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Panel on Constitutional Affairs

**Information note prepared by the Legislative Council Secretariat
for the meeting on 16 May 2011**

**Medical conditions of Principal Officials and
arrangements made during the temporary absence of Principal Officials**

The need to formulate policy concerning sick leave of Principal Officials ("PO") and the work arrangements was raised at the meetings of the House Committee on 1 and 8 April 2011. Extracts from the minutes of these two meetings are in **Appendices I** and **II** respectively.

2. When the Accountability System was implemented on 1 July 2002, POs were required to attend -
 - (a) full sessions of the Legislative Council ("LegCo") to initiate bills or motions, respond to motions and answer questions from LegCo Members; and
 - (b) LegCo committee, subcommittee and Panel meetings where major policy issues were involved.

As regards the arrangements during the temporary absence of a PO from Hong Kong, the Administration's stance at that time was that POs were not expected to take leave for any length of time other than when LegCo was in recess. Even if POs were physically away from Hong Kong, they would still be able to make urgent decisions by means of fax or internet communication.

3. Hon Frederick FUNG raised a written question at the Council meeting of 5 May 2004 regarding temporary acting appointments of accountable officials. Mr FUNG asked, among others, whether the Government would consider creating the post of Deputy Secretary under the existing framework of the Accountability System. The Secretary for Constitutional Affairs replied that the Administration had no intention to create the post of politically appointed deputy secretary under the then existing framework.

4. On 17 October 2007, the Administration published the "Report on Further Development of the Political Appointment System". The Administration

recommended that one position of Under Secretary at the rank of Deputy Director of Bureau and one position of Political Assistant should be created for each policy bureau (except the Civil Service Bureau), and one position of Political Assistant should be created for the Chief Secretary for Administration ("CS") and the Financial Secretary ("FS") respectively.

5. The "Code for Principal Officials under the Accountability System", gazetted on 28 June 2002, set out the basic principles which POs should follow in the performance of their duties. With the Political Appointment System coming into operation in April 2008, the Code has been adapted as the "Code for Officials under the Political Appointment System" ("the Code") to take into account the introduction of the new layers of Under Secretaries and Political Assistants. Relevant provisions of the Code include:

- (a) Under Secretaries will deputize the relevant Directors of Bureau during the latter's temporary absence, attend meetings of LegCo, its committees, subcommittees and Panels and speak on behalf of the Government;
- (b) POs shall note that they may be directed as necessary by the Chief Executive during the temporary absence of other POs, to exercise the powers or perform the duties of the absent POs, including the duty to attend meetings of LegCo, its committees, subcommittees and Panels and to speak on behalf of the Government; and
- (c) during the temporary absence of the Secretary for Justice, relevant Law Officers will exercise the powers and perform the duties of the Secretary for Justice, including the duty to attend meetings of LegCo, its committees, subcommittees and Panels and to speak on behalf of the Government. During the temporary absence of the Secretary for the Civil Service, the Permanent Secretary in the Civil Service Bureau will exercise the powers and perform the duties of the Secretary for the Civil Service, including the duty to attend meetings of LegCo, its committees, subcommittees and Panels and to speak on behalf of the Government.

The Code also provides that POs and Under Secretaries shall endeavour to ensure that they would be available to attend meetings of LegCo when matters relating to their respective portfolios are discussed.

Extract from the minutes of meeting of House Committee on 1 April 2011

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Formulation of policy concerning sick leave of Principal Officials and the work arrangements

3. Ms Emily LAU expressed concern that the Administration had not explained to the public the recent hospitalization of the Secretary for Commerce and Economic Development and the work arrangements during her sick leave. In her view, it was not a matter of privacy as the illness of Principal Officials might affect their discharge of duties. She considered it necessary for the Administration to formulate policy in this regard, and suggested that reference should be made to the practices adopted by other countries. She requested the Chairman to relay her concern to CS.

4. The Chairman undertook to relay Ms Emily LAU's concern to CS.

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Extract from the minutes of meeting of House Committee on 8 April 2011

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Formulation of policy concerning sick leave of Principal Officials and the work arrangements

2. The Chairman said that she had relayed to CS Members' concern about the failure of the Administration to explain to the public the recent hospitalization of Mrs Rita LAU, Secretary for Commerce and Economic Development ("SCED"), and the work arrangements during her sick leave. On behalf of Mrs LAU, CS thanked Members for their concern for and regards to her. CS had pointed out that the Administration had announced Mrs LAU's sick leave and the appointment of Mr Gregory SO, Under Secretary for Commerce and Economic Development ("USCED"), as Acting SCED during her sick leave. Mr SO would attend Council meetings in his capacity as Acting SCED during the period of acting appointment.

3. The Chairman further said that CS had stressed the need to strike a balance between the public's right to know and protection of privacy. He respected privacy and hence would not disclose details about Mrs LAU's illness. CS had highlighted that the acting appointment was made in accordance with the established mechanism, i.e. when a Government official was on leave, an acting appointment would be made to cover his/her temporary absence. The acting official was empowered to exercise the statutory powers and functions of the relevant office. CS did not consider it necessary to collect information on the practices adopted by other countries in this regard. Nevertheless, the Administration would be happy to make reference to relevant information obtained by the Legislative Council ("LegCo").

4. Mr Ronny TONG noted that Mr Stephen LAM, Secretary for Constitutional and Mainland Affairs, had disclosed his undergoing of an operation the day before the House Committee meeting. He sought confirmation on whether it was Mr LAM's voluntary disclosure and this did not represent any change in the Administration's policy in respect of disclosure of illness of Principal Officials.

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5. The Chairman replied in the affirmative. She said that according to CS's response, it was the Administration's policy not to disclose to the public details of illness of Principal Officials on sick leave. The Administration would only make a formal announcement on the sick leave of the Principal Official and the acting appointment during his/her sick leave. It was for individual officials on sick leave to decide whether to disclose their illness to the public.

6. Mr Abraham SHEK opined that in demanding Principal Officials to disclose details of their illness, Members should consider whether they would do the same.

7. While noting Mr Abraham SHEK's view, the Chairman said that it was not the issue under discussion.

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