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**Paper for the House Committee meeting on 15 June 2012**

**Report of the Subcommittee to Study the Proposed Legislative Amendments  
Relating to the Re-organisation of the Government Secretariat**

**Purpose**

This paper reports on the deliberations of the Subcommittee to Study the Proposed Legislative Amendments Relating to the Re-organisation of the Government Secretariat ("the Subcommittee").

**Re-organisation proposals**

2. In his manifesto, the Chief Executive-elect ("CE-elect") has proposed to create two Deputy Secretary of Department ("DSoD") posts, i.e. the Deputy Chief Secretary for Administration ("DCS") and Deputy Financial Secretary ("DFS"), to share the workload of the Chief Secretary for Administration ("CS") and the Financial Secretary ("FS") respectively to oversee and coordinate the cooperation between Hong Kong Special Administrative Region ("HKSAR") and the Mainland, and a number of cross-cutting policy issues<sup>1</sup>.

3. The plan of the CE-elect to restructure the Government Secretariat is as follows -

- (a) two DSoD posts should be created to share the workload of CS and FS. A new rank of DSoD should be created, and the monthly salary of the DSoD rank should be pitched midway between that of the Secretary for Justice and Directors of Bureaux ("DoBs");

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<sup>1</sup> "We will consider the creation of deputy posts to share the workload of the Chief Secretary for Administration and the Financial Secretary. Under their purview, we will strengthen the cooperation between Hong Kong and the Mainland in diverse fields and actively plan for the economic and social developments in Hong Kong, including financial innovations, tourism promotion, population policy and retirement protection, as well as stepping up coordination among different bureaux in formulating and implementing policies." (*Point 8 under My Policy Platform in the Chapter on My Pledge on Administrative and Political System, page 76 of the Manifesto of the CE-elect*)

- (b) a new Culture Bureau ("CB") should be set up to take over the policy responsibilities on culture and the West Kowloon Cultural District ("WKCD") from the Home Affairs Bureau ("HAB"), film and creative industries from the Commerce and Economic Development Bureau ("CEDB"), and heritage conservation from the Development Bureau ("DEVB");
- (c) the existing CEDB (less policy responsibilities on film and creative industries) should be restructured into two new bureaux, namely the Commerce and Industries Bureau ("CIB"), and the Technology and Communications Bureau ("TCB"). Policy responsibilities on the maritime, air and logistics industries should be transferred from the Transport and Housing Bureau ("THB") to the new CIB; and
- (d) the existing DEVB (less policy responsibilities on heritage preservation) and THB (less policy responsibilities on the maritime, air and logistics industries) should be restructured into two new bureaux, namely the Housing, Planning and Lands Bureau ("HPLB"), and the Transport and Works Bureau ("TWB").

4. With the re-organisation proposals in paragraph 3(c) and 3(d) above, policy responsibilities on housing and transport will be transferred from the CS' side to the FS' side. The policy responsibilities of the Secretary for Culture ("S for C"), the Secretary for Home Affairs, the Secretary for Commerce and Industries ("SCI"), the Secretary for Technology and Communications ("STC"), the Secretary for Housing, Planning and Lands and the Secretary for Transport and Works ("STW") are set out in **Appendices I to VI** respectively. The policy responsibilities of the eight bureaux not affected by the re-organisation will remain unchanged. They are the Civil Service Bureau, the Constitutional and Mainland Affairs Bureau, the Education Bureau ("EDB"), the Environment Bureau, the Financial Services and the Treasury Bureau, the Food and Health Bureau, the Labour and Welfare Bureau, and the Security Bureau.

5. On 4 May 2012, the Executive Council endorsed the re-organisation proposals put forth by the CE-elect's Office.

6. In accordance with section 54A of the Interpretation and General Clauses Ordinance (Cap. 1), the Legislative Council ("LegCo") may by resolution provide for the transfer of statutory functions vested in one public officer to another public officer. On 8 May 2012, the Secretary for Constitutional and Mainland Affairs ("SCMA") gave notice of his intention to move a motion under section 54A of Cap. 1 to effect the transfer from 1 July 2012 of the statutory functions of four DoBs to the Directors of the four re-organised Bureaux and a new DoB (S for C),

and the transfer of functions of two affected Permanent Secretaries pursuant to the proposal to re-organise the Government Secretariat by the CE-elect.

7. According to the Administration, once the resolution is passed, the Chief Executive-in-Council will make an order, which is subject to negative vetting by LegCo, to amend the list of public officers set out in Schedule 6 to Cap. 1. The amendments aim to include the post titles of the two DSoDs and reflect the changes to the post titles of the various public officers. The order will also come into force on 1 July 2012.

### **The Subcommittee**

8. At the House Committee meeting on 11 May 2012, Members formed a subcommittee to study the proposed legislative amendments relating to the re-organisation of the Government Secretariat. Mr TAM Yiu-chung and Mr Jeffrey LAM have been elected as Chairman and Deputy Chairman of the Subcommittee respectively. The membership list of the Subcommittee is in **Appendix VII**.

9. The Subcommittee has held 11 meetings to study the legislative amendments and the re-organisation proposals.

### **Deliberations of the Subcommittee**

#### Implementation of the proposed re-organisation

10. Members note that to implement the new organisation structure with effect from 1 July 2012, apart from the need to move the resolution to effect the transfer of statutory functions, the current term Government would submit proposals in June 2012 to the Establishment Subcommittee ("ESC") and the Finance Committee ("FC") for approval of the staffing and financial implications arising from the proposed re-organisation. Subject to the endorsement/approval of ESC and FC, these staffing and financial proposals will come into effect from the date of transfer specified in the resolution proposed to be passed by LegCo. Therefore, the funding approval will only become effective if the proposed resolution is passed by LegCo, and on the same date when that resolution takes effect, i.e. 1 July 2012.

11. Some members including Mrs Sophie LEUNG, Mr LAU Kong-wah, Mr Jeffrey LAM and Mr IP Kwok-him have expressed support for the proposed re-organisation with effect from 1 July 2012 in order to facilitate the CE-elect to implement the priority policy initiatives pledged during the Chief Executive

("CE") election with the ultimate aim of enhancing the effectiveness of governance. They generally recognise the need for a comprehensive government structure as envisioned by the CE-elect to facilitate the implementation of his policies to address the livelihood concerns in a timely and effective manner. These members have pointed out that the public has raised two major concerns, namely, the pace of development of Hong Kong has become stagnant; and there is a lack of coordination among policy bureaux and government departments on cross-cutting policies. The public has high expectations on the new governing team to bring about changes to the current situation. They stress that the new-term government should be given the freedom to put in place a structure of the Government Secretariat which can better fulfill the policy objectives and priorities pledged by the CE-elect.

12. Some other members including Members belonging to the Civic Party and Mr LEUNG Kwok-hung, however, do not support the re-organisation proposals. They have pointed out that the outcome of the last two exercises to re-organise the Government Secretariat has fallen short of public expectation on the objective of enhancing the effectiveness of governance but taxpayers are asked again to foot the bill for the additional posts in order to implement the proposed re-organisation. These members are of the view that the Administration should have reviewed the Accountability System (also referred to as the Political Appointment System ("PAS") in this report) in order to enhance the accountability of the politically-appointed officials ("PAOs") and identify the inadequacies of the existing administrative structure before seeking its further expansion. They consider that the CE-elect is putting the cart before the horse by creating an additional layer of PAOs without any critical review of the efficiency and effectiveness of the system. In addition, the policy responsibilities of relevant DoBs should be rationalised and there should be a clearer delineation of the role of Political Assistants. These members have taken the view that LegCo should not be asked to rush through the scrutiny work simply to tie in with the schedule of the CE-elect for the implementation of the re-organisation proposals on 1 July 2012. Dr Margaret NG has also expressed disagreement with the Administration's view that the proposed resolution will only provide for the simple substitution of the current title of the public officer concerned by the new title of the public officer in whom policy responsibility for the provisions in question is to be vested with effect from 1 July 2012. She considers that the proposed resolution involves substantive changes to the relevant policies and LegCo should be allowed ample time to scrutinise the relevant legislative amendments.

13. According to the Head of the CE-elect's Office ("H/CEEO"), the purposes of the proposed re-organisation are (a) to enhance the capacity of the team of PAOs in reaching out and feeling the pulse of the community and stakeholders, so

that policies will align more closely with public aspirations; (b) to strengthen the co-ordination of policy formulation and implementation that cut across policy programmes, and develop long-term plans; and (c) to step up efforts in expanding the economic base of Hong Kong by capitalising on the opportunities arising from the rapid economic development on the Mainland and nurturing competitive industries. H/CEEEO has explained that the re-organisation proposals should be implemented on 1 July 2012 so that the new governing team will be in its full complement for mission alignment and work prioritisation within the first three months of the new-term government. This would facilitate early formulation and implementation of policy measures to deliver CE-elect's pledges in his election manifesto.

14. H/CEEEO has stressed that the re-organisation proposals do not seek to bring a fundamental change to PAS. The re-organisation proposals will bring about improvements to PAS by strengthening policy planning and coordination which will be conducive to the long-term development of Hong Kong. PAS will be improved in the short term, and be subject to an interim review after gaining operational experience (as elaborated in paragraphs 18 and 19 below).

15. The additional staff cost arising from the proposed re-organisation of the Government Secretariat is estimated to range from around \$62,466,000 to \$63,182,000 each year. The Subcommittee notes that on the recommendation of the Independent Commission on Remuneration for Members of the Executive Council and the Legislature, and Officials under PAS of HKSAR, the Administration has proposed the remuneration package for PAOs serving in the fourth-term Government, including an increase of 8.1% in the cash remuneration.

16. Members in general have expressed objection to the proposed increase of remuneration of PAOs which, they consider, should be justified by performance. They have urged the Administration to take heed of the public sentiment against the proposal.

17. The Government has announced on 5 June 2012 that the proposal to increase the remuneration of PAOs will not be pursued. The CE-elect has also announced that the entire political team of the next-term Government will have their pay frozen at the present level, i.e. at the 2009 level following the voluntary pay cut of 5.38%.

### Review of the Political Appointment System

18. In response to the strong call of some members for a review of the existing system, the CE-elect has undertaken to conduct an interim review of PAS, after gaining operational experience for two years, to -

- (a) consolidate the experience in implementing PAS in the past years;
- (b) study the gap between the performance of PAS and the public expectations;
- (c) with reference to the practice and experience of other countries and regions, set out the requirements and standards regarding the accountability of PAOs, and put in place a reward and penalty system with relevant policies and measures; and
- (d) put forward proposals to further improve PAS, such as the pay adjustment mechanism, process of appointment, post-service employment arrangements and a "revolving door" mechanism.

19. On short-term measures for improving PAS, H/CEEO has advised that all Secretaries of Department ("SoDs") and DoBs of the new term Government are expected to reach out to the community for gauging public sentiments and collecting public opinions, as well as to communicate with political parties and members of the Legislature for fostering mutual trust and enhancing legitimacy of the Government. The CE-elect has undertaken to conduct visits to 18 districts at least once every year. He has also asked all SoDs and DoBs to follow suit so as to draw the Government closer to the general public not only psychologically and geographically, but also in terms of policy distance. Appointment of PAOs will be by merit. To avoid mismatch, and to ensure members of the political teams of various bureaux share a common agenda and complement one another in terms of background and ability, DoBs will be involved in the selection of their Under Secretaries and Political Assistants, and they have to be answerable for the performance of their team members. In addition, the new term Government will set overall and specific objectives so that both the political team and individual officials will know exactly what are expected and required of them in terms of the implementation of policy commitments.

20. Some members have reiterated their view that the Accountability System has been implemented for over 10 years but it does not bring significant improvement to the efficiency of the Administration. There is clearly a need to conduct a comprehensive and critical review of the system. Members belonging

to the Democratic Party have expressed grave reservations about the existing post-office employment control and the declaration of interests arrangement for PAOs, as well as the "revolving door" mechanism. They stress that it is highly undesirable that PAOs currently are not required to declare their personal debts and liabilities except property mortgages. They are of a strong view that a reward and penalty system should be introduced so that PAOs will bear their political responsibility at varying degrees in accordance with their performance. Moreover, all the improvement measures should be introduced before the appointment of PAOs of the fourth-term government so that these measures will be incorporated in their contracts of employment.

21. The Administration has advised that it has reviewed the recommendations in the report of Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests, and will, in consultation with the CE-elect's Office, amend the Code for Officials under PAS ("the Code") as appropriate so that the amended Code will apply to the fourth-term Government. H/CEEEO has also assured members that the CE-elect will discuss with members of his governing team whether they agree to be subject to any additional requirements to be introduced after the conduct of the interim review and after they have assumed office in future.

22. Some members including Members belonging to the Democratic Party are of the view that the Code should be amended, along the line of the Civil Service Code, with a view to addressing the following inadequacies of the Code -

- (a) the existing one-year post-office employment control period for PAOs is too short compared with that for directorate civil servants;
- (b) the advice of the Advisory Committee on Post-Office Employment for Former CEs and PAOs is not binding;
- (c) it is not effective in preventing PAOs from gaining deferred advantages after stepping down from office; and
- (d) PAOs are not required to declare their personal debts and liabilities.

23. The Administration has explained that different post-office employment control regimes are applied to directorate civil servants and PAOs because the latter serve a shorter term and do not enjoy any security of tenure or any gratuity/retirement benefits. The current control regime for post-office employment control of PAOs should strike a balance between attracting political talents to join the governing team and imposing a suitable control period as they

may need to seek another job after stepping down from office. According to the Code, PAOs shall not engage in any lobbying activities on matters relating to the Government or represent any person in connection with any claim, action, demand, proceedings, transaction or negotiation against or with the Government. While the suggestion to tighten up the existing declaration requirements for PAOs will be considered, comprehensive public consultation on the review of the post-service employment arrangements and the "revolving door" mechanism of PAS should be conducted in the mid-term of the next Government.

24. Mr LEE Wing-tat does not accept the Administration's explanations. He has pointed out that some PAOs have served for almost 10 years, during which they will have access to more important and confidential information as compared with senior civil servants.

#### Proposed creation of the two new Deputy Secretaries of Department

25. According to the re-organisation proposals, DCS is tasked to assist CS in co-ordinating the development of human resources to meet the demands for human resources from various economic and social sectors of Hong Kong, and to maintain Hong Kong's competitiveness in the era of quest for talents in the 21<sup>st</sup> century. DFS is tasked to assist FS in economic development, formulating policies on industries, creating wealth for Hong Kong and providing more employment opportunities for Hong Kong people. The specific policy responsibilities of DCS and DFS are in **Appendices VIII** and **IX** respectively.

26. Some members including Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong and Mrs Sophie LEUNG have expressed support for the proposed creation of the two DSoD posts on the ground that it will be conducive to the long-term planning for the economic development of Hong Kong, and can improve the coordination of bureaux in achieving the desired results when cross-cutting policy issues are involved.

27. Some other members including Members belonging to the Democratic Party, Members belonging to the Civic Party and Mr LEE Cheuk-yan have, however, queried the need for creating the two new posts under CS and FS respectively. They consider that good co-ordination in the formulation and implementation of government policies does not necessarily have to be achieved by creating an additional layer of administration. Moreover, the work of the two proposed DSoDs will inevitably overlap to some degree with that of CS and FS, and may cause a delay in policy decision as the policy secretaries will need to route through an additional layer of administration. These members find the proposal a duplication of structure. They have expressed grave concern about the



hierarchy in the proposed new structure of the Government and the future relationship between SoDs and DoBs after the creation of the two DSoD posts.

28. According to H/CEEEO, under the leadership of CE, CS is still the head of PAOs and will continue to chair the Policy Committee every week to discuss and co-ordinate formulation of important policies with all DoBs. CS will work with FS on the priority of resource allocation in preparation for the annual Budget. Creation of the two DSoD posts will not affect the contact and communication of DoBs with the two SoDs, nor will it attenuate CS's role in maintaining oversight of the Government Secretariat. The two DSoDs will have specific responsibilities and directly supervise the operation of two or three closely related bureaux.

29. Some members including Mr CHEUNG Man-kwong and Mr LEE Wing-tat have queried the rationale behind the delineation of responsibilities between CS and FS. H/CEEEO has explained that housing and land supply are of relevance to the remit of FS in that land sale and auction are sources of public finances; the portfolio of land planning falls within the purview of the existing DEVB which reports to FS; and the functions performed by those policy bureaux reporting to FS are broadly revenue-generating.

30. Mr CHEUNG Man-kwong has also queried the justification for the proposed creation of the DFS post given that the duties to be taken up, which include, inter alia, implementing economic cooperation agreements signed with Mainland authorities, coordinating the formulation and implementation of policies to promote Hong Kong's development set out in the National Five-year Plans, should be performed by SCMA and the Secretary for Commerce and Economic Development ("SCED").

31. H/CEEEO has advised that the proposed DFS would help foster a closer cooperation with Mainland authorities at the central and provincial levels, as well as ensure coordination in the formulation and implementation of policy pertaining to economic development and development of the industries. DFS will coordinate the relevant initiatives set out in the manifesto of the CE-elect and map out a work plan with relevant bureaux and the Mainland offices. DFS, as a DSoD, will also lead the discussions with the Mainland counterparts. Having regard to the National Five-Year Plans, DFS will be responsible for formulating relevant industry policies that support trade and commerce, develop maritime, civil aviation, logistics and tourism industries, forge the development of technology and telecommunications industries as well as professional services. The new CIB will continue to spearhead discussions with the Ministry of Commerce on further liberalisation under the Closer Economic Partnership Arrangement between the Mainland and Hong Kong ("CEPA"). Other bureaux, in accordance with their

respective policy areas, will also continue to communicate and follow up with their relevant counterparts in the Mainland.

32. Mrs Regina IP has suggested that the two DSoDs should report to CE direct in order to avoid any bottleneck in decision-making. H/CEEEO has, however, advised that DCS is tasked to assist CS in coordinating the development of human resources to meet Hong Kong's various economic and social needs. Specific responsibilities include overseeing manpower planning and addressing manpower mismatch; improving education and cultural literacy; addressing the needs for an ageing population through planning for healthcare, elderly services and retirement protection; formulating policy for the youth and children; and developing welfare planning; and CS is to focus more on other cross-cutting policies requiring longer term planning, e.g. poverty alleviation and sustainable development. In response to the public expectation on enhancing coordination amongst policy bureaux on cross-cutting policy issues, the coordination work of DSoDs would be mission-driven and would not necessarily be limited to the policy bureaux directly under their purview.

33. Some members including Dr Margaret NG, Mr CHEUNG Man-kwong and Ms Emily LAU have expressed grave concern about the constitutionality and legality of the proposed creation of the two DSoDs, as well as the scope of their exercisable powers. They have pointed out that DSoDs are principal officials above the rank of DoB, and SoDs may delegate their powers to them. These two DSoDs may also give directives to DoBs which are not under their direct purview. However, the proposed resolution will not confer any statutory functions on the two new DSoDs. These members consider that there is actually no legal basis in local legislation for the proposed creation of DSoDs. They stress the need for the Administration to explain clearly to the Subcommittee the scope of power to be exercised by the two DSoDs and the procedure to confer such power.

34. On the constitutionality and legality of creating DSoD rank and post, the Administration has explained that under Article 48(5) of the Basic Law ("BL"), CE of HKSAR shall exercise powers and functions to nominate and to report to Central People's Government ("CPG") for appointment the following principal officials: SoDs and DSoDs, DoBs, Commissioner Against Corruption, Director of Audit, Commissioner of Police, Director of Immigration and Commissioner of Customs and Excise; and to recommend to CPG the removal of the above-mentioned officials. BL 101 also includes a reference to the rank of DSoD. CE is empowered to nominate and to report to CPG for appointment of the principal officials including DSoDs. As such, the creation of the rank and post of DSoD is in conformity with BL. Section 8 of the Public Finance Ordinance (Cap. 2) provides that FC may approve changes to the estimates of expenditure

upon a proposal of FS. ESC under FC examines and makes recommendations to FC on the Administration's proposals for creating new ranks and/or posts. The Administration has, in accordance with the above procedures, put forth proposals for the establishment changes arising from the re-organisation of the Government Secretariat to ESC, including the creation of DSoD rank and posts. According to section 3 of Cap. 1, "public officer" means any person who holds an office of emolument under the HKSAR Government. As such, when FC has approved the creation of the two DSoD posts and CPG has appointed the persons concerned as DSoDs pursuant to BL and on nominations made by CE, those persons who have taken up the posts of DSoD are "public officers". Under section 43(1) of Cap. 1, a specified public officer may, when the need arises, delegate any other public officer to exercise the powers conferred or perform the duties imposed upon the specified public officer by an Ordinance. The proposed creation of DSoD rank and posts is therefore in conformity with BL and local laws.

35. The Administration has also explained that the organisational structure of the Government (including the hierarchy and relations between SoDs/Bureaux/Departments) is not provided for in the legislation. Instead, the structure is adjusted by the Government from time to time in the light of the actual needs. Most public officers are exercising executive responsibility (as opposed to statutory powers or duties) but their offices are not necessarily established in local legislation. For example, there is no express provision for the exercise of executive functions by most Permanent Secretaries in statutes. H/CEEEO has pointed out that under the existing law, any powers conferred or duties imposed by any Ordinance are generally conferred or imposed upon the head of the organisation concerned who may delegate the exercise of those powers and performance of those duties to his/her subordinates by virtue of section 43(1) of Cap. 1. During the absence of the head, his/her deputy who assumes the duties on his/her behalf performs the statutory functions of the head. The proposed arrangements with regard to the statutory powers and duties of two DSoDs are in line with current practice. As far as delegation of executive responsibility is concerned, arrangements will be made according to the internal operation of the Government which should be left to the Administration.

36. The legal adviser to the Subcommittee has advised that under section 43 of Cap. 1, the statutory powers and duties of public officers, including CS and FS, may be delegated. Section 43(1) provides that where any ordinance confers powers or imposes duties upon a specified public officer, such public officer may delegate any other public officer or the person for the time being holding any office designated by the specified public officer to exercise such powers or perform such duties on his behalf. This power to delegate is available to specified public officers who are specified in a Legal Notice published in the Gazette by CE

in Council in accordance with section 43(4). Such a notice is subsidiary legislation which is subject to negative vetting by LegCo. Despite the specification of a public officer in a Legal Notice published under section 43(4) of Cap. 1, the public officer cannot delegate his power to make subsidiary legislation or to hear any appeal. A public officer who has been delegated under section 43(1) of Cap. 1 may exercise the powers or perform such duties specified in an ordinance on behalf of the specified public officer. The delegated officer is accountable as if he was the specified public officer and the exercise of power or the performance of duties are equally liable to the scrutiny of the court.

37. The legal adviser to the Subcommittee has further advised that Specification of Public Offices (Cap. 1 sub. leg. C) contains the titles of public offices and correspondingly ordinances which confer powers or impose duties upon them respectively as specified in Legal Notices published pursuant to section 43(4) of Cap. 1. A specification under section 43 of Cap. 1 only identifies the specified public officer who is allowed to delegate his powers or duties but not the public officer to whom the power is delegated. Under the Legal Notices mentioned in the Schedule to the Specification, CS<sup>2</sup> and FS<sup>3</sup> have already been specified for the purpose of certain Ordinances. The effect is that CS and FS may delegate their powers and duties under those ordinances to any public officer. However, no example has been found in the Laws of Hong Kong as to whether CS and FS have delegated any of their statutory powers and duties or to whom if there has been any delegation.

38. Mr CHEUNG Man-kwong takes the view that the powers to be exercised by the two DSoDs should be conferred on them by way of legislation. The Administration has advised that its observation about the legal framework relating to the transfer/delegation of statutory functions to DSoDs is consistent with that of the legal adviser to the Subcommittee. However, it is a policy decision that there is no need to confer any such functions on DSoDs by way of a resolution under section 54A of Cap. 1. This is due to the fact that the two DSoDs will mainly be tasked to assist CE and SoDs in formulating long-term plans, to co-ordinate the formulation and implementation of policy, as well as to assist in supervising the relevant policy bureaux. The performance of such duties basically does not involve the exercise of statutory powers, and thus there is no need to transfer the statutory powers of SoDs to the two DSoDs. In case there is a genuine need to exercise specific statutory powers, such powers may be exercised by the public officers vested with the powers, or such powers or duties may be conferred or imposed upon DSoDs by virtue of section 43(1) of Cap. 1.

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<sup>2</sup> For example, the power of CS under section 13 of the Air Passenger Departure Tax Ordinance (Cap. 140) to waive departure tax under certain circumstances.

<sup>3</sup> For example, the power of FS under section 128(3) of the Companies Ordinance (Cap. 32) to exclude the disclosure of certain information in the accounts of a company laid before its general meeting.

39. Some members including Mrs Sophie LEUNG, Mr WONG Kwok-hing and Mr IP Kwok-him have expressed support for the Administration's position concerning the constitutionality and legality of the proposed creation of the two DSoDs. They also consider that LegCo should not probe into the delegation of executive responsibility and deployment of work within the Government.

40. Dr Margaret NG and Mr Alan LEONG have reiterated their concern that the creation of the two DSoDs is proposed to check and balance, or even undermine, the powers of the future CS and FS. Ms Audrey EU has asked whether the proposed re-organisation of the Government Secretariat has to be accepted as a whole package or whether it can be accepted partially. H/CEEEO has advised that it is the objective of the next-term Government to secure the LegCo's approval of the re-organisation proposals as a whole package in order to facilitate the appointment of the new governing team and related matters. Some members including Members belonging to the Democratic Party and Members belonging to the Civic Party consider that given the controversies over the proposed creation of the two DSoDs, it should be deleted from the re-organisation proposals.

#### Proposed creation of the Culture Bureau

41. According to the re-organisation proposals, the proposed CB reports to CS via DCS. It will take over the Culture Branch and the WKCD Project Management Team from HAB, Create Hong Kong ("CreateHK") from CEDB, and the Commissioner for Heritage's Office from DEVB. In addition, CB will work with EDB to promote arts education within and outside schools in a well-coordinated manner, and partner with District Councils to popularise arts programmes at the district level. According to the CE-elect's Office, with the creation of CB, a new DoB post, S for C, has to be created to take over the policy responsibilities on culture from the concerned bureaux and give these efforts extra impetus.

42. Noting that the proposed CB will not be entrusted with new statutory functions to implement new policy initiatives of the next-term government, Ms Audrey EU has expressed concern that the new Bureau cannot discharge effectively its responsibilities if it is only to exercise those statutory functions currently exercised by the Secretary for Home Affairs, SCED and the Secretary for Development ("S for D").

43. Mr LAU Kong-wah has expressed doubt whether the new S for C reporting to CS will have sufficient power to perform the policy responsibility relating to heritage conservation given that land use and planning will be put under the purview of the Secretary for Housing, Planning and Lands reporting to FS.

H/CEEEO has advised that according to S for D, relevant policies such as declaration of a monument have been established. The new CB with the support of the Lands Department can work in accordance with the established policies.

44. Members note that paragraph (1)(d) of and Schedule 3 to the proposed resolution provide for the transfer of statutory functions of the relevant public officer pursuant to the restructuring of HAB. Paragraph (1)(e) of the proposed resolution seeks to replace Deputy Secretary for Home Affairs (Recreation and Culture), which is an obsolete title, by S for C as an ex officio member of the Council of the Lord Wilson Heritage Trust.

#### Restructuring of Commerce and Economic Development Bureau

45. According to the CE-elect's Office, to fully recognise the importance of industrial development and technology in economic development, and to provide more dedicated high level leadership in developing Hong Kong's trade and key service industries, it is proposed to restructure CEDB into two new bureaux, namely TCB and CIB. The new TCB will be responsible for promoting innovative technology and communications in Hong Kong. The new bureau is transformed from the existing Communications and Technology Branch of CEDB, less the CreateHK division which will be put under the newly formed CB. A new DoB post, the STC, has to be created.

46. The Subcommittee notes that the new CIB will have overall responsibility for trade and industry policy as well as the development of the maritime, air, logistics and tourism industries. Recognising the intimate connection between aviation, shipping and logistics with other sectors of the economy, such as tourism, import and export, it is proposed to transfer the policy responsibilities on air, maritime and logistics services from THB to the new CIB. SCED will be renamed as SCI. The new CIB will have two branches, namely the Maritime, Aviation, Logistics and Tourism Branch ("MALTB"), and the Trade and Industry Branch ("TIB"), which is transformed from the existing Commerce, Industry and Tourism Branch ("CITB") (except tourism which will be transferred to MALTB). Each branch is to be headed by a Permanent Secretary. MALTB will provide holistic support to promote the development of the maritime, aviation, logistics and travel industries in Hong Kong so as to enhance their competitiveness and increase market penetration. TIB will assume the current policy responsibilities of CITB except tourism which will be transferred to MALTB. TIB will also coordinate the implementation of CEPA, notably in trade in services and professional services with a view to promoting Hong Kong as an international trade and services centre.

47. Some members have enquired about the rationale for the proposed transfer of the statutory functions under the Control of Obscene and Indecent Articles Ordinance (Cap. 390) and the Film Censorship Ordinance (Cap. 392) from SCED to STC. They consider that the related functions should be transferred to the new S for C.

48. The Administration has explained that it is a trend for separating the regulating and promotion functions of certain industries in order to maintain checks and balances. The functions regarding the control of obscene and indecent articles and film censorship are now under the purview of the Office of the Communications Authority ("OFCA") of CEDB. With the transfer of OFCA from CEDB to the new TCB, the relevant statutory functions are proposed to be transferred from SCED to STC. On the other hand, CreateHK, which is set up to support projects that are conducive to the development of creative industries, such as the film industry, will be transferred to the new CB which is tasked to promote culture and creative industries in Hong Kong.

49. Mr LEE Wing-tat has enquired about the rationale for transferring Tung Chung Cable Car Ordinance (Cap. 577) to the purview of SCI, but not to the new STW. The Administration has explained that Tung Chung Cable Car is regarded as a tourist attraction, not a public transportation mode.

#### Restructuring the Development Bureau and the Transport and Housing Bureau

50. According to the CE-elect's Office, to enable the Government to respond effectively to the growing calls for more housing, it is proposed that a new HPLB be created by combining the Planning and Lands Branch of the existing DEVB and the Housing Branch/Housing Department of the existing THB. By putting housing and land supply in the same bureau, there will be better coordination in the timing of land supply to meet the demand for both public and private housing. HPLB will also assume policy responsibilities for developing a long-term housing strategy, urban renewal as well as building maintenance and safety. A new TWB is also proposed to be created by combining the existing Transport Branch of THB (except policy responsibilities on maritime, air and logistics industries to be transferred to CIB) with the existing Works Branch of DEVB (except policy responsibilities on heritage preservation to be transferred to the new CB). TWB will be responsible for further improving the quality of public transport services, reviewing fare scales, accelerating the 10 major infrastructure projects, updating and implementing the Railway Development Strategy 2000 and exploring green transport modes.

51. According to H/CEEEO, the proposal for combining the portfolio of land planning and housing is made in consultation with senior management of the

concerned bureaux and their operational experience has been taken into account in order to optimise the coordination of policy formulation.

52. Members have enquired about the relevant considerations for transferring the portfolios of housing and land planning from the CS' side to the FS' side. H/CEEEO has explained that housing issues are of relevance to FS because land and planning are currently under the purview of the DEVB reporting to FS, who has been chairing a Steering Committee on Housing Land Supply, which is tasked to coordinate the efforts of bureaux and departments to increase housing land supply.

53. Members note that paragraph (1)(f) of and Schedule 4 to the proposed resolution provide for the transfer of statutory functions of the relevant public officers pursuant to the restructuring of THB. Paragraph (1)(g) of the proposed resolution seeks to replace the Secretary for Transport by STW in section 2A(5) of the Peak Tramway Ordinance (Cap. 265). According to the Administration, this provision, enacted in 1992 amongst others, is to facilitate the Peak Tramways Company Limited to apply for extension of its operating right beyond 2003. Specifically, it allows the Company to request an extension to its current operating right not less than one year before the expiry date. The Administration proposes to bring the reference to the policy secretary concerned up-to-date by replacing "Secretary for Transport" with "STW".

### **Proposed resolution under section 54A of Cap. 1**

54. Members raise no query about the legal and drafting aspects of the proposed resolution. The Subcommittee will not move any amendments to the proposed resolution.

### **Draft order to amend Schedule 6 to Cap. 1**

55. The legal adviser to the Subcommittee has advised that the draft order to amend Schedule 6 to Cap. 1 will be made under section 62(3) of Cap. 1. Under section 62(1) of Cap. 1, where any ordinance confers a power or imposes a duty upon CE to make any subsidiary legislation or appointment, give any directions, issue any order, authorise 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 performance of such duty may be signified by any public officer specified in Schedule 6 to Cap. 1. Section 62 may be regarded as a provision under which certain acts of CE may be evidenced by the signification of public officers identified in Schedule 6. DCS and DFS are among the public officers specified in the draft order.



56. Members raise no query about the legal and drafting aspects of the draft Order.

**Advice sought**

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

Council Business Division 2  
Legislative Council Secretariat  
14 June 2012

**Policy Responsibilities of Secretary for Culture**

*Responsibilities to be transferred from the existing Secretary for Home Affairs*

1. To devise a holistic culture policy, promote cultural activities and exchanges, nurture talents and cultural groups, and encourage community participation, i.e. to develop both the hardware and software for Hong Kong as a cultural hub.
2. To oversee the development of the West Kowloon Cultural District.
3. To steer and strategise the work of the Leisure and Cultural Services Department in relation to the arts and culture.
4. To work with relevant parties to promote arts education within and outside schools in a well-coordinated manner.
5. To partner with District Councils to popularise arts programmes at the district level.

*Responsibilities to be transferred from the existing Secretary for Commerce and Economic Development*

6. To formulate and implement policy to drive the development of creative sectors and build Hong Kong into a creative capital in the region.
7. To steer and strategise the work of the Create Hong Kong.

*Responsibilities to be transferred from the existing Secretary for Development*

8. To formulate and implement policy on heritage conservation and to protect, conserve and revitalise historical and heritage sites and buildings.
9. To steer and strategise the work of the Commissioner of Heritage's Office

## **Appendix II**

### **Policy Responsibilities of Secretary for Home Affairs**

1. To devise measures to enhance the role of District Councils and empower the District Officers to coordinate the work and services provided by government departments at the district level with a view to addressing district issues at the district level and capitalising on local opportunities.
2. To formulate and implement policies relating to youth development, gambling, civic education promotion, religion, sports and recreation, legal aid, social enterprise, community building, building management, and certain entertainment and accommodation related licensing.
3. To steer and strategise work of the Home Affairs Department, the Leisure and Cultural Services Department in relation to leisure and sport services, the Information Services Department and the Legal Aid Department.

## Appendix III

### Policy Responsibilities of Secretary for Commerce and Industries

#### *Responsibilities to be transferred from the existing Secretary for Commerce and Economic Development*

1. To oversee matters relating to Hong Kong's external commercial relations, Mainland and Hong Kong Closer Economic Partnership Arrangement, investment promotion, intellectual property protection, industry support, trade facilitation, competition policy, tourism, consumer protection, wine-related business, postal services and meteorological services.
2. To steer and strategise the work of Tourism Commission, Hong Kong Economic and Trade Offices (overseas), Hong Kong Observatory, Hongkong Post, Intellectual Property Department, and Trade and Industry Department.

#### *Responsibilities to be transferred from the existing Secretary for Transport and Housing*

3. To formulate and implement policy and provide holistic support to drive development of the maritime, air and logistics industries, to enhance their competitiveness and increase market penetration, and to strengthen Hong Kong's position as an international and regional aviation, shipping and maritime centre and logistic hub.
4. To steer and strategise the work of the Civil Aviation Department and Marine Department.

**Policy Responsibilities of  
Secretary for Technology and Communications**

*Responsibilities to be transferred from the existing Secretary for  
Commerce and Economic Development*

1. To formulate technology policy to support the development of technology infrastructure; encourage synergy among government, enterprises as well as research and academic institutions in research and development; and integrate the development of emerging industries in the Mainland with innovative technology in Hong Kong.
2. To oversee matters relating to broadcasting, telecommunications, information technology as well as innovation and technology.
3. To steer and strategise the work of the Innovation and Technology Commission, Office of the Communications Authority and Office of the Government Chief Information Officer.
4. To house-keep the Radio Television Hong Kong.

## Appendix V

### **Policy Responsibilities of Secretary for Housing, Planning and Lands**

#### *Responsibilities to be transferred from the existing Secretary for Transport and Housing*

1. To formulate and implement housing policy to ensure adequate and stable supply of housing in response to the need of the community.
2. To steer and strategise the work of the Housing Department.

#### *Responsibilities to be transferred from the existing Secretary for Development*

3. To assess the long-term demand for land to assure a flexible, steady and sufficient supply to meet developmental needs, enhance Hong Kong's competitiveness as a commercial hub, increase the per capita living and working space and improve the quality of life.
4. To achieve better and more efficient use of land resources to meet future needs arising from economic re-structuring, population changes and development of new industries.
5. To formulate and implement policy to promote and ensure building safety and maintenance, and urban renewal.
6. To steer and strategise the work of the Buildings Department, Lands Department, Land Registry and Planning Department.

**Policy Responsibilities of Secretary for Transport and Works**

*Responsibilities to be transferred from the existing Secretary for Transport and Housing*

1. To plan for and implement the construction and improvement of our transport infrastructure to further enhance the economic development of Hong Kong and its connectivity and integration with the Mainland.
2. To further promote the usage of public transport services by improving their quality and co-ordination, and to review fare scales.
3. To extend our railway network in coordination with other forms of transport, and to explore green transport modes.
4. To effectively manage road use, reduce congestion and promote safety.
5. To steer and strategise the work of the Highways Department and Transport Department.

*Responsibilities to be transferred from the existing Secretary for Development*

6. To ensure the effective planning, management and implementation of public sector infrastructure development and works programmes.
7. To steer and strategise the work of the Architectural Services Department, Civil Engineering and Development Department, Drainage Services Department, Electrical and Mechanical Services Department, and Water Supplies Department.

**Subcommittee to Study the Proposed Legislative Amendments Relating to  
the Re-organisation of the Government Secretariat**

**Membership List**

**Chairman** Hon TAM Yiu-chung, GBS, JP

**Deputy Chairman** Hon Jeffrey LAM Kin-fung, GBS, JP

**Members**

Hon Albert HO Chun-yan  
Hon LEE Cheuk-yan  
Dr Hon Margaret NG  
Hon CHEUNG Man-kwong  
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP  
Dr Hon Philip WONG Yu-hong, GBS  
Hon WONG Yung-kan, SBS, JP  
Hon LAU Kong-wah, JP  
Hon LAU Wong-fat, GBM, GBS, JP  
Hon Miriam LAU Kin-yea, GBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Timothy FOK Tsun-ting, GBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon WONG Kwok-hing, MH  
Hon LEE Wing-tat  
Hon CHEUNG Hok-ming, GBS, JP  
Hon WONG Ting-kwong, BBS, JP  
Hon CHAN Kin-por, JP  
Dr Hon Priscilla LEUNG Mei-fun, JP  
Hon WONG Kwok-kin, BBS  
Hon IP Wai-ming, MH  
Hon IP Kwok-him, GBS, JP  
Hon Mrs Regina IP LAU Suk-yea, GBS, JP  
Dr Hon PAN Pey-chyou  
Hon Paul TSE Wai-chun, JP  
Dr Hon Samson TAM Wai-ho, JP  
Hon Alan LEONG Kah-kit, SC  
Hon LEUNG Kwok-hung  
Hon Tanya CHAN (since 23 May 2012)  
Hon Albert CHAN Wai-yip (up to 16 May 2012)

Total : 31 Members



**Clerk**

Miss Flora TAI

**Legal Advisers**

Mr Arthur CHEUNG  
Mr Kelvin LEE

**Date**

23 May 2012

## Appendix VIII

### **Job Description Deputy Chief Secretary for Administration (DCS)**

**Rank** : Deputy Secretary of Department

**Responsible to** : Chief Secretary for Administration (CS)

#### **Main Duties and Responsibilities –**

1. To assist the Chief Executive (CE) and the CS in ensuring coordination in policy formulation and implementation especially pertaining to human resources (including education; manpower planning and development; social welfare planning and retirement protection), and culture. More specifically, to oversee manpower planning and address manpower mismatch; to improve education and cultural literacy; to address the needs for an aging population through planning for healthcare, elderly services and retirement protection; to formulate policy for the youth and children; and to develop welfare planning. In this connection, to supervise relevant policy bureaux, namely, the Education Bureau, the Labour and Welfare Bureau, and the Culture Bureau.
2. To oversee specific priority areas of the CE's policy agenda as directed by him/her and/or the CS including those relating to population policy and poverty alleviation.
3. To assist the CE in policy making as a member of the Executive Council.
4. To engage stakeholders and consider their views in formulating Government policies; and to explain policies to and answer questions from the Legislative Council, members of the public and the media.
5. To deputise for the CS during his/her absence.
6. To exercise relevant statutory functions delegated by the CE and/or the CS, or vested in him/her by law.
7. To perform other duties that are incidental and/or conducive to performing the duties set out in the preceding paragraphs.

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## Appendix IX

### Job Description Deputy Financial Secretary (DFS)

**Rank** : Deputy Secretary of Department

**Responsible to** : Financial Secretary (FS)

#### **Main Duties and Responsibilities –**

1. To assist the Chief Executive (CE) and the FS in ensuring coordination in the formulation and implementation of policy pertaining to economic development and development of the industries in order to create wealth and provide more employment opportunities. More specifically, to promote trade and industry; to support development of the maritime, air, logistics and tourism industries, as well as technology and communications; and to promote further development of professional services. In this connection, to supervise relevant policy bureaux, namely, the Commerce and Industries Bureau, and the Technology and Communications Bureau.
2. To oversee specific priority areas of the CE's policy agenda as directed by him/her and/or the FS, including those relating to the positioning of Hong Kong in the national development plans, and the effective implementation of various agreements signed with the Mainland by fostering a closer cooperation with the relevant Mainland authorities.
3. To assist the CE in policy making as a member of the Executive Council.
4. To engage stakeholders and consider their views in formulating Government policies; and to explain policies to and answer questions from the Legislative Council, members of the public and the media.
5. To deputise for the FS during his/her absence.
6. To exercise relevant statutory functions delegated to him by the CE and/or the FS, or vested in him/her by law.
7. To perform other duties that are incidental and/or conducive to performing the duties set out in the preceding paragraphs.

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