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Paper for House Committee meeting on 27 April 2012

Background brief

**Transition arrangements
for change of the Chief Executive
of the Hong Kong Special Administrative Region**

Purpose

This paper summarizes the concerns expressed by members of the Panel on Constitutional Affairs in respect of the transition arrangements for the change of the Chief Executive ("CE") of the Hong Kong Special Administrative Region ("HKSAR"). The paper also provides background information on the establishment of the Office of the Chief Executive-elect ("CE-elect") for the fourth-term Government.

Background

2. At the House Committee meeting on 20 April 2012, Members expressed concern about the lack of information on the changeover of Government from the current CE to the newly elected CE including the proposal of the CE-elect to restructure the Government Secretariat. In the absence of such information, it had been difficult for the Legislative Council ("LegCo") to undertake its work in scrutinizing the present legislative proposals which might straddle 1 July 2012 and in examining policy and financial proposals put forward by the present Administration which might be different from those of the CE-elect. Members considered that the Administration should brief LegCo on the transition arrangements. On the other hand, the House Committee should also examine how far these arrangements would impact on the work of LegCo before its business is prorogued on 18 July 2012. Where needed, a subcommittee could be formed to follow up on the matter.

Recent discussion at Panel meeting

3. The subject of transition arrangements was raised at the meeting of the Panel on Constitutional Affairs on 16 January 2012 when the Administration's plan to set up a CE-elect's Office for the fourth-term Government was discussed. According to the Administration, the current term Government would strive to implement its policies as it has pledged according to the time-table within the remainder of its term. The scrutiny work of legislative proposals would not be affected by the change of CE and his Principal Officials ("POs"). Moreover, POs are underpinned by civil servants with extensive experience and newly appointed POs would have the knowledge to explain policies under their policy portfolios to LegCo. The incumbent Government would continue to implement its policies until 30 June 2012. However, as the CE-elect would not have any power before the commencement of his term of office on 1 July 2012, and in view of the differences in policy inclination between the incumbent CE and the CE-elect, the question at issue is how to ensure a smooth transition. According to the Administration, this would be the task of the CE-elect's Office, which would play a pivotal role in providing continuity in policy and would ensure a smooth transition arising from the changeover.

4. Members have been advised by the Administration that it has looked into the relevant practices in the United Kingdom, France and Germany but the duration of the transition period in respect of these countries is relatively short. The Administration has also made reference to the practice in the United States of America ("US") where the transitional period is longer. There is a Presidential Transition Act in US to govern transition matters (including appropriation of funds) during the period between the presidential election and the inauguration of the new President. The General Services Administration would handle transition arrangements and related personnel matters.

Establishment of the CE-elect's Office

5. During the debate on the Motion of Thanks in respect of CE's Policy Address 2011-2012 at the Council meeting of 28 October 2011, the Chief Secretary for Administration advised the Council that with a view to ensuring the smooth changeover from the third-term HKSAR Government to the fourth-term HKSAR Government, the Administration would establish a provisional office for the CE-elect, an arrangement similar to that in 1997. According to the Administration, both the second-term CE and the third-term CE did not set up a CE-elect's Office after their election as there was no operational need for that.

6. The CE-elect's Office which commenced operation on 25 March 2012, the day the fourth-term CE was elected, will cease to operate by 30 June 2012. According to the Administration, the CE-elect's Office will support the CE-elect in undertaking the following major duties –

- (a) to form a governing team for the new term of Government, including nominating POs for appointment by the Central People's Government, as well as recruiting Executive Council Members and other politically appointed officials;
- (b) to prepare for drawing up a policy plan for the new Government based on the CE-elect's election platform;
- (c) to make arrangements with the incumbent Government for a smooth transition; and
- (d) to liaise extensively with different sectors of the community and to participate in various official activities.

7. According to the Administration, the CE-elect's Office would have five posts at the directorate level and 21 posts at the non-directorate level. Details of the staff establishment are in **Appendix I**. The Head of the CE-elect's Office and the Special Assistant are special appointments on non-civil service terms. The rest are civil service posts to be filled by deployment within the Government. Suitable accommodation, manpower and financial resources would be provided to the CE-elect's Office to support its work. A provision of \$8.289 million for the establishment of the CE-elect's Office has been included in the 2012-2013 Estimates of Expenditure.

8. As regards the working relationship between the CE-elect's Office and the incumbent CE's Office, according to the Administration, continuity of Government policies is of paramount importance, which would be achieved through the work of the CE-elect's Office to make arrangements for a smooth transition. If the CE-elect considers it appropriate, the post-holders of Secretary-general of the CE-elect's Office (D6 of the Directorate Pay Scale) and Private Secretary to the CE-elect (D4 of the Directorate Pay Scale) would continue their service in the CE's Office as from 1 July 2012 to maintain consistency given their roles in co-ordinating transitional affairs and preparatory work in formulating the policy plan of the new term of government. The CE's Office would be the counterpart of the CE-elect's Office serving as the liaison point between the CE-elect's Office and the current Government.

Research conducted by the Secretariat

9. At Members' request at the House Committee meeting on 20 April 2012, the Research Division of the LegCo Secretariat has compiled information on transition arrangements for change of Government in Macao Special Administrative Region, Taiwan, Australia and US in **Appendix II**.

10. A chronology of events concerning the re-organization of Policy Bureaux of the Government Secretariat in 2007 is in **Appendix III** for Members' reference.

11. A list of the relevant committee papers with their hyperlinks at LegCo's website is in **Appendix IV**.

Council Business Division 2
Legislative Council Secretariat
26 April 2012

Appendix I

Staff Establishment of the Office of the Chief Executive-elect

Details of the five posts at the directorate level are as follows –

Rank	No.	Main Duties
Equivalent to Director of Bureau	1	Head of the CE-elect's Office, to be responsible for overall supervision of the CE-elect's Office and liaison with political groups and different sectors of the community.
Administrative Officer, Staff Grade A (D6)	1	Secretary-general of the CE-elect's Office, to assist in co-ordinating transitional affairs and preparatory work in formulating the policy plan of the new term of Government.
Administrative Officer, Staff Grade B1 (D4)	1	Private Secretary to the CE-elect, to assist the CE-elect in daily office work and official engagements.
Administrative Officer, Staff Grade C (D2)	1	Deputy Private Secretary to the CE-elect.
Administrative Officer, Staff Grade C (D2)	1	Press Secretary to the CE-elect.

Details of the 21 posts at the non-directorate level are as follows –

Rank	No.	Main Duties
Senior Administrative Officer	2	Assistant Private Secretary to the CE-elect.
Special Assistant (senior professional level)	1	Special Assistant to the CE-elect, to assist in liaising with political groups and different sectors of the community.
Principal Information Officer	1	To assist in matters related to media and public relations.
Information Officer	1	To assist in matters related to media and public relations.
Senior Official Languages Officer	1	To perform translation duties.
Executive Officer I	1	To provide administrative support.
Senior Personal Assistant	1	Personal Assistant to the CE-elect.
Personal Assistant	1	Personal Assistant to the Head of the CE-elect's Office.
Senior Personal Secretary	2	To perform secretarial duties.
Personal Secretary I	2	To perform secretarial duties.
Personal Secretary II	2	To perform secretarial duties.
Personal Chauffeur	1	Driver for the CE-elect.
Chauffeur	1	Driver for the Head of the CE-elect's Office.
Driver	2	Driver for the CE-elect's Office.

Rank	No.	Main Duties
Assistant Clerical Officer	1	To provide clerical support.
Office Assistant	1	To provide general support.

Source : Administration's paper provided for the meeting of the Panel on Constitutional Affairs on 16 January 2012 [LC Paper No. CB(2)785/11-12(01)]

INFORMATION NOTE

Transition arrangements for change of government in selected places

1. Background

1.1 This information note provides a summary of the transition arrangements for change of government in the Macao Special Administrative Region ("Macao"), Taiwan, Australia and the United States. The following **Table** compares the preparation work done before transition and the handling of unfinished policy tasks of the outgoing government after transition in the places studied.

Table – Transition arrangements for change of government in selected places

	Macao ⁽¹⁾	Taiwan ⁽²⁾	Australia	The United States
Preparation work done before transition				
Measures to facilitate the work of the incoming government	<ul style="list-style-type: none"> The incumbent CE issued a directive in August 2009 requesting all secretaries' offices, bureaux and public entities to support the incoming CE in forming his team. Personnel were provided to the office of the incoming CE from these public organs, and the costs were borne by the incumbent government. 	<ul style="list-style-type: none"> The President-elect can request the secondment of personnel from the incumbent government to assist with the forming of the new government. The President-elect and his or her designated personnel can request the transfer of government files and other relevant documents from the incumbent government. 	<ul style="list-style-type: none"> As a convention, the incumbent government assumes a "caretaker role" during the "caretaker period" which begins at the time the House of Representatives is dissolved and continues until the election result is announced or, if there is a change of government, until the new government is appointed. 	<ul style="list-style-type: none"> Presidential transition in the United States is regulated by the <i>Presidential Transition Act of 1963</i> ("the Act"), as amended by legislation such as the <i>Presidential Transitions Effectiveness Act of 1998</i>, the <i>Presidential Transition Act of 2000</i>, and the <i>Pre-Election Transition Act of 2010</i>. In particular, the Act provides for: <ul style="list-style-type: none"> (a) the General Services Administration⁽³⁾ to provide funding, facilities, access to government services, and support for the transition team established by the President-elect;

Notes: (1) Ho Hau Wah was the first and second terms Chief Executive ("CE") of Macao. Chui Sai On was elected the third term CE of Macao on 26 July 2009. He was appointed the third term CE on 10 August 2009 and formally sworn in on 20 December 2009. As there is no legislation governing the transition arrangements in Macao, information provided in this **Table** only refers to the practices adopted for the transition arrangements in 2009.

(2) Currently, there is no legislation governing the presidential transition arrangements in Taiwan. Information provided in this **Table** is based on a draft bill on presidential and vice presidential transition introduced to the Legislative Yuan in 2008. The bill is awaiting the passage by the legislature.

(3) The General Services Administration is a federal agency responsible for supporting the functioning of other federal agencies. Their duties include supplying products and communications for government offices and providing office space to federal employees.

Table – Transition arrangements for change of government in selected places (cont'd)

	Macao	Taiwan	Australia	The United States
Preparation work done before transition (cont'd)				
Measures to facilitate the work of the incoming government (cont'd)	<ul style="list-style-type: none"> The incumbent CE had discussed with the incoming CE and reached consensus over the arrangement of the 2010-2011 budget. They agreed that the key budget proposals should be outlined by the incumbent government, though the proposals would be implemented by the incoming government. 	<ul style="list-style-type: none"> With effect from the polling day for presidential election until the inauguration of the President-elect, the incumbent president who fails to be elected must freeze the appointment and/or transfer of key government officials. During the above period, the President-elect can freeze the implementation of those policies, orders and budget proposals which he or she considers controversial. 	<ul style="list-style-type: none"> The incumbent government generally observes the caretaker convention, which includes refraining from: <ul style="list-style-type: none"> (a) making major policy decisions that are likely to commit an incoming government; (b) making significant appointments; and (c) entering major contracts or undertakings. 	<ul style="list-style-type: none"> (b) provision of training and orientation to incoming government personnel; and (c) the incumbent President to take any actions that he or she determines necessary and appropriate to plan and co-ordinate activities of the executive branch to facilitate an efficient transfer of power⁽⁴⁾.

Note: (4) These include the establishment and operation of a transition co-ordinating council, the development of guidance to executive departments and agencies regarding briefing materials for the incoming administration, and the development of publications, training, programmes and other items appropriate for improving the effectiveness and efficiency of a presidential transition for dissemination to the President-elect. The transition co-ordinating council may comprise high level officials of the executive branch selected by the incumbent President, which may include any Cabinet officer, the Chief of Staff to the President, and the Administrator of the General Services Administration.

Table – Transition arrangements for change of government in selected places (cont'd)

	Macao	Taiwan	Australia	The United States
Preparation work done before transition (cont'd)				
Setting up an office or a team to prepare for the transition	<ul style="list-style-type: none"> The office of the CE-elect began operation on 1 September 2009. Its operation was supported by the incumbent government. Staff of the office held meetings with government bureaux to prepare the 2010-2011 policy address. 	<ul style="list-style-type: none"> The President-elect will set up an office tasked with, among other things, the handling of the transfer of important documents between the incumbent and incoming governments. 	<ul style="list-style-type: none"> The Labor Party won the 2007 parliamentary election and has ruled Australia since then. In 2004, the Labor Party published a comprehensive policy commitment, <i>Machinery of Government: the Labor Approach</i>, which provided a basis for planning of the new government after the 2007 election. The 2004 document covered areas including ministerial and parliamentary standards, the size and structure of the ministry, Cabinet functions and the role of ministerial staff. 	<ul style="list-style-type: none"> The President-elect will establish a transition team to prepare for the orderly transfer of power between administrations. The preparation works to be done may include: <ul style="list-style-type: none"> (a) filling in positions of key officials in the new administration⁽⁵⁾; (b) briefing nominees of the heads of executive departments on the operations of the respective departments and the priorities of the new administration; and (c) reviewing the executive orders⁽⁶⁾ of the incumbent President to determine whether the incoming President wants to rescind or replace any of them with orders of his or her own to define new course of action right away.

Notes: (5) Over 9 000 civil service leadership and support positions in the Executive and Legislative branches of the Federal Government, including Cabinet Officers and heads of other executive branch agencies, Under Secretaries, Assistant Secretaries, and Directors of Bureaus and Services, may be subject to change during presidential transitions. These positions are listed in a document called "United States Government Policy and Supporting Positions" which is published every four years at the request of the Congress.

(6) A presidential executive order is a directive issued to federal agencies, department heads or other federal employees by the President under his or her statutory or constitutional powers. Executive orders become laws 30 days after being published in the Federal Register. Presidents typically issue executive orders for purposes such as operational management of the executive branch, federal agencies or officials, and carrying out statutory or constitutional presidential responsibilities.

Table – Transition arrangements for change of government in selected places (cont'd)

	Macao	Taiwan	Australia	The United States
Preparation work done before transition (cont'd)				
Whether the incumbent government would have to complete the legislative process of all bills introduced before transition	<ul style="list-style-type: none"> Not specified in rules. In practice, all bills introduced by the incumbent government had completed the legislative process before the inauguration of the incoming government. 	<ul style="list-style-type: none"> Not specified in the draft bill. 	<ul style="list-style-type: none"> The incumbent government would complete the legislative process provided that: <ol style="list-style-type: none"> the enactment of the bill will not be in breach of the caretaker convention; or the bill has passed through both Houses, in which case it would be assented to by the Governor-General before the dissolution of the House of Representatives. 	<ul style="list-style-type: none"> Rules of the Congress are silent on this issue.

Table – Transition arrangements for change of government in selected places (cont'd)

	Macao	Taiwan	Australia	The United States
Preparation work done before transition (cont'd)				
Arrangements related to appointment of principal officials	<ul style="list-style-type: none"> On 24 November 2009, in accordance with the Macao Basic Law and the nomination of the incoming CE, the State Council appointed the principal officials and the Public Prosecutor-General of the new government. As appointed by the State Council, six principal officials and the Public Prosecutor-General of the incumbent government continue to serve in their current posts in the new government, while one principal official has assumed another post. In other words, eight out of 10 principal officials of the incumbent government have remained in the new government⁽⁷⁾. 	<ul style="list-style-type: none"> The <i>Constitution</i> provides that the President-elect is responsible for appointing the President of the Executive Yuan while other Ministers of the Cabinet shall be appointed by the President upon the recommendation of the President of the Executive Yuan. 	<ul style="list-style-type: none"> In the case of a change in government, the Shadow Ministers of the Opposition Party winning the parliamentary election are expected to serve in the new government. 	<ul style="list-style-type: none"> The appointment of members of the Cabinet, except for the Vice President⁽⁸⁾, is required to be confirmed by the Senate, the upper house of the Congress. The President-elect may nominate candidates before inauguration but voting of the Senate on the nominations will take place after inauguration.

Notes: (7) For the remaining two principal officials of the incumbent government, one was the incoming CE who served as the Secretary for Social Affairs and Culture in the incumbent government and the other one was not nominated by the incoming CE to serve in the new government.

(8) The Cabinet of the United States comprises the Vice President and the heads of 15 executive departments of the government. The Vice President is elected along with the President during the presidential election.

Table – Transition arrangements for change of government in selected places (cont'd)

	Macao	Taiwan	Australia	The United States
Preparation work done before transition (cont'd)				
Arrangements if there would be a reorganization of government structure	<ul style="list-style-type: none"> There was no reorganization of government structure. Although there was speculation that the number of policy secretaries would be raised from five to seven, the number has remained unchanged until the present time. 	<ul style="list-style-type: none"> The organization of government structure is set out in law. Any reorganization has to be approved by the Legislative Yuan. There has not been any reorganization during the presidential transition. 	<ul style="list-style-type: none"> After the Prime Minister of the new government has taken office, in the case of a reorganization of government structure and upon the advice of the Prime Minister, the Governor-General signs the Administrative Arrangements Order which formally allocates executive responsibility among the ministers. 	<ul style="list-style-type: none"> Information not available.

Table – Transition arrangements for change of government in selected places (cont'd)

	Macao	Taiwan	Australia	The United States
Handling of unfinished policy tasks of the outgoing government after transition				
Arrangements for handling the unfinished policy tasks	<ul style="list-style-type: none"> As observed from the first policy address of the new CE delivered to the Legislative Assembly on 16 March 2010, policies were inherited from the previous administration. The policy orientation of the new CE was in line with the previous administration. The new government continued those policy initiatives that the outgoing government had committed⁽⁹⁾. 	<ul style="list-style-type: none"> Information not available. 	<ul style="list-style-type: none"> There is no rule governing the handling of the unfinished policy tasks of the outgoing government after transition. The continuation and arrangement of these policy tasks is to be decided by the incoming government. 	<ul style="list-style-type: none"> Information not available.

Note: (9) For example, the new CE announced that the government would keep the cash subsidies and tax cuts implemented by the previous administration. Moreover, the outgoing CE said in his last policy address that the government would launch a central savings system. The new CE reaffirmed this commitment and pledged to set up a two-tier social security system, including a central savings system. The outgoing government's commitment to the provision of 19 000 public housing units over the next few years would also be continued by the new government.

Research Division
26 April 2012
Tel: 3919 3637

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**Chronology of events concerning the re-organization
of Policy Bureaux of the Government Secretariat in 2007**

Date(s)	Events
3 May 2007	The Chief Executive ("CE") announced a plan to re-organize the policy bureaux of the Government Secretariat with effect from 1 July 2007.
From 8 to 26 May 2007	The Panel on Constitutional Affairs held five meetings to discuss and receive views on the proposed re-organization of the policy bureaux and related issues. The Panel considered the changes in the civil service organizational structure, the changes to the 2007-2008 Estimates of Expenditure consequential to the proposed re-organization, and the nature of the legislative amendments to be introduced to effect the transfer of statutory functions arising from the re-organization.
18 May 2007	In anticipation of a notice to be given by the Administration to move a resolution on the proposed re-organization of policy bureaux, the House Committee formed a subcommittee to commence scrutiny of the legislative amendments relating to the proposed re-organization.
From 23 to 31 May 2007	The Subcommittee on Legislative Amendments Relating to the Proposed Re-organization of Policy Bureaux of the Government Secretariat ("the Subcommittee") held a total of six meetings to complete its scrutiny work.
22 May 2007	The Establishment Subcommittee endorsed the staffing proposal related to the re-organization.
23 May 2007	The then Secretary for Constitutional Affairs gave notice of moving a Resolution under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) at the Council meeting of 13 June 2007 for the purpose of giving effect to the transfer of statutory functions from the affected Directors of Bureaux to Directors of Bureaux of the re-organized bureaux.

Date(s)	Events
1 June 2007	The Chairman of the Subcommittee made a verbal report on its deliberations to the House Committee.
8 June 2007	The Subcommittee made a written report to the House Committee.
12 June 2007	The Finance Committee approved the staffing proposal related to the re-organization.
13 June 2007	The Council passed the resolution moved by the then Secretary for Constitutional Affairs.
23 June 2007	The third-term CE announced that the Central People's Government had, on his nomination, approved the appointment of Principal Officials (including the three Secretaries and 12 Directors of Bureaux) for the third-term Hong Kong Special Administrative Region Government.
29 June 2007	The Interpretation and General Clauses Ordinance (Replacement of Schedule 6) Order 2007 to amend the list of public officers specified in Schedule 6 to Cap. 1 so as to reflect the changes to the post titles of the various Directors of Bureaux who were to take charge of the re-organized bureaux was gazetted.
1 July 2007	Inauguration of the third-term Hong Kong Special Administrative Region Government.

Council Business Division 2
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**Relevant documents on transition arrangements for change of
the Chief Executive of the Hong Kong Special Administrative Region**

Committee	Date of meeting	Paper
Subcommittee on Legislative Amendments Relating to the Proposed Re-organisation of Policy Bureaux of the Government Secretariat	23.5.2007	Legislative Council Brief [Re-organisation of policy bureaux of the Government Secretariat] [Re-organisation of policy bureaux of the Government Secretariat : Legislative Amendments]
House Committee	8.6.2007	Report of the Subcommittee on Legislative Amendments Relating to the Proposed Re-organisation of Policy Bureaux of the Government Secretariat
Panel on Constitutional Affairs	16.1.2012 (Item III)	Agenda
Finance Committee (Special meeting)	5 – 9.3.2012	Examination of the Estimates of Expenditure 2012-13 [Reply Serial No. CSO008] [Page 26]
		Examination of the Estimates of Expenditure 2012-13 [Reply Serial No. CEO011] [Page 21]
		Examination of the Estimates of Expenditure 2012-13 [Reply Serial No. S-CSO04] [Page 5]