

For discussion
on 19 May 2003

Legislative Council Panel on Constitutional Affairs

Procedures for appointment and removal of principal officials under the accountability system

Introduction

This paper sets out the procedures for appointment and removal of principal officials under the accountability system.

Article 48(5) of the Basic Law

2. Article 48(5) of the Basic Law provides for the following:

“The Chief Executive of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

.....

(5) To nominate and to report to the Central People’s Government for appointment the following principal officials: Secretaries and Deputy Secretaries of Departments, Directors of Bureaux, Commissioner Against Corruption, Director of Audit, Commissioner of Police, Director of Immigration and Commissioner of Customs and Excise; and to recommend to the Central People’s Government the removal of the above-mentioned officials”.

Appointment of principal officials under the accountability system

3. The procedures for appointment of a principal official under the accountability system are, in very broad terms, as follows:

- (a) a prospective principal official selected by the Chief Executive will undergo an integrity check and medical examination;
- (b) after the integrity check and medical examination have been completed, he will be nominated by the Chief Executive for appointment by the Central People's Government;
- (c) after the Central People's Government has approved the proposed appointment, the Government of the Hong Kong Special Administrative Region (HKSARG) will enter into an employment agreement with the principal official.

Removal of principal officials under the accountability system

4. The employment agreement with individual principal officials provides for, inter alia, the following:

- (a) subject to Article 48(5) of the Basic Law, a principal official may resign from his office by giving to the HKSARG one month's prior written notice or by paying the HKSARG an amount equal to one month's salary in lieu of such notice;
- (b) subject to Article 48(5) of the Basic Law, the HKSARG may terminate the employment of a principal official at any time by giving the principal official one month's prior written notice or by paying the principal official an amount equal to one month's salary in lieu of such notice; and
- (c) subject to Article 48(5) of the Basic Law, the HKSARG and a principal official may resolve the employment agreement at any time by mutual agreement.

5. The procedures for removal of a principal official under the accountability system are, in very broad terms, as follows (in cases where the removal is instigated by resignation of the principal official):

- (a) a principal official tenders his resignation;
- (b) if the Chief Executive accepts the resignation in principle, he will recommend to the Central People's Government the removal of the principal official;
- (c) after the Central People's Government has agreed to remove the relevant principal official, the HKSARG will accept the resignation of the official and terminate his employment in accordance with the provisions of the employment agreement.

Specific points raised

6. The Chairman of the Panel has requested the Administration to address in particular the following points:

- (a) in the case of the resignation of a principal official which is accepted by the Chief Executive, whether the approval of the Central People's Government is still required; and
- (b) if there is a need to terminate the employment of a principal official immediately, for example, in case of serious misconduct, whether the Government is still required to give one month's prior notice or one month's salary in lieu of such notice.

7. If the resignation of a principal official is accepted in principle by the Chief Executive, the Chief Executive will recommend to the Central People's Government the removal of the principal official in accordance with Article 48(5) of the Basic Law. After the Central People's Government has agreed to the removal, the HKSARG will accept the resignation of the official and terminate his employment in accordance with the provisions of the employment agreement.

8. If there is a need to terminate the employment of a principal official immediately, the HKSARG may, in accordance with the relevant provisions of the employment agreement, pay the principal official an

amount equal to one month's salary in lieu of notice. Alternatively, the employment agreement may be resolved by mutual agreement between HKSARG and the principal official. Under either scenario, the Chief Executive will recommend to the Central People's Government the removal of the principal official. After the Central People's Government has agreed to the removal, the HKSARG will terminate the employment of the principal official in accordance with the provisions of the employment agreement.

9. In respect of any serious breach of the agreement, Government may consider instituting legal proceedings for compensation or applying to the court for an injunction for the restraint of the breach. The expiry of the term of office is without prejudice to any right of action of the HKSARG in respect of any antecedent breach of the employment agreement.