

立法會
Legislative Council

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LC Paper No. CB(2)2806/07-08
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 16 June 2008, at 2:30 pm
in the Chamber of the Legislative Council Building

Members present :

Dr Hon LUI Ming-wah, SBS, JP (Chairman)
Hon TAM Yiu-chung, GBS, JP (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHEUNG Man-kwong
Hon Bernard CHAN, GBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon LEUNG Yiu-chung
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum, JP
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, BBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon Daniel LAM Wai-keung, SBS, JP
Hon LEUNG Kwok-hung
Dr Hon KWOK Ka-ki
Hon CHEUNG Hok-ming, SBS, JP
Hon WONG Ting-kwong, BBS

Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KWONG Chi-kin
Hon Mrs Anson CHAN, GBM, JP

**Member
attending**

Hon SIN Chung-kai, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon TAM Heung-man

**Members
absent**

: Hon Alan LEONG Kah-kit, SC

**Public Officers
attending**

: Item II

The Administration

Mr Stephen LAM Sui-lung
Secretary for Constitutional and Mainland Affairs

Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional and Mainland Affairs

Mr Gary POON Wai-wing
Principal Assistant Secretary for Constitutional and Mainland
Affairs

Item III

The Administration

Mr Stephen LAM Sui-lung
Secretary for Constitutional and Mainland Affairs

Mr Joshua LAW Chi-kong
Permanent Secretary for Constitutional and Mainland Affairs

Ms Joyce HO Kwok-shan
Principal Assistant Secretary for Constitutional and Mainland
Affairs

Clerk in attendance : Mrs Percy MA
Chief Council Secretary (2)3

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Mrs Fanny TSANG
Legislative Assistant (2)3

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I. Confirmation of minutes of meeting

(LC Paper No. CB(2)2248/07-08 - Minutes of meeting on 17 March 2008)

The minutes of the meeting held on 17 March 2008 were confirmed.

II. Further development of the Political Appointment System

(LC Paper No. CB(2)2250/07-08(01) - Background Brief prepared by the Legislative Council Secretariat on "Further Development of the Political Appointment System"

LC Paper No. CB(2)2225/07-08(01) - Administration's paper on "Further development of the Political Appointment System : Nationality and remuneration of Deputy Directors of Bureau and Political Assistants"

LC Paper No. CB(2)2250/07-08(02) - Hon Emily LAU's letter dated 10 June 2008

LC Paper No. CB(2)2282/07-08(01) - Hon LEE Wing-tat's letter dated 10 June 2008

LC Paper No. CB(2)2282/07-08(02) - Hon LEE Wing-tat's letter dated 12 June 2008

LC Paper No. CB(2)2300/07-08(01) - Administration's paper on "Further development of the Political Appointment System : Responses to the views and questions raised by Members "

LC Paper No. CB(2)2300/07-08(02) - the response of the Director of Chief Executive's Office to Hon LEE Wing-tat's letter dated 10 June 2008)

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Briefing by the Administration

2. The Secretary for Constitutional and Mainland Affairs (SCMA) said that the Administration had provided two papers in response to the enquiries raised by two members (LC Paper Nos. CB(2)2225/07-08(01) and 2300/07-08(01)). As a start, he would like to make the following points -

- (a) following the implementation of the Political Appointment System (PAS) for Principal Officials (POs) on 1 July 2002, the Administration proposed to further develop the PAS by creating two additional layers of political positions, namely Under Secretary and Political Assistant. The PAS was similar to the cabinet system operated in some overseas governments in that the political team would assist the leader of the government in delivering his election manifesto. The proposal to create 24 new positions under the PAS was approved by the Finance Committee on 14 December 2007, bringing the total number of positions under the PAS to 40 now. Despite the expansion, the size of the political team was small as compared with that of some overseas governments;
- (b) the objectives to further develop the PAS were to provide additional support for POs to meet the demands of people-based governance, to enhance the capacity of the political team to take on political work which would be conducive to maintaining the political neutrality of the civil service, and to provide a more comprehensive career path for political talents which would tie in with the progressive development of a more democratic political system;
- (c) on the nationality requirement, Article 61 of the Basic Law required POs to be Chinese citizens who were permanent residents of the Hong Kong Special Administrative Region (HKSAR) with no right of abode in any foreign country and had ordinarily resided in Hong Kong for a continuous period of not less than 15 years. Article 61, however, was not applicable to Under Secretaries and Political Assistants. This point was re-affirmed by a recent statement made by the Central Authorities. It was the personal decisions of Under Secretaries and Political Assistants as to whether they would renounce any right of abode in foreign countries they might have; and
- (d) the remuneration packages for the 17 political appointees were offered within the salary ranges approved by the Finance Committee. In future, the Administration would make clear to any newly-appointed Under Secretaries and Political Assistants that their remuneration would be disclosed.

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Further Development of the PAS

3. Some members, including Mr LEE Cheuk-yan, Ms Audrey EU and Mr LEUNG Yiu-chung, said that they opposed the further development of the PAS before the implementation of universal suffrage for the Chief Executive (CE) election. As the CE was returned by a "small circle" election, further developing the PAS was not conducive to political party development and democratic development, and would open the door to a "spoils system" for political parties which had close relations with the CE.

4. Dr YEUNG Sum queried the basis for the Administration to use public funds to groom like-minded political talents who shared the governing philosophy of an incumbent CE. Ms Emily LAU queried whether further developing the PAS would achieve the aim of providing a more comprehensive career path for political talents, given that only three out of the 17 new appointees had political party background. Mrs Anson CHAN said that she was against the PAS from the very beginning.

5. Mr LAU Kong -wah and Mr Abraham SHEK said that they supported the further development of the PAS as it would contribute to effective governance of Hong Kong and it was also necessary to groom more political talents to complement constitutional development. Mr LAU said that although the recent arrangements for the appointment of Under Secretaries and Political Assistants were far from ideal, it did not mean that the PAS should be abolished.

6. SCMA said that he was aware that there were diverse views on whether the PAS was conducive to the political development in Hong Kong. The Administration held the view that further developing the PAS would expand the scope of political participation and pave the way for the implementation of universal suffrage.

7. Mr LEUNG Yiu-chung said that the Administration should review the PAS to ascertain whether it should be continued, having regard to the disappointment of the public about the recent arrangements concerning the appointment of Under Secretaries and Political Assistants. In his view, the Administration should introduce a political party law in order to develop party politics.

8. SCMA said that the Administration maintained the position that, since political parties in Hong Kong were still at a developmental stage, sufficient room should be allowed for political parties to grow. Imposing statutory control on the operation of political parties at this stage might hinder the development of political parties. He considered that expanding the scope of PAS to provide room for political participation was an appropriate approach.

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9. Some members, including Ms Audrey EU, Mr Albert HO, Mr LEUNG Yiu-chung and Ms Margaret NG, expressed concern about the commitment of the political appointees to pursue their career in politics after stepping down from office. Mr Albert HO and Mr LEUNG Yiu-chung said that the fact that some political appointees had refused to renounce their foreign right of abode or retained their positions in academic institutions reflected that they were not fully committed to pursuing a political career. It was also doubtful whether these political appointees would be willing to run for LegCo election given the substantial pay cut in taking up the office of a LegCo Member. If a political appointee discontinued his political path after stepping down from office, the PAS would not be able to achieve the purpose of nurturing political talents for the long term interest of Hong Kong.

10. Ms Audrey EU said that some political appointees might choose to work in the commercial sector, instead of participating in direct elections, after stepping down from office. Ms LI Fung-ying said that the Administration should provide specific guidelines on stepping down from office for Under Secretaries and Political Assistants.

11. Ms Margaret NG pointed out that Professor LAU Siu-kai, Head of Central Policy Unit (CPU), had retained his position in the Chinese University of Hong Kong while working in the CPU for some 10 years. She questioned whether the arrangement had been fair to the Chinese University of Hong Kong, in spite of the fact that Professor LAU had been taken off the payroll.

12. In response to members, SCMA made the following points -

- (a) paragraph 5.15 of the Code for Officials under the PAS (the Code) provided that within one year after stepping down from office, politically appointed officials should seek the advice of a committee appointed by the CE before commencing any employment, becoming a director or a partner in any business or profession or starting any business or profession on his own account or with others;
- (b) if an Under Secretary with foreign right of abode was interested in pursuing a political career in the long term and aspired to become a PO in future, he could choose to surrender his foreign passport early. It was the personal decision of the political appointee concerned;
- (c) generally speaking, the Administration would allow political appointees coming from the academia to retain their positions in their former organisations, but not those coming from commercial organisations. In the case of Professor LAU Siu-kai, he had finally chosen to leave the academic institution; and

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- (d) some political appointees decided to join the Government even though they suffered pay cuts. However, the commitment of an appointee to pursue a political career could not be purely judged by whether he had to suffer any pay cut upon take up the political appointment.

Appointment procedure

13. Some members, including Mr LEE Wing-tat, Dr YEUNG Sum and Mrs Anson CHAN, and Miss Mandy TAM expressed concern about the lack of transparency on the appointment procedure of the political appointees, thus depriving the public's right to information.

14. Mr James TIEN said that the Liberal Party was disappointed at the appointment arrangements. He asked whether the relevant POs were consulted on the postings of Under Secretaries and Political Assistants.

15. SCMA said that the procedures and related arrangements for the appointment of Under Secretaries and Political Assistants were drawn up by the Appointment Committee (AC) in late 2007. He explained the appointment procedures as follows -

- (a) the AC was chaired by the CE, and comprised the three Secretaries of Departments, SCMA, and the Director of the CE's Office (D/CEO). As regards the interviewing panels, the one for Under Secretaries was chaired by the Chief Secretary for Administration, typically with a number of Directors of Bureau and D/CEO as members; and the one for Political Assistants was chaired by D/CEO or SCMA with one to two other Directors of Bureaux as members;
- (b) the interviewing panels would compile assessments at the end of each interview and these were presented to the AC for consideration. All key decisions on the appointment procedures were made by the AC on a collective basis; and
- (c) the relevant POs would be consulted and their agreement would be secured over the proposed match, before the AC ruled on the exact "posting" for each Under Secretary or Political Assistant.

16. Some members, including Mr LEE Wing-tat, Dr YEUNG Sum, Mr CHEUNG Man-kwong and Mr LEE Cheuk-yan, and Miss Mandy TAM said that the D/CEO was a key figure in the recruitment of political appointees. Given that D/CEO had nominated candidates for appointment as political appointees, they asked whether D/CEO had participated in the short-listing of candidates, attended interviews, and made decisions on the appointment of candidates. These members expressed concern about the conflicting roles played

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by D/CEO. They asked how many candidates had been nominated by D/CEO and how many of them had been appointed as Under Secretaries and Political Assistants.

17. Mr LEE Wing-tat expressed regret that D/CEO had attended the meet-the-media session on 10 June 2008, but declined to attend the Panel meeting. As LegCo Members returned by direct election represented the public, D/CEO should not evade his responsibility. Mr LEE pointed out that paragraphs 5.1 and 5.3 of the Code provided that politically appointed officials should avoid putting themselves in a position where they might arouse any suspicion of dishonesty, unfairness or conflict of interest, and should refrain from handling cases with actual or potential conflict of interest. He wondered whether D/CEO had paid regard to these rules.

18. Dr YEUNG Sum queried whether the recruitment process had been fair, given that many of the political appointees were former colleagues of D/CEO. Mr James TIEN asked whether D/CEO was involved in the decision making process.

19. SCMA said that he represented the Administration to answer questions relating to the appointment of Under Secretaries and Political Assistants at this meeting. He made the following points -

- (a) following the approval of the creation of the Under Secretary and Political Assistant positions in December 2007, the Administration indicated that all interested parties could put forward their nominations;
- (b) by January 2008, the Administration had received over 100 nominations or referrals or self-nominations from political parties, think tanks, and government sources (including Secretaries of Department, Directors of Bureau and Head of the CPU). Having considered the initial long list of potential candidates, the AC agreed in February 2008 to a list of potential candidates short-listed for interviews;
- (c) the Administration would not comment on the details of the number of nominations or referrals received from different sources. In any event, the number nominated by D/CEO was small; and
- (d) throughout the entire appointment process, all decisions, such as formation of interviewing panels, consideration of candidates, determination of their remuneration levels, and postings were made with the AC's approval after careful consideration. No single member of the AC could rule alone on these matters.

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20. Mr Ronny TONG asked about the basic criteria in selecting Under Secretaries and Political Assistants, and how the Administration determined whether a candidate could be groomed to become a political figure.

21. SCMA said that paragraphs 7.12 to 7.15 of the "Report on Further Development of the Political Appointment System" published in October 2007 (the Report) set out the aspects which the Government would take into account when considering candidates for appointment to these new positions. These included, for example, the network they had with their respective fields, the contribution which they could make to the relevant portfolios, their knowledge and experience in public service, and their ability, etc. The AC would also consider individual candidates in terms of their commitment to serving the community and pursuing a political career. It was under this framework that the AC made comprehensive assessment on individual candidates. In short, the AC would take into account the qualifications, ability and experience of candidates.

22. In further response to Mr Ronny TONG on the feasibility of conducting an open recruitment exercise, SCMA said that the issue was addressed in the Report. While open recruitment had been the system used for civil service appointment, it was not suitable for political appointment, and this was not the arrangement adopted for appointing POs currently. Political appointees were required to subscribe to the CE's manifesto and be committed to assuming political responsibilities collectively for the governance of Hong Kong.

23. Mr James TIEN expressed concern about the qualification of some of the political appointees. He said that Mr Paul CHAN Chi-yuen, who was appointed as a Political Assistant, had only three years' working experience as a Senior Research Assistant in the City University of Hong Kong. Mr Victor LO Yik-kee, who was appointed as a Political Assistant, was a retiree from the Police Force at the age of 55. Mr TIEN asked how these two candidates stood out from the others.

24. SCMA explained that Mr Paul CHAN had shown an interest in politics on various fronts. Mr CHAN was a founding member of the Roundtable group. He was also a part-time lecturer at the Department of Politics and Public Administration at the Chinese University of Hong Kong and a presenter and commentator at the Radio Television Hong Kong. The AC considered that he had considerable knowledge in the political affairs in Hong Kong and possessed the necessary competencies and communication skills required for handling government work. As regards Mr Victor LO, SCMA said that age was not a major consideration for appointment. Mr LO had over 30 years' experience in the Police Force, and this stood him in good stead for the position in the Security Bureau. SCMA further said that the 17 political appointees, mostly in their 30s and 40s, were considered by the AC to be the most suitable candidates for the respective positions.

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25. Mr LEUNG Yiu-chung doubted whether the Administration had selected the most suitable candidates for the respective positions. He quoted the following examples -

- (a) Mr Kenneth CHEN Wei-on, currently engaged in gambling business as Director of Racecourse Business in the Hong Kong Jockey Club, was appointed as Under Secretary for Education;
- (b) Dr Kitty POON Kit, currently Assistant Professor of the Department of Applied Social Sciences in the Hong Kong Polytechnic University, was appointed as Under Secretary for Environment;
- (c) Mr YAU Shing-mu, currently the Executive Chief Editor in the Hong Kong Economic Times, was appointed as Under Secretary for Transport and Housing; and
- (d) Mr Gregory SO Kam-leung, a solicitor, was appointed as Under Secretary for Commerce and Economic Development.

26. Mr LEE Wing-tat asked whether the new political appointees had to go through training before taking up offices. Ms Audrey EU pointed out that it would be too costly to pay over one to two million dollars to train political appointees who did not have experience in the relevant fields.

27. In response to members, SCMA made the following points -

- (a) the public and the media could come to their own views on the performance of the 17 political appointees after they had assumed office;
- (b) all the political appointees had a strong education background. They came from various sectors and had experience which could help them deliver in the new positions. For instance, Mr Kenneth CHEN, appointed as Under Secretary for Education, was a member of the Advisory Committee on Teacher Education and Qualification and had previously served as a part-time member of the CPU. In addition, his previous employer, the Hong Kong Jockey Club, provided various social services to the community and grants to various organisations including medical and education bodies; and
- (c) the Administration was not offering political appointments as some sort of training for the appointees. The political appointees should possess the political skills to explain and defend government policies, listen to public views and assess the level of support attained, upon taking up the job. Soon after the political appointees had familiarised with their work portfolios, they had to take up real work.

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Remuneration

28. Mr Albert HO asked why a confidential clause on remuneration package was included in the employment contract between the Administration and the new political appointees, given that public money was involved. He pointed out that the salary of newly employed civil servants was public information.

29. SCMA explained that in the civil service, the actual salaries of individual colleagues would not be disclosed if there were different salary points within the same rank. It was in line with this practice that the salaries stated in the contract entered into with political appointees were not disclosed. The Administration had only disclosed the salary ranges for Under Secretaries and Political Assistants. However, in view of sustained public interest, the Under Secretaries and Political Assistants had agreed to disclose their personal remuneration, and the Administration issued a press release on their behalf and included such information in the paper presented to the Panel. The Administration had strived to disclose relevant information as far as possible, but in doing so, it had to strike a balance between safeguarding the integrity of personal data and facilitating the public's right to know.

30. Mr LEE Cheuk-yan questioned the logic for the Administration to offer the mid-point within the approved salary ranges, but not the minimum salary point, to some of the newly appointed Under Secretaries and Political Assistants.

31. Ms Audrey EU asked who and how to decide the pay points of respective political appointees, and how and when their salary would be reviewed. As the Administration had previously said that disclosing the pay points of individuals would give rise to management problems, she enquired what problems had arisen after the Administration disclosed the details.

32. Mr LAU Kong-wah said that the performance of political appointees should not be assessed by the relevant POs only, as they were also accountable to the public. Mr LAU asked whether the salary of a political appointee could be reduced if his performance was below standard.

33. Mr Martin LEE asked whether the Administration had decided to offer the mid-point within the approved salary ranges to political appointees because of the difficulty in recruiting suitable persons to fill the positions.

34. In response to members, SCMA made the following points -

- (a) there were three pay points for Under Secretaries and five for Political Assistants within the ranges approved by the Finance Committee. Since the Administration was developing a new system and the public had considerable expectation of the new political appointees, the Administration set relatively high standards

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for these appointments and had adopted the mid-point within the salary ranges as the anchor when considering whether to screen in a candidate. For those meeting the benchmark, their remuneration would be set at the mid-point within the approved ranges. In case particular individuals would suffer pay cuts upon taking up the appointment, a relatively higher salary points would be offered for these appointees. All decisions on the remuneration of individual appointees were made by the AC on a collective basis;

- (b) the public and the media could come to their own views on the performance of political appointees after they had assumed office. Their performance would be assessed by the relevant POs after they had taken up office for 18 to 24 months. The AC would decide whether to adjust the remuneration of each appointee within the pay scale for the relevant rank after considering the performance appraisal by the PO concerned. Under the PAS, the remuneration for political appointees could be increased or reduced. In the extreme event that a political appointee failed to perform, his employment could be terminated either by giving one month's notice or one month's salary in lieu; and
- (c) the previous concern of the Administration about disclosing the personal salaries of political appointees was that it would give rise to unnecessary comparisons and personnel management problems. The political appointees were appointed under the principle of meritocracy, and it was inappropriate to compare salaries among themselves. However, after discussion among themselves, the political appointees agreed to disclose their remuneration to the public. On this, the Government had no dissenting views.

35. Mr SIN Chung-kai said that in the private sector, a salary increase of 30% was considered exceptional on change of employment. Generally speaking, suitable candidates were offered salary at market rates or at the minimum entry point. The mid-point within a salary range would be offered only if the candidate had proven ability. He queried the justification for offering Mr Paul CHAN a pay rise of 300% and asked whether the minimum point had ever been offered to Mr CHAN from the very beginning. He cautioned about prudent use of public money and asked whether Mr CHAN's salary could be adjusted downward to a more reasonable level. He also requested the Administration to consider offering the minimum salary point within the approved salary ranges to future appointees, having regard to their existing remuneration and experience.

36. Mr LAU Kong-wah said that if the Administration decided in future that the minimum salary point should be offered to political appointees, it must make clear to the public that it was not because the requirements of political appointees had been lowered.

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37. SCMA responded that the AC had made the decision at the early stage of the recruitment process that, in order to ensure that the appointees were of high standard and could perform immediately after taking up office, it should adopt the mid-point within the salary range as the basic position when considering whether to screen in a candidate. As contracts had already been entered into with individual political appointees, the Administration had to honour its offers. The Administration would consider members' views that it should consider offering the minimum salary point within the approved salary ranges to some appointees, where justified.

38. Ms LI Fung-ying said that the public was gravely disappointed at the Administration's arrangement in appointing political officials. Since the Administration's intention was to offer political appointees at the mid-point of the approved salary ranges as the anchor rather than the minimum point, the Administration was providing misleading information to Members when it sought funding approval from the Finance Committee.

39. SCMA said that when the Administration sought approval from the Finance Committee in December 2007, it had already indicated that the salary scales included three pay points for Under Secretaries and five for Political Assistants. The decision of the AC to set the mid-point of the approval salary ranges as the basic position when considering whether to screen in a candidate was consistent with the Government's proposal as approved by the Finance Committee.

40. Mrs Anson CHAN and Ir Dr Raymond HO expressed concern that the remuneration offered to political appointees would affect civil service morale. Mrs Anson CHAN said that civil servants had to work over 10 years before they were promoted to D2 posts. As some Under Secretaries and Political Assistants had relatively short length of experience, she queried how the Administration could convince civil servants that these political appointees were of a higher calibre than their counterparts in the civil service. Ir Dr Raymond HO said that under the existing practice, the Government would offer a non-chartered engineer with five years of working experience at the minimum point of \$11,470. He was not convinced that the political appointees should be offered at the mid-point.

41. Ms Margaret NG expressed concern about the double standard adopted by the Administration. On the one hand, civil servants were employed at the minimum salary point at the start, while the salaries for Under Secretaries and Political Assistants started at the mid-point.

42. In response to members, SCMA made the following points -

- (a) the Government attached importance to civil service morale. Under the PAS, politically appointed officials shouldered political responsibility for matters under their respective portfolios, thus

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protecting civil servants from political controversies and enabling them to focus on policy work. It would therefore be conducive to maintaining a permanent, professional, and politically neutral civil service;

- (b) the newly appointed Under Secretaries and Political Assistants had strong education background, came from various sectors, and possessed experience which could help them deliver in the new positions. The remuneration package offered had to be competitive and should reflect the level of responsibility for these positions;
- (c) Under Secretaries and Political Assistants were not civil servants and their remuneration packages were not linked to those of the civil service. They were remunerated on the basis of a total cash package, and there were no housing allowance, no passage allowance and no gratuity benefits for them. It was not appropriate to compare the level of their remuneration directly with that of civil servants; and
- (d) for ease of reference, the remuneration range for Under Secretaries was broadly equivalent to the remuneration of a D4 to D6 civil servant on agreement terms with all allowances and end-of-contract gratuity encashed, while the remuneration range for Political Assistants was broadly equivalent to the remuneration of a senior professional to D2 civil servant on agreement terms with all allowances and end-of-contract gratuity encashed.

43. Ms Emily LAU and Mr Ronny TONG pointed out that Members were also involved in political work but their remuneration was low in comparison with POs and the new political appointees. Ms Emily LAU said that the salary of a Member was \$56,750 per month as compared with a PO who received a salary of nearly \$300,000 per month. In terms of grooming political talents, Members were given an allowance of \$127,835 per month as operating expenses for running their offices which included the hiring of Members' assistants, while a Political Assistant received a monthly salary of over \$100,000 per month. She hoped that the remuneration of LegCo Members and allowance for employing staff would be adjusted to a reasonable level in the next term LegCo.

44. SCMA responded that the Administration supported that the remuneration of Members should be adjusted upward in the coming term. In this regard, the Administration had accepted last year the recommendations of the Independent Commission on Remuneration for Members of the Executive Council and the Legislature of the HKSAR, chaired by Mr Vincent CHENG Hoi-chuen, to increase the monthly remuneration and to enhance some other aspects of the package for Members of the Fourth LegCo.

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Delineation of responsibilities

45. Ms Margaret NG and Mrs Anson CHAN pointed out that senior civil servants were engaged in political work at present. They asked whether senior civil servants were no longer required to answer questions at meetings of the Council and LegCo committees, after the political appointees had assumed their respective positions. Ms Emily LAU and Mr LEE Cheuk-yan asked when the new political appointees would start attending meetings of LegCo committees.

46. SCMA said that POs and Under Secretaries would attend Council meetings when relevant issues were discussed. As regards panel and bills committee meetings, the level of political officials attending would depend on the nature of the agenda items. As a general practice, either the PO or the Under Secretary concerned would attend regular monthly meetings of the relevant panels. SCMA said that individual political appointees would start attending meetings of LegCo committees within the current legislative session, subject to the service needs of the respective bureaux.

47. Ms Emily LAU said that according to paragraph 5.14 of the Report, a Civil Service Code (CS Code) applicable to civil servants would be drawn up. The CS Code would clearly delineate the roles and responsibilities of civil servants under the PAS to avoid uncertainty about the responsibilities of politically appointed officials and civil servants, and to safeguard the integrity and political impartiality of the civil service. She asked when the CS Code would be published and the reasons for the delay in its publication.

48. SCMA said that the Administration had issued a circular in March 2008 concerning the organisational changes in the Government Secretariat arising from further development of the PAS. The circular stated, for example, that Under Secretaries would have no direct line of command vis-à-vis Permanent Secretaries. As regards the CS Code, it would apply to the entire civil service and the Civil Service Bureau needed more time in the drafting work.

Nationality

49. On the nationality requirement, SCMA said that Under Secretaries and Political Assistants had to be permanent residents of the HKSAR. However, since Under Secretaries were not POs, they were not required to have no right of abode in any foreign country, as required in the case of POs. This was in compliance with the Basic Law. As there were views suggesting that there was no "Deputy Directors of Bureau" at the time when the Basic Law was enacted, SCMA explained as follows -

- (a) according to the Draft Basic Law for Solicitation of Opinions in 1988, "only Chinese nationals among permanent residents of the Region can fill the following posts: the Secretary and Deputy

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Secretaries of Departments, Directors of Bureaus, Commissioner Against Corruption, Director of Audit, Deputy Directors for Security and Civil Service, Commissioner and Deputy Commissioners of Police, Commissioner and Deputy Commissioners of External Affairs, Commissioner of Immigration and Inspector General of Customs and Excise";

- (b) it could be seen from the above that, during the drafting process of the Basic Law, consideration had once been made on requiring the "Deputy Directors for Security and for Civil Service" to be subject to the same requirements applicable to POs. However, in the Basic Law promulgated in 1990, the references to the above "Deputy Director" posts were taken out from the relevant provision. Therefore, the legislative intention of the Basic Law was clear, that was, only Secretaries and Deputy Secretaries of Departments, Directors of Bureaus, and a number of other department heads, were required to be filled by Chinese citizens among permanent residents of the Region with no right of abode in any foreign country; and
- (c) the Central authorities had issued a statement re-affirming the understanding of the Administration on the issue of the nationality of political appointees.

50. SCMA further said that the eight Under Secretaries had made public separately on whether they had right of abode in any foreign country. Five of them had foreign right of abode, and they had all renounced it to demonstrate their commitment to Hong Kong. The Administration respected the personal decisions of Under Secretaries and Political Assistants on whether to renounce any right of abode in foreign countries they might have.

51. Mr LEE Cheuk-yan said that given that Hong Kong was an international city, he did not mind if political appointees had foreign right of abode. Ir Dr Raymond HO disagreed that political appointees should hold foreign passports, and believed that this was unacceptable to the general public.

52. Dr YEUNG Sum said that the Administration was resorting to political expediency when asking political appointees to decide on their own whether to disclose their nationality. The Administration was shirking its moral and political responsibilities.

53. SCMA responded that nationality of a person was his personal data. The Administration could not make public such information unless it had obtained the consent of individual political appointees. In future, when announcing the appointments, the Government would convey to the appointees the community's expectation for them to make public whether they had right of abode in any foreign country. The Government would continue to respect their personal decision on whether to renounce any such right they might have.

Action

54. Mr James TIEN asked whether the Administration had enquired about the nationality of the 17 political appointees during interviews. SCMA affirmed that the Administration was aware of the nationality of these appointees before offering appointments.

Accountability and lessons learnt

55. Some members, including Dr YEUNG Sum, Mr LEE Cheuk-yan, Mr CHEUNG Man-kwong and Mr LEUNG Kwok-hung, expressed grave concern about the lack of transparency on the nationality, remuneration, and appointment procedure of the political appointees. Dr YEUNG Sum said that concentration of power was dangerous, and the appointment procedure of political appointees revealed that the Administration was high-handed. Mr LEE Cheuk-yan said that the CE had been too arrogant and had ignored public aspiration. These members said that the CE should take full responsibility and make a public apology for the chaotic arrangement of the appointment of the Under Secretaries and Political Assistants. Mr CHEUNG Man-kwong said that given that D/CEO was directly accountable for the appointment process, he should consider resigning from his position.

56. SCMA said that during the meet-the-media session on 10 June 2008, the CE had admitted with hindsight that the arrangement for new political appointees to meet with the press did not fully meet public expectations, and had apologised for the controversy that had caused. Separately, D/CEO had made his apology on the same day.

57. Some members expressed dissatisfaction that the CE had only apologized for not arranging the new political appointees to meet with the press immediately after the announcement of the appointments, but not for the handling of the whole matter. Mr CHEUNG Man-kwong said that the Administration had made four major mistakes in handling the appointment of Under Secretaries. First, it had under-estimated the reaction of the public in handling the nationality issue. Allowing political appointees to have foreign right of abode called into question their commitment to Hong Kong. Second, D/CEO's heavy involvement in the nomination and selection process had aroused suspicion of conflict of interest. Third, offering political appointees at the mid-point within the approved salary ranges, instead of the minimum point, without taking into consideration their present salary and years of experience had departed from the existing policies for recruiting civil servants, run against the principle of prudent use of public money, and disregarded the prevailing practice in the job market. Fourth, the appointment procedure for political appointees was not transparent. The Administration, in declining to disclose nationality and remuneration of individual political appointees on ground of privacy, had disregarded the public's right to know.

Action

58. Ms LI fung-ying asked the Administration about the lessons learned from this incident. Mrs Anson CHAN enquired about the arrangement for appointment of future political officials.

59. Mr TAM Yiu-chung said that although these new political positions were not civil service posts, the public tended to compare their employment terms with those of the civil servants. Before the Administration made further appointments, it should review the present arrangement and learnt from the past experience. For instance, candidates should be informed that their nationality and remuneration would be made public. He hoped that the performance of the 17 political appointees would meet the high expectation of the public.

60. SCMA said that the PAS was still a relatively new system to Hong Kong. The events in the past few weeks had demonstrated the high expectation of the public on political appointments. The Administration was accountable to the public and the LegCo. The Administration would, in the light of the experience this time round, adopt the following adjustments in making further appointments of Under Secretaries and Political Assistants -

- (a) the Administration would convey to the appointees the community's expectation for them to make public whether they had the right of abode in any foreign country;
- (b) the Government would make clear to the new appointees that their remuneration would be disclosed; and
- (c) the Administration would consider members' views that it should consider offering the minimum salary point within the approved salary ranges to some appointees, where justified.

SCMA said that the Government had made public the appointment process, the appointment criteria, and the criteria for determining remuneration for each appointee. He considered that there was sufficient transparency about the appointment process in overall terms.

61. Mr Abraham SHEK said that members had expressed concern about the transparency of the appointment procedure for political appointees, compliance of the appointment procedure with law, and the public's right to know. He had observed the development in the past few weeks, and was satisfied with the Administration's latest response. He also supported the involvement of D/CEO in the recruitment exercise.

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Motions moved by members

62. Mr LEE Cheuk-yan moved a motion condemning the chaotic arrangement of the appointment of Under Secretaries and Political Assistants, and the lack of transparency and objective criteria in the selection procedure and remuneration determination. Ms Emily LAU supported the motion. Wording of the motion is as follows -

"鑒於特區政府任命副局長和政治助理的安排混亂、遴選程序和準則、釐定薪酬水平欠缺透明度及客觀標準致引起公憤，本委員會對此作出強烈譴責。"

[English Translation: That this Panel strongly condemns the chaotic arrangement for the appointment of Under Secretaries and Political Assistants by the SAR Government, and the lack of transparency and objective criteria in selecting them and in determining their pay levels, which have aroused public indignation.]

63. Mr LEE Wing-tat moved a motion to amend Mr LEE Cheuk-yan's motion. He considered that the CE should take full responsibility and make a public apology over the chaotic arrangement. Dr YEUNG Sum expressed support for the proposed amendment. Wording of Mr LEE Cheuk-yan's motion as amended by Mr LEE Wing-tat is as follows -

"鑒於特區政府任命副局長和政治助理的安排混亂、遴選程序和準則、釐定薪酬水平欠缺透明度及客觀標準致引起公憤，本委員會對此作出強烈譴責。要求特首曾蔭權全面承擔責任並公開道歉。"

[English Translation: That this Panel strongly condemns that the chaotic arrangement for the appointment of Under Secretaries and Political Assistants by the SAR Government, and the lack of transparency and objective criteria in selecting them and in determining their pay levels, which have aroused public indignation, and this Panel also requests that the Chief Executive, Mr Donald TSANG, should take full responsibility and make a public apology.]

64. Mr LAU Kong-wah said that he did not support the above motions. He moved a motion expressing grave disappointment that the Government had under-estimated the expectation of the public in handling matters relating to the appointment of Under Secretaries and Political Assistants and urging the Government to review the deficiencies of the PAS and give an account to the public. Mr Howard YOUNG supported the motion. Wording of the motion is as follows -

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"本會認為政府在處理委任副局長及政治助理的過程中低估了市民的期望，表示十分失望。本會促請政府檢討整個制度各方面有所不足的地方，並向公眾交代，亦促請新委任官員充分理解市民的高要求及高期望，積極發揮所長，發揮問責精神，作出政治承擔，為港人忠誠服務。"

[English Translation: That this Panel considers and expresses grave disappointment that the Government has underestimated the expectation of the public in handling the appointment of Under Secretaries and Political Assistants; and this Panel urges the Government to review the deficiencies of the whole system and give an account to the public; moreover, this Panel urges the new appointees to understand fully the high expectations and high standards required of them by the public, give full play to their strengths, live up to the spirit of accountability and be politically committed to faithfully and sincerely serving the people of Hong Kong.]

65. Mr LEE Cheuk-yan said that Mr LAU Kong-wah's motion was reiterating the views expressed by the Administration. As he considered that the whole system for appointment of Under Secretaries and Political Assistants was problematic, he could not support Mr LAU's motion.

66. Mr LAU Kong-wah disagreed with the view of Mr LEE Cheuk-yan that his motion was reiterating the views of the Administration. He pointed out that the Administration would not express grave disappointment at its own deed. He, however, was disappointed at the appointment arrangement for Under Secretaries and Political Assistants.

67. Mr Ronny TONG asked Mr LAU Kong-wah whether he supported Mr LEE Wing-tat's motion on "Seeking papers, books, records and documents regarding the salary and fringe benefits of Under Secretaries and Political Assistant" to be moved at the Council meeting on 25 June 2008.

68. Mr LAU Kong-wah replied in the negative, and said that the nationality, remuneration, and appointment procedure of the political appointees had all been made public.

69. Mr LEE Wing-tat disagreed with Mr LAU Kong-wah that the Administration had disclosed the relevant information. He pointed out that the Administration had refused to disclose the number of nominations made by the D/CEO. Mr LEE said that he would not support Mr LAU's motion.

70. On voting procedure, Senior Assistant Legal Adviser 2 (SALA 2) advised members that according to Rules 31 and 32 of the Rules of Procedure, where the Council had taken a decision on a specific question, no further motion should be moved in relation to that question during the current session. If the Panel

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followed the practice of the Council, the motion proposed by Mr LAU Kong-wah might not be dealt with after a decision had been made on the motion moved by Mr LEE Cheuk-yan unless Mr LAU's motion was moved as an amendment to the latter Member's motion. However, the Panel had the discretion to depart from the procedure adopted by the Council.

71. Mr TAM Yiu-chung said that many panels had voted on motions proposed by individual members relating to the same agenda item. He suggested and members agreed to vote on the above motions in the following manner -

- (a) members would first vote on the motion proposed by Mr LEE Wing-tat;
- (b) members would then vote on the motion proposed by Mr LEE Cheuk-yan; and
- (c) members would vote on the motion proposed by Mr LAU Kong-wah.

72. The Chairman put the motions to vote. The motion proposed by Mr LEE Wing-tat was negatived by a vote of 14 to 20. The motion proposed by Mr LEE Cheuk-yan was negatived by a vote of 14 to 20. The motion proposed by Mr LAU Kong-wah was passed by a vote of 20 to 9, with three members abstained from voting.

73. The Chairman declared that Mr LAU Kong-wah's motion was carried.

Ms Emily LAU's proposal

74. Ms Emily LAU said that in her letter (LC Paper No. CB(2)2250/07-08(02)), she had mentioned that the recruitment of Members' assistants had to go through stringent procedures, at the suggestion of the Independent Commission Against Corruption (ICAC). In this regard, she had proposed in paragraph 3 of her letter that the Panel should make a decision on whether the arrangement for appointing Under Secretaries and Political Assistants should be referred to the Commissioner of the ICAC for examination to ascertain whether it was in compliance with the required standard.

75. Mr Tommy CHEUNG, Chairman of the Panel on Food Safety and Environmental Hygiene (FSEH), said that the FSEH Panel had scheduled its meeting at 5:30 pm in the Chamber to receive views from deputations. If the venue was not vacated before 5:45 pm, the meeting of FSEH Panel would have to be aborted. Some members held the view that the Panel should deal with Ms LAU's proposal immediately by voting, and some members suggested that the proposal be dealt with at another meeting. As the appointed time of the Panel had passed, members had not made a decision on the matter.

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(Post-meeting note: On the instruction of the Chairman, members' views were sought on whether a special meeting should be held to deal with Ms LAU's proposal. As the majority of the members responded that it was not necessary to hold another meeting, Ms Emily LAU's proposal was dealt with by circulation. The majority of the members responded that it was not necessary for the Panel to follow up Ms LAU's proposal.)

III. Methods for electing the Chief Executive and for forming the Legislative Council in 2012

(LC Paper No. CB(2)2223/07-08(01) - Administration's paper on "Methods for electing the Chief Executive and for forming the Legislative Council in 2012")

76. Members agreed to defer discussion of the item to a future meeting.

77. The meeting ended at 5:37 pm.

Council Business Division 2
Legislative Council Secretariat
23 September 2008