

立法會
Legislative Council

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**Report of Panel on Constitutional Affairs
for submission to the Legislative Council
2002 - 2003**

Purpose

The report gives an account of the work of the Panel on Constitutional Affairs during the 2002-2003 Legislative Council (LegCo) session. It will be tabled at the Council meeting on 25 June 2003 in accordance with Rule 77(14) of the Rules of Procedure of the Council.

The Panel

2. The Panel was formed by a resolution passed by the Council on 8 July 1998 and as amended on 20 December 2000 and 9 October 2002 for the purpose of monitoring and examining Government policies and issues of public concern relating to constitutional affairs. The terms of reference of the Panel are in **Appendix I**.

3. The Panel comprises 15 members, with Hon Andrew WONG Wang-fat and Hon Emily LAU Wai-hing elected as Chairman and Deputy Chairman of the Panel respectively. The membership of the Panel is in **Appendix II**.

Major work

Accountability System for Principal Officials (POs)

Conflict of interest and related issues

4. Following the implementation of the accountability system for POs on 1 July 2002, the Panel held three meetings to discuss, inter alia, prevention of conflict of interest and related issues. Members, in particular, focused on the provisions of Chapter 5 of the "Code for Principal Officials under the Accountability System" which dealt specifically with prevention of conflict of interest. The Code was gazetted on 28 June 2002 and set out the basic principles which POs should follow in the performance of their duties.

5. As requested by members, the Administration provided copies of the declarations of investments and interests made by the Chief Executive (CE), POs and

other Executive Council (ExCo) Members for reference of the Panel. In response to members' suggestion, the Administration agreed that the declarations made by POs and other ExCo Members should include information on the usage of the properties (in addition to the location), and in cases where CE had given written consent to company directorships held by POs and other ExCo Members, the names and nature of business of the companies concerned. The Administration had subsequently provided copies of the updated declarations for members' reference.

6. Some members suggested that the Administration should implement measures to improve the transparency of the declaration system, such as requiring POs to disclose liabilities, partners and shareholders of foreign companies or British Virgin Islands companies used for holding financial interests/assets, and resign from company directorships which were held in a personal capacity. These members also expressed concern that family trusts, instead of blind trusts as required under the Code for POs, had been set up by some POs to manage their assets. They suggested that the Administration should ensure that trusts set up by POs were controlled and operated in such a way that all matters concerning the investment, management and disposal of the trust assets were left entirely with the trustees. In considering the relevant issues, the Panel had made reference to the information provided by the Research and Library Services Division of the LegCo Secretariat relating to declaration of interests by senior members of government in the United States and the United Kingdom.

7. While the Administration remained of the view that the declaration system currently in place was appropriate, it agreed to review the system in the light of experience and in the context of the 12-month report on the implementation of the accountability system for POs.

POs' leave relief arrangements and attendance at meetings of LegCo

8. Arising from the concerns of Members about the leave relief arrangements during the temporary leave absence of POs, and the Government's representation at meetings of Panels or other committees, the Panel discussed the matter with the Administration.

9. The Panel was advised that during the absence of the Chief Secretary for Administration (CS) or the Financial Secretary (FS), the Director of Bureau who stood in as acting CS or acting FC would attend the full Council meeting and speak on behalf of the Government. In the case of the Secretary for Justice and the Secretary for the Civil Service, given their special roles and responsibilities, arrangements would be made for a designated Law Officer and the Permanent Secretary for the Civil Service to attend the full Council meeting on their behalf respectively. During the absence of the other Directors of Bureau, another Director of Bureau would speak on behalf of the Government on established policy relating to the absent Director of Bureau but under his/her own title.

10. As regards meetings of Panels or other committees, the Government's representation would depend on the subject being discussed. The guiding principle

was that the Government would send the most suitable representative(s). Irrespective of the level of Government's representation, the Administration assured the Panel that POs would accept total responsibility for matters under their policy portfolios.

11. The Panel agreed that the arrangements were in general acceptable. Some members suggested that the Director of Bureau should make it a practice to attend the regular monthly meetings of Panels to discuss policy issues with members. It was also a good practice for Directors of Bureau to attend the first few meetings of bills committees or subcommittees on subsidiary legislation to explain the policy behind the proposed legislation and listen to the views and concerns of the members concerned.

Responsibilities of POs under the accountability system

12. 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 questioned the propriety of adopting the four categories of responsibilities, as the Administration had not put forward and 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 this Panel for follow up.

13. The Administration explained that the four categories of responsibilities were only categorizations adopted by the Panel on Inquiry on Penny Stocks Incident. The Administration reiterated its view that POs under the accountability system were 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 had 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 were accountable to CE for matters within their respective portfolios. They shouldered total responsibility for the success or failure of their policies and, in extreme cases, might have to step down for serious policy failures relating to their portfolios.

Interim report on implementation of the accountability system for POs

14. The Administration had undertaken to review the implementation of the accountability system for POs within 12 months following its implementation on 1 July 2002. At the Finance Committee meeting on 14 June 2002, the Administration undertook to provide a progress report on the review to the Panel in six months' time.

15. The Administration provided the interim report to the Panel in January 2003. On the review of the working relationship between bureaux and departments, the Panel was advised that the 11 Director of Bureau had made a preliminary assessment of the need to reorganize the bureaux and departments under their purview. The

reorganization of Housing, Planning and Lands Bureau and Education and Manpower Bureau took effect on 1 January 2003 with the approval of the Finance Committee. Civil Service Bureau and Financial Services and the Treasury Bureau would present proposals on establishment changes to LegCo as necessary. Of the remaining seven bureaux, Constitutional Affairs Bureau and Security Bureau had decided that there would not be any major reorganization, and the remaining five would come to a view on the matter by mid 2003.

16. On the review of the number and ranking of the 16 Permanent Secretaries, the Panel was advised that five Directors of Bureau had completed their review. The posts of the Permanent Secretary for Constitutional Affairs Bureau and Security Bureau were downgraded to D6 level with effect from 1 December 2002, pending a further review in the light of experience. The Secretary for Housing, Planning and Lands, Secretary for Education and Manpower, Secretary for Civil Service had decided that the Permanent Secretary posts in their bureaux should continue to be pitched at D8 level. The remaining Directors of Bureau would continue with their reviews and present their proposals to LegCo as appropriate.

17. A few members pointed out that it was the consensus view of political parties and groups represented in LegCo that the Administration should adopt a prudent approach to Government spending in the face of its sizable deficit. They considered that there was scope for further downgrading the rank of the remaining Permanent Secretary posts. Another member was of the view that under the accountability system for POs, Permanent Secretaries working to the politically appointed POs should be of a sufficiently high rank in order to preserve the integrity of the civil service.

18. The Administration advised that the net increase in full annual cost of the accountability system amounted to \$42.228 million when it was introduced in July 2002. Since its implementation, the savings realized or identified so far in terms of staff costs already amounted to \$75.65 million. The second progress report to be submitted in six months' time would provide an overall assessment of the implementation of the accountability system.

The incident of FS purchasing a vehicle shortly before the increase in motor vehicles first registration tax

19. On 9 March 2003, a newspaper reported that FS had purchased a Lexus LS430 in January 2003, prior to his announcement of an increase in motor vehicles first registration tax on Budget Day on 5 March 2003. Arising from public concern over the incident, FS was invited to explain the incident to the Panel.

20. On 15 March 2003, the Administration provided a copy of CE's letter to FS on his conclusion on the incident for members' reference. In his letter, CE concluded that what FS had done amounted to gross negligence. FS had breached parts of the Code for POs, and his behavior was highly inappropriate as a PO. CE considered that FS's offer to resign was an honourable act on his part. Having weighed the full circumstances of the case, CE had come to the conclusion that FS's mistake warranted a formal criticism, but not his resignation.

21. At the two meetings of the Panel on 17 March and 8 April 2003, FS gave an account of the incident and the chronology of events on the discussions of the Budget Strategy Group on the various revenue items, including the first registration tax, since July 2002. FS advised the Panel that he had bought the car out of practical need rather than a wish to avoid tax, and that he had donated to a charity a sum of \$380,000, being double the difference in the retail price of the car before and after the first registration tax was revised. He accepted the conclusion of CE on the incident and at the request of CE, he withdrew his offer to resign. He would continue to do his best to assist CE in facilitating the successful restructuring of the economy.

22. Some members expressed doubts about FS's integrity as he had not disclosed all the relevant information in his first report to CE, and he failed to declare his purchase of a new car, even after the Secretary for Health, Welfare and Food had declared at the ExCo meeting on 5 March 2003 that he had ordered a private car. These members also had doubts as to whether FS had actually offered to resign on 10 March 2003 as no reference was made to this piece of crucial information in his second report to CE. They also considered that CE was too hasty in coming to a conclusion on the matter on 15 March 2003 by simply relying on FS's two written reports.

23. Some other members considered that FS had been cooperative in attending the Panel meetings and in providing information to members. As CE had come to the conclusion that what FS had done amounted to gross negligence and had already issued a formal criticism, the matter should be put to an end as early as possible. These members were of the view that the present priority should be on getting Hong Kong through the difficult times, such as dealing with the outbreak of Severe Acute Respiratory Syndrome and the budget deficit.

24. In response to the request of the Panel, FS provided copies of the two reports he submitted to CE on 10 and 13 March 2003, his resignation letter, statements of his Administrative Assistant and Acting Senior Personal Assistant confirming the date they typed the English and Chinese versions of the resignation letter respectively, for members' reference.

25. At the meeting on 17 March 2003, a member proposed to move a motion that the Government should appoint a Commission of Inquiry to inquire into whether FS's purchase of a car constituted a breach of the Code for POs. The Chairman ruled that it was more appropriate for the member to pursue the motion at a meeting of the House Committee or the Council, because the Panel should only deal with issues of policy of the accountability system, and not matters relating to the conduct of individual POs under the accountability system.

Procedures of appointment and removal of POs under the accountability system

26. The Panel discussed the relevant issues arising from an oral question relating to the procedure for resignation of POs raised at the Council meeting on 30 April 2003.

27. The Panel was advised that if the resignation of a PO was accepted in principle

by CE, CE would recommend to the Central People's Government (CPG) the removal of the PO in accordance with BL 48(5). After CPG had agreed to the removal, the Government of the Hong Kong Special Administrative Region (HKSAR) would accept the resignation of the PO and terminate his employment in accordance with the provisions of the employment agreement. In response to members' question about the procedure for immediate termination of the employment of a PO, the Administration explained that CE would recommend to CPG the removal of the PO. After CPG had agreed to the removal, the Government of HKSAR would terminate the employment of the PO in accordance with the provisions of the employment agreement, either by paying the PO an amount equal to one month's salary in lieu of notice, or the employment agreement might be resolved by mutual agreement between the Government of HKSAR and the PO.

28. In the light of the recent car purchase incident involving FS, a member considered that a formal mechanism should be established to deal with serious and unexpected incidents involving POs, for example, a thorough and independent investigation should be conducted, and the report on the investigation should be made public. Another member suggested that a formal impeachment procedure, similar in operation to that for the impeachment of CE under BL 73(9), should be introduced to deal with cases of POs committing serious misconduct.

29. The Administration was of the view although the BL did not provide for an impeachment procedure for POs, the accountability system allowed the public, the media and LegCo to effectively monitor the performance of the Government.

2004 LegCo elections

30. The Administration briefed the Panel on a number of proposals on electoral arrangements relating to the third term LegCo elections to be held in 2004.

31. In response to the request of the Panel, the Research and Library Services Division of LegCo Secretariat had provided information on a number of relevant issues including public subsidies for parliamentary election expenses, limits of election expenses, and allocation of broadcasting time to candidates and political parties in Canada, Germany and Australia, for members' reference.

Geographical constituencies (GCs)

32. The Administration proposed that for the 2004 LegCo elections, there would still be five GCs with the number of seats ranging from four to eight. Under the Basic Law, the number of GC seats to be returned through direct elections for the third term LegCo would be increased from 24 to 30.

33. Some Members expressed concern that for a large GC with, say, eight seats, a candidate who had secured a small number of votes could get elected. The Administration had explained that the number of seats per GC would be proportional to the spread of population.

Election expense limits

34. The Administration proposed that the same election expense limits used in the 2000 LegCo elections (i.e. \$1.5 per head of population in a given GC, rounded to the nearest \$500,000) should continue to apply.

35. While a Member requested the Administration to consider removing the election expense limits so as not to place unnecessary restrictions on candidates' election activities, the majority of the members considered that such a proposal would deter less well-off candidates from standing in the elections.

Number of subscribers

36. The Administration briefed the Panel on its proposal to amend the relevant legislative provisions to the effect that candidates would only be allowed to submit a specified number of subscribers (100 for a LegCo GC candidate list), plus a 100% buffer as potential subscribers to make up for any shortfall of the legal requirements. The proposed measure would tackle the problem of election candidates submitting very large number of subscribers in their nomination papers. Members did not raise any objection to the proposal.

Financial assistance scheme

37. Members welcomed the Administration's proposal to introduce a financial assistance scheme for candidates of LegCo elections. Under the proposed scheme, financial support would be given to a candidate who got elected, or those who had received 5% of valid votes or more. The rate would be set at \$10 per vote but capped at 50% of the actual election expenses of the candidate concerned. In addition, free mailing for candidates would be reduced from two rounds to one.

38. In response to the request of the Panel, the Administration explained the rationale of setting the subsidy rate at \$10 per valid vote and the ceiling at 50% of the actual election expenses incurred by candidates under the proposed scheme. Regarding financial implications, the Administration advised that, taking the 2000 LegCo elections as an illustration, reimbursement of \$9.99 million would be payable to candidates under the proposed scheme. However, the abolition of one round of free mailing would generate savings of about \$9.02 million. The additional expenditure for implementation of the proposed scheme was estimated to be \$0.97 million.

39. A member expressed concern about the reimbursement arrangements under the proposed scheme in the event that a candidate's election expenses would be partially offset by the election donations received by him. The Administration had advised that details of the scheme would be set out in the LegCo (Amendment) Bill 2003 and the relevant subsidiary legislation.

40. Some members considered that it was only fair and reasonable for the Administration to provide similar financial assistance to candidates in District

Councils (DCs) election. The Administration was of the view that the proposed financial assistance scheme should be introduced first in the 2004 LegCo elections. In view of the sizable deficit faced by the Government, it would be difficult to introduce a similar scheme in the DCs election at this juncture. Nevertheless, the Administration agreed to take into consideration members' views in the future review of DCs to be conducted after the 2003 DCs election.

"Equal time" principle

41. The "equal time" principle applies to candidates taking part in electioneering programmes on television or radio. A member raised the issue of allocation of free air time in proportion to the support a candidate had received at the last election. Another member had cautioned against a departure from the "equal time" principle. The Administration considered that all candidates at an election should be given the opportunity to compete on equal grounds.

Printing of names and emblems of political parties or organizations or candidates' photographs on ballot papers

42. The Administration briefed the Panel on this preliminary proposal. The Administration also provided a sample of the possible design of the ballot paper for the reference of the Panel.

43. While members supported the principle of the proposal, they requested the Administration to take into account their concerns and views in finalizing the implementation details of the proposal. Some members expressed concern whether a political party or organization would be allowed to apply for registration of different emblems for different lists of candidates, and whether a commercial organization which sponsored a candidate in an election would be allowed to have its logo or name registered and printed on ballot papers. Some members made comments on the design of the ballot paper for the consideration of the Administration.

Medical functional constituency (FC)

44. The Administration briefed the Panel on the outcome of its consultation with the relevant professions and interested parties on the proposal to include registered Chinese medicine practitioners in the Medical FC for the 2004 LegCo elections.

45. In view of the divergent views of the relevant professions and parties on the issue, most members considered that it was prudent to maintain the status quo, pending the review of constitutional arrangements after 2007. A member considered that the electorate size of FC elections should be enlarged as far as possible so as to enhance the degree of representation, although she was personally against "small-circle" type of elections. Another member considered that the best solution was to implement election of all LegCo Members by universal suffrage at the earliest possible opportunity. The Administration undertook to take into account members' views before making a final recommendation.

2003 Districts Councils (DCs) election

46. The Administration briefed the Panel on the electoral arrangements for the second term DCs election to be held on 23 November 2003.

Vote counting arrangements and handling of questionable ballot papers

47. The Administration proposed to decentralize vote counting at individual polling stations immediately after the close of poll, and to delegate to the Presiding Officers the authority for determining certain categories of questionable ballot papers.

48. Some members supported the Administration's proposal to decentralize vote counting at individual polling stations. A member requested the Administration to reconsider conducting vote counting at one of the polling stations for DC constituencies with two or more polling stations, as it would be impossible for candidates and their agents to be present to observe the count at all stations. Another member expressed concern about the proposal for Presiding Officers to determine certain categories of questionable ballot papers. In addition, he considered that the principle for mixing ballot papers from individual polling stations within a constituency before counting, especially those in small polling areas, should be maintained. This long standing arrangement would safeguard the confidentiality of electors and minimize the chance of intimidation or other illegal conduct at elections.

Polling hours

49. The Administration consulted the Panel on the proposal to shorten the existing polling hours from 7:30 am to 10:30 pm to 12 hours, i.e. from 7:30 am to 7:30 pm.

50. While some members expressed support to the Administration's proposal, some members considered that the actual polling hours should be determined having regard to the voting habit of electors. Some members preferred to maintain the existing polling hours and considered that if the polling hours were to be reduced, the closing time of the poll should end as late as possible, e.g. 9:30 pm was preferable to 7:30 pm.

Number of subscribers

51. The Administration briefed the Panel on its proposal to amend the relevant legislative provisions to the effect that candidates would only be allowed to submit a specified number of subscribers (10 for a DC candidate), plus a 100% buffer as potential subscribers to make up for any shortfall of the legal requirements. The proposed measure would tackle the problem of election candidates submitting very large number of subscribers in their nomination papers. Members did not raise any objection to the proposal.

Voter registration campaign

52. The Administration informed the Panel of the main features of the 2003 voter registration campaign. The voter registration campaign would be conducted from 1 June to 16 July 2003.

53. According to the Administration, the latest final voter register published in May 2002 recorded a total of 2.9 million registered electors for the LegCo GCs and DC constituencies, representing 65% of the total number of eligible electors. About 90,000 new electors had been registered for the 1999 DCs election. If the same number of new electors were registered in 2003, the overall registration rate would increase by 3%. A member considered the overall registration rate was too low and suggested that the Administration should set a target registration rate of 75 -80 %.

Automatic voter registration

54. The Administration briefed the Panel on the problems associated with the implementation of an automatic voter registration system. The two major problems included inherent difficulties in excluding disqualified voters from an automatically generated register, and practical difficulties in effective maintenance of an accurate and up-to-date automatic voter register. The Administration was also mindful of the repercussions in infringement of privacy arising from the need to maintain the accuracy of an automatic voter register by cross-matching personal information of Hong Kong permanent residents kept by various sources of personal data. The Administration believed that it was preferable to continue to give eligible persons the personal choice of whether to register as an elector. The Administration concluded that an automatic voter registration system should not be implemented for the time being.

55. Some members agreed with the view of the Administration. A member considered that the problems identified were not insurmountable and could be overcome by legislative and administrative means. Another member was disappointed about the Administration's decision on the issue which had been discussed by Members on many occasions in the past. He suggested that the Administration should take into account the substantial administrative costs involved in voter registration campaigns and updating voter registers under the existing arrangements in considering whether a system of automatic voter registration should be implemented. He also suggested that the public should be consulted on the issue in the context of the review of constitutional development to be conducted by the Administration.

Review of constitutional development of HKSAR after 2007

56. At the meeting on 15 January 2003, some members pointed out that LegCo had passed two motions in 2000 relating to constitutional development of HKSAR, and it was the consensus view of Members that the Administration should proceed with a comprehensive review without delay. They expressed concern about the lack of progress of the review of constitutional development of HKSAR after 2007. They considered that the review should commence as soon as possible in order to allow sufficient time for public consultation and discussions, and making amendments, if any, to the relevant provisions of the BL to provide for the election of CE and LegCo Members by universal suffrage.

57. The Administration advised the Panel that the public consultation exercise on constitutional development would likely be conducted sometime in 2004 or 2005. As regards the scope of the review, the Administration was studying whether the reference to "the method for selecting the Chief Executives for the terms subsequent to the year 2007" in paragraph 7 of Annex I to BL should include the method for selecting the third term CE in 2007. The Administration had yet to come to a view on the legal interpretation of the relevant reference in paragraph 7 of Annex I to BL.

58. The Panel decided to invite the public, in particular, the academics, legal professional bodies, major employers' associations and political groups/parties to give views on the following issues at its meeting on 16 June 2003 -

- (a) the interpretation of paragraph 7 of Annex I to BL, i.e. whether "the terms subsequent to the year 2007" should include the third term CE commencing on 1 July 2003; and
- (b) whether the method for selecting the third term CE in 2007 should be included in the review of constitutional development to be conducted by the Administration in 2004 or 2005.

59. A total of 374 individuals/organizations had made submissions to the Panel, and 35 of them had given oral representations. Some members expressed the view that as constitutional development had been discussed by the Panel on many occasions, and as a lot of views had been expressed by the deputations in relation to the review of the method for selecting the CE at the meeting, the Panel should not further discuss the subject matter until the Administration had analyzed all the views received. The following motion was moved by a member -

"That this Panel should resume the discussion on the 'Review of the method for selecting the Chief Executive under the Basic Law' only after the Administration has collated and studied all the views received on the subject matter."

The motion was put to vote. Seven members voted for, and one member voted against, the motion.

Panel meetings

60. Between the period from October 2002 to June 2003, the Panel held a total of 13 meetings.

Panel on Constitutional Affairs

Terms of Reference

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

**Legislative Council
Panel on Constitutional Affairs**

Membership List

Chairman	Hon Andrew WONG Wang-fat, JP
Deputy Chairman	Hon Emily LAU Wai-hing, JP
Members	Hon James TIEN Pei-chun, GBS, JP Hon NG Leung-sing, JP Hon Margaret NG Hon CHEUNG Man-kwong Hon HUI Cheung-ching, JP Dr Hon Philip WONG Yu-hong Hon Howard YOUNG, JP Dr Hon YEUNG Sum Hon YEUNG Yiu-chung, BBS Hon SZETO Wah Hon TAM Yiu-chung, GBS, JP Hon IP Kwok-him, JP Hon LAU Ping-cheung (Total : 15 Members)
Clerk	Mrs Percy MA
Legal Adviser	Mr Arthur CHEUNG
Date	10 October 2002