureau

63. The Administration had proposed that Directors of Bureau would be provided with office staff comprising an administrative assistant (pitched at the equivalent rank of a D2 civil servant), a press secretary, a personal assistant and a chauffeur (CS, FS and SJ have already provided with a similar complement of administrative staff).

64. Some Members expressed concern about the staff costs required to provide the complement of administrative support staff and the implications of the proposed arrangement on the civil service.

65. The Administration had explained that the additional full annual average staff cost for providing administrative support to the 11 Directors of Bureau was estimated to be in the region of \$57 million. The provisions would be absorbed within existing financial resources.

66. On 1 August 2002, the Administration advised the Panel on Constitutional Affairs that all the posts in the private offices of the Directors of Bureau had been filled by civil servants with the exception of the following six posts which have been filled by non-civil service contract staff (LC Paper No. CB(2)2684/01-02(01) refers) -

<u>Office</u>	<u>Posts</u>
(a) Office of Secretary for Education and Manpower	(i) Press Secretary, (ii) Personal Assistant
(b) Office of Secretary for Commerce, Industry and Technology	(iii) Personal Assistant, (iv) Chauffeur

(c) Office of Secretary for the Environment, (v) Personal Assistant
Transport and Works

(d) Office of Secretary for Home Affairs (vi) Chauffeur

Council Business Division 2
Legislative Council Secretariat
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**List of major issues discussed by the
Subcommittee to Study the Proposed System
of Accountability for Principal Officials and Related Issues**

1. Timetable and public consultation on the accountability system;
2. Order of seeking the Council 'approval for the staffing, financial and legislative proposals for the accountability system;
3. Financial and staffing implications of the accountability system;
4. Powers and functions of the Chief Executive and his accountability;
5. Definition of "Public officer" and "public servant";
6. Constitutionality of the accountability system;
7. Legislative measures to give effect to the accountability system;
8. The function, composition and operation of the Executive Council;
9. A new system of employment of principal officials;
10. Leave relief arrangement for principal officials;
11. Inclusion of the post of Secretary for Justice in the accountability system;
12. Inclusion of the post of Secretary for the Civil Service in the accountability system;
13. Preserving the integrity and political neutrality of the civil service;
14. Ranking of Permanent Secretaries and their role as Controlling Officers in the Approved Estimates of Expenditure;
15. Director of CE's Office;
16. Establishment and development of constitutional conventions;
17. Issues relating to appointment, employment and removal of principal officials;
18. Conflict of interest and Code for Principal Officials;
19. Splitting, merging and retention of bureaux;

20. Relationship between bureaux and departments;
21. Review of advisory and statutory bodies and other public bodies, implications of the proposed system on their roles and functions;
22. Pension payment arrangements for serving civil servants appointed as principal officials;
23. Resolution under section 54A of the Interpretation and General Clauses Ordinance;
24. Interpretation and General Clauses Ordinance (Replacement of Schedule 6) Order 2002; and
25. Powers and duties delegated by the Chief Executive to existing bureau secretaries.