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**Paper for the House Committee meeting
on 18 April 2008**

**Report of the Subcommittee on Interpretation and General Clauses Ordinance
(Amendment of Schedule 6) Order 2008**

PURPOSE

This paper reports on the deliberations of the Subcommittee on Interpretation and General Clauses Ordinance (Amendment of Schedule 6) Order 2008 (the Order).

BACKGROUND

2. The Report on Further Development of the Political Appointment System sets out the Administration's proposal to create two additional layers of political appointment positions, namely Deputy Directors of Bureau (DDs of B) (their post title being Under Secretary) and Political Assistants to Directors of Bureau (PAs). Paragraph 10.06 of the Report indicates that legislative amendments are necessary to include the Under Secretaries of the various bureaux in the list of public officers specified in Schedule 6 to the Interpretation and General Clauses Ordinance (Cap. 1).
3. The proposal to create 24 non-civil service positions (11 DDs of B and 13 PAs) under the Political Appointment System (PAS) with effect from 1 April 2008 was approved by the Finance Committee on 14 December 2007.
4. Section 62(1) of Cap. 1 provides, among other things, that where any Ordinance confers a power or imposes a duty upon the Chief Executive (CE) to make any subsidiary legislation or appointment, give any directions, issue any order, authorize any thing or matter to be done, grant any exemption, remit any fee or penalty, or exercise any other power or perform any other duty, the exercise of such power or the performance of such duty may be signified under the hand of any public officer specified in Schedule 6 to the Cap. 1. The CE in Council is empowered under section 62(3) of Cap. 1 to amend Schedule 6 by order published in the Gazette.
5. The Administration has proposed to include Under Secretaries in the list of public officers specified in Schedule 6 to Cap. 1, given that -

- (a) Permanent Secretaries (PSs), Deputy Secretaries and Principal Assistant Secretaries, representing a range of officers from D2 to D8, are currently included in the list; and
- (b) by way of general reference, the remuneration for an Under Secretary is broadly equivalent to the remuneration of a D4 to D6 civil servant on agreement terms with all allowances and end-of-contract gratuity encashed.

THE ORDER

6. To tie in with the timing of creating the Under Secretary positions, section 1 of the Order provides that the Order shall come into force on 1 April 2008. Section 2 of the Order provides that the existing Schedule 6 to Cap. 1 be amended by adding "Under Secretary". The Order was gazetted on 7 March 2008 and tabled in the Legislative Council (LegCo) on 12 March 2008.

7. As the scrutiny period of the Order expired on 9 April 2008, the Chairman of the House Committee moved a motion at the Council meeting on 9 April 2008 to extend the scrutiny period to 30 April 2008.

THE SUBCOMMITTEE

8. At the House Committee meeting on 28 March 2008, Members formed a Subcommittee to study the Order. The membership list of the Subcommittee is in **Appendix**. Under the chairmanship of Dr Hon Philip WONG, the Subcommittee has held one meeting with the Administration.

DELIBERATIONS OF THE SUBCOMMITTEE

Further development of the PAS

Overall views

9. According to the Administration, the further development of the PAS by creating two additional layers of political appointees will -
- (a) pave the way for further democratic development and facilitate the grooming of all-round talents in public affairs;
 - (b) enable the Government to have a wider spectrum of expertise for better governance; and
 - (c) enhance the political capacity of the governing team in the pursuit of people-based and effective governance.

10. Hon Mrs Anson CHAN is of the view that the expansion of the PAS should only be contemplated after universal suffrage has been implemented. Otherwise, the system would result in the centralization of power by the CE and open the door to "transfer of benefits" and "backroom deals" between the Government and political parties.

11. Hon Albert HO has indicated that Members of the Democratic Party are strongly opposed to the creation of additional political positions as they are not convinced that it could pave the way for further democratic development and grooming of political talents. The Administration should implement universal suffrage and promote political party development instead of expanding the PAS by appointing persons who are like-minded people with the CE as political officials.

12. Hon Audrey EU points out that as the CE has "different affinities" with different political parties, only candidates who share the CE's governing philosophy will be appointed as political officials. Members of the Civic Party do not consider it appropriate to use public funds to groom particular political parties and will not support the proposal.

13. Hon TAM Yiu-chung points out that the existing PAS with only one layer of political appointees is unsatisfactory, e.g. it may not be effective for a Director of Bureau (D of B) to respond to oral questions or motion debates in Council in the capacity of another D of B during the latter's absence as he may not be conversant with the policy areas concerned. With the creation of the DDs of B positions, a D of B's deputy could deputise for him during his temporary absence. In addition, further development of the PAS would broaden the avenues for political participation and complement constitutional development in moving towards the ultimate aim of universal suffrage.

14. The Administration has advised that it is a common international practice for the head of a government to form his political team comprising several layers of political appointees. The decision of the Standing Committee of the National People's Congress on 29 December 2007 has provided a timetable for implementing universal suffrage. In this regard, the further development of the PAS will pave the way for universal suffrage. It could help develop the software of political talents, so that by the time when the CE is returned by universal suffrage, there would be a pool of political talents available for appointment as cabinet members and deputies.

Remuneration package

15. In response to the concerns raised by members, the Administration has explained that the remuneration packages for political appointees are not linked to that of the civil service. The remuneration for the positions of DDs of B and PAs are pitched within a range equivalent to 65% to 75% and 35% to 55% respectively of the remuneration package for a D of B. For easy reference, the remuneration packages for DDs for B and PAs are broadly equivalent to the remuneration of a D4 to D6 civil servant on agreement terms with all allowances and end-of-contract gratuity encashed,

and that of a D2 civil servant on agreement terms with all allowances and end-of-contract gratuity encashed, respectively.

16. The proposed ranges of remuneration were approved by the Finance Committee. The remuneration for individual DDs for B and PAs will be reviewed in the middle of each term of government (i.e. around end of 2009 for the third term Government) and may be adjusted within the above-mentioned ranges.

Delineation of responsibilities and line of command

17. Some members have expressed concern about the delineation of responsibilities between Ds of B and DDs of B, the political tier and the civil service, as well as the line of command between political appointees and senior civil servants, in particular, PSs.

18. The Administration has responded that DDs of B will assist Ds of B in a full range of political responsibilities including the handling of LegCo business. In the case of LegCo business, they will deputise for Ds of B in the latter's absence, and they will attend the meetings of LegCo (to respond to motion debates and LegCo questions) and committee meetings of LegCo (to explain and defend the Government's policy decisions) as assigned by Ds of B.

19. The creation of additional layers of political appointees would strengthen the political team and reduce the political pressure on the civil service. There will be a clear delineation of work between the political stream and the civil service stream. Ds of B and DDs of B will focus more on political matters whereas PSs and other civil servants will focus more on policy analysis or research. In addition, Ds of B or DDs of B will normally attend regular Panel meetings to explain Government policies. Whilst they will tackle the more political issues of the business involved, the accompanying PSs and/or civil service colleagues will deal with issues that are more technical in nature.

20. As for the line of command of PSs, the Administration has advised that they will continue to report to Ds of B. DDs of B will have no direct line of command vis-a-vis PSs.

Issues relating to appointment

21. Some members have enquired about the source and background of candidates and the criteria for appointment. The Administration has advised that people with political party, academic, professional, business, civil service and other backgrounds are possible candidates for appointment. Only persons who are of the right calibre, patriotic and love Hong Kong will be appointed to fill the new positions. In addition, they must be ready and able to support CE in the delivery of pledges and promises in his election platform, and share the ultimate aim of universal suffrage as set out in the Basic Law and as determined by the NPCSC decision of 29 December 2007.

22. As all DDs for B and PAs will be appointed and removed by the CE on the advice of the Appointment Committee, some members have asked whether the arrangement is consistent with the Basic Law which provides that the appointments of POs are made by the Central People's Government (CPG) at the nomination of the CE.

23. The Administration has explained that the Basic Law has not provided for the appointment authority or the specific procedures for political appointments other than POs. Under the Basic Law, the CE is the head of the Hong Kong Special Administrative Region (HKSAR) and the head of the HKSAR Government. The proposed appointment procedures of the two new tiers of political appointments are consistent with the Basic Law. The fact that the DDs of B will deputise for Ds of B during the latter's absence does not mean that the former will need to be appointed by CPG in the first place.

24. Some members have questioned whether the arrangement for DDs of B to act as Ds of B during the latter's absence is consistent with the Basic Law. The Administration has clarified that it is a standing practice within the Government for deputies to act in the capacity of their senior officials during the latter's absence. The arrangement for DDs of B to act as Ds of B on a short-term basis will not contravene the Basic Law.

Availability of "revolving door" arrangement

25. Members have asked about the availability of "revolving door" arrangement for political appointees who are ex-civil servants. The Administration has advised that no "revolving door" arrangement would be provided for ex-civil servants joining the political team (except for the position of the Secretary for Civil Service). Persons filling the political positions, if selected from the body of serving civil servants, should leave the civil service before taking up political appointments. Such a person would not be permitted to return to his former civil service rank and position automatically upon completion or termination of his political appointment. Should he wish to serve in the civil service again, he would have to go through an open and competitive recruitment process in the usual way.

Other issues

26. In response to members on issues relating to the code of conduct, pre-appointment procedure and post-office employment control of the new political appointees, the Administration has responded as follows -

- (a) the "Code of Principal Officials under the Accountability System" has been adapted as the "Code for Officials under the Political Appointment System" after the expansion of the PAS. The Code will apply to all politically appointed officials including DDs of B and PAs;
- (b) integrity checking on prospective candidates will be conducted before they are nominated for appointment;

- (c) the new positions will be filled by individuals of the right calibre, and the new appointees may get more familiar with the Government during the setting-in period; and
- (d) with effect from April 2007, the terms of reference of the advisory committee previously set up to advise politically appointed POs on their employment plans after leaving office has been extended to cover the post-office employment or appointment of CEs and all politically appointed officials including DDs of B and PAs. The committee has been renamed as "Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials" (Advisory Committee).

27. In further response to members on the effectiveness of the Advisory Committee in prevention of conflict of interest of political appointees, the Administration has explained that within one year after stepping down from office, political appointed officials shall seek the advice of the Advisory Committee, which is chaired by a High Court judge, before commencing employment etc. The advice given by the Advisory Committee shall be made public.

The Order

28. The Order amends Schedule 6 to Cap. 1 to add "Under Secretary" to the list of public officers who are empowered to signify the exercise of statutory powers and performance of statutory duties by the CE.

29. Members note that "Under Secretary" appears before "Permanent Secretary" on the list. Some members have questioned the appropriateness for according "Under Secretary" a higher ranking on the list, given that the remuneration of "Permanent Secretary" is higher than that of "Under Secretary", and the former does not report to the latter as far as the line of command is concerned.

30. The Administration has explained that the list of public officers specified in Schedule 6 to Cap. 1 can be divided into two parts : political appointees and civil servants. The arrangement to place "Under Secretary" immediately after Directors of Bureau will enable all political appointees to be grouped together on the list. The list is not a precedence list. As the Chief Secretary for Administration, the Financial Secretary and the Secretary for Justice occupy the first three places on the list, some members maintain that the list in a way reflects the status and order of precedence of public officers. They have reiterated their concern about a clear delineation of responsibilities and line of command between DDs of B and PSs.

31. Hon Albert HO has indicated that he does not support the Order as he is opposed to the further development of the PAS. In response to Hon Albert HO, the Administration has confirmed that Under Secretaries, when acting as Ds of B, could exercise the powers and perform the duties of Ds of B, irrespective of whether the post title of "Under Secretary" is included in the list of public officers specified in Schedule 6 of Cap. 1.

32. The Administration points out that the proposal to create the positions of 11 DDs of B and 13 PAs under the PAS with effect from 1 April 2008 was approved by the Finance Committee on 14 December 2007. It urges members to support the Order which is a consequential legislative amendment following the creation of the new positions.

33. Hon Albert HO moved a motion urging the Subcommittee to repeal the Order. The majority of the members of the Subcommittee did not support the motion after voting. Hon Albert HO has advised the Subcommittee that he will move a motion to repeal the Order at the Council meeting on 30 April 2008.

ADVICE SOUGHT

34. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
17 April 2008

**Subcommittee on Interpretation and General Clauses Ordinance
(Amendment of Schedule 6) Order 2008**

Membership list

Chairman Dr Hon Philip WONG Yu-hong, GBS

Members Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon SIN Chung-kai, SBS, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum, JP
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Daniel LAM Wai-keung, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon Mrs Anson CHAN, GBM, JP

Total : 16 Members

Clerk Mrs Percy MA

Legal Adviser Mr Kelvin LEE

Date 9 April 2008