

**立法會**  
**Legislative Council**

Ref : CB2/SS/5/11

LC Paper No. CB(2)2872/11-12  
(These minutes have been seen  
by the Administration)

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

**Minutes of the seventh meeting  
held on Tuesday, 5 June 2012, at 8:30 am  
in Conference Room 1 of the Legislative Council Complex**

**Members present** : Hon TAM Yiu-chung, GBS, JP (Chairman)  
Hon Albert HO Chun-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 Emily LAU Wai-hing, JP  
Hon Audrey EU Yuet-mee, SC, 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 Kwok-him, GBS, JP  
Hon Alan LEONG Kah-kit, SC  
Hon LEUNG Kwok-hung  
Hon Tanya CHAN

**Members attending** : Hon KAM Nai-wai, MH

**Members absent** : Hon Jeffrey LAM Kin-fung, GBS, JP (Deputy Chairman)  
Hon LEE Cheuk-yan  
Hon LAU Wong-fat, GBM, GBS, JP  
Hon Miriam LAU Kin-yee, GBS, JP  
Hon Timothy FOK Tsun-ting, GBS, JP  
Hon WONG Kwok-hing, MH

Hon LEE Wing-tat  
Hon CHEUNG Hok-ming, GBS, JP  
Hon IP Wai-ming, MH  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP  
Dr Hon PAN Pey-chyou  
Hon Paul TSE Wai-chun, JP  
Dr Hon Samson TAM Wai-ho, JP

**Public Officers** : Office of the Chief Executive-elect  
**attending**

Mrs Fanny LAW FAN Chiu-fun  
Head of the Chief Executive-elect's Office

Ms Alice LAU Yim  
Secretary-General of the Chief Executive-elect's Office

Constitutional and Mainland Affairs Bureau

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

Mr Gordon LEUNG Chung-tai  
Deputy Secretary for Constitutional and Mainland Affairs

Mr Freely CHENG Kei  
Principal Assistant Secretary for Constitutional and  
Mainland Affairs

Department of Justice

Mr Gilbert MO Sik-keung  
Deputy Law Draftsman  
(Bilingual Drafting & Administration)

Commerce and Economic Development Bureau

Ms Linda LAI Wai-ming  
Deputy Secretary for Commerce & Economic  
Development (Commerce & Industry) 1

Mr Joe WONG Chi-cho  
Deputy Secretary for Commerce & Economic  
Development (Communications & Technology)

Development Bureau

Miss Vivian KO Wai-kwan  
Commissioner for Heritage

Home Affairs Bureau

Miss WONG Yuet-wah  
Principal Assistant Secretary for Home Affairs (Culture) 2

Ms Elizabeth TAI Ka-pui  
Principal Assistant Secretary for Home Affairs (West  
Kowloon Culture District)

Office of the Communications Authority

Mr Eric CHAN Sui-wai  
Assistant Director (Film, Newspaper & Article  
Administration)

**Clerk in attendance** : Miss Flora TAI  
Chief Council Secretary (2)3

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

Mr Kelvin LEE  
Assistant Legal Adviser 1

Miss Cindy HO  
Senior Council Secretary (2)3

Ms Wendy LO  
Council Secretary (2)3

Mrs Fanny TSANG  
Legislative Assistant (2)3

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Action

**I. Meeting with the Administration**

[LC Paper Nos. CB(3)735/11-12, CB(2)1908/11-12(01),  
CB(2)2105/11-12(01), CB(2)2106/11-12(01) to (02),  
CB(2)2158/11-12(01) to (03), CB(2)2164/11-12(01),  
CB(2)2193/11-12(01) and CB(2)2228/11-12(01)]

Action

The Subcommittee deliberated (index of proceedings attached at **Annex**).

Follow-up actions required of the Administration

2. The Administration was requested to –
  - (a) provide information concerning the constitutionality and legality of creating the rank and post of Deputy Secretary of Department (“DSoD”), transfer of functions, and the Interpretation and General Clauses Ordinance (Substitution of Schedule 6) Order 2012; and
  - (b) provide a list of statutory functions presently exercised by the Secretaries of Department, which might be exercised by DSoDs if the posts were created, through delegation of authority.

*(Post-meeting Note: The Administration's follow up on the issues raised at the meeting was circulated to members vide LC Paper No. CB(2)2328/11-12(01) on 8 June 2012.)*

**II. Any other business**

Date of next meeting

3. The Chairman reminded members that the Subcommittee would hold its next meeting on the same day at 4:30 pm.
4. There being no other business, the meeting ended at 10:50 am.

Council Business Division 2  
Legislative Council Secretariat  
27 September 2012

**Proceedings of the seventh meeting of the  
Subcommittee to Study the Proposed Legislative Amendments Relating to the  
Re-organisation of the Government Secretariat  
on Tuesday, 5 June 2012, at 8:30 am  
in Conference Room 1 of the Legislative Council Complex**

<b>Time Marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
001220 - 001559	Chairman	Opening remarks	
001600 - 001739	Chairman Mr CHEUNG Man-kwong	Approach to scrutinise the Resolution	
001740 - 002007	Chairman Administration Mr CHEUNG Man-kwong	Scrutiny of the Resolution paragraph by paragraph with reference to Annex B to LC Paper No. CB(2)2106/11-12(01).  <u>Division 1 of Part 2 to Schedule 1 (Cont'd)</u>	
002008 - 002313	Chairman Administration Ms Emily LAU Head of the Chief Executive-elect's Office ("H/CEEEO")	For the discussion of the transfer of statutory functions under the Consumer Council Ordinance (Cap. 216) to the Secretary for Commerce and Industries ("SCI"), Ms Emily LAU's views that Hong Kong people were deeply concerned about enhancing the protection of consumer rights.	
002314 - 003122	Chairman Dr Margaret NG Administration H/CEEEO	Referring to the e-mail from a group of Senior Civil Servants indicating its objection to the creation of two posts of Deputy Secretaries of Department ("DSoDs"), Dr Margaret NG's enquiry on whether scrutiny of the proposed resolution would be affected if the DSoDs posts were not to be created.  The Administration's explanation that the proposed resolution had contained no reference to the posts of DSoDs. Hence, exclusion of DSoDs from the re-organisation proposals would not affect the resolution. H/CEEEO's explanation on the division of work of Deputy Chief Secretary for Administration ("DCS") and Deputy Financial Secretary ("DFS") as outlined in its paper [LC Paper No. CB(2)2158/11-12(01)], emphasising that coordination of cross-cutting policy areas did not necessarily entail statutory functions.	
003123 - 004219	Chairman Mr CHEUNG Man-kwong Administration H/CEEEO	Mr CHEUNG Man-kwong queried why the posts of DSoD were not made an established public office through local legislation, pointing out that DSoDs were important officials which were above the rank	

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		<p>of Director of Bureau ("DoB"), and Secretaries of Department ("SoDs") might delegate their powers to them.</p> <p>The Administration's explanation that –</p> <p>(a) Most public offices were exercising executive responsibility (as opposed to statutory powers or duties) but their offices were not necessarily established by local legislation;</p> <p>(b) Section 8 of the Public Finance Ordinance (Cap. 2) provided that the Finance Committee ("FC") might approve changes to the estimates of expenditure upon a proposal of FS. Establishment Subcommittee ("ESC") under FC examined and made recommendations to FC on the Administration's proposals for creating new ranks and/or posts; and</p> <p>(c) the organisational structure of the Government (including the hierarchy and relations between SoDs / Bureaux / Departments) was not provided for in the legislation.</p> <p>Mr CHEUNG Man-kwong's enquiry and Administration's clarification that statutory functions would continue to be carried out by the relevant SoDs or DoBs unless the DSoDs were delegated with the authority to do so.</p> <p>H/CEEO assured the meeting that the appointment of DSoDs was constitutionally provided for under the Basic Law ("BL") and was legally in order.</p>	
004220 - 005545	<p>Chairman Dr Margaret NG Mr CHAN Kin-por Mr WONG Ting-kwong SALA2 Mr CHEUNG Man-kwong Administration H/CEEO</p>	<p>Concerns were raised by members about the constitutional propriety of the process to appoint DSoDs which were not public offices stipulated in local legislation. Discussion on whether SALA2 should be requested to give views on the matter without compromising his neutral stance.</p> <p>Referring to the LegCo Brief issued by the Administration [CMAB F19/6/3/2], SALA2's explanation that –</p> <p>(a) after the resolution had been passed, the Chief Executive-in-Council would make an order under section 62(3) of the Interpretation and</p>	

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		<p>General Clauses Ordinance (Cap. 1) to amend the list of Public Officers set out in Schedule 6 to Cap. 1 ("the Order"). The amendments to Schedule 6 would include the post titles of the two DSoDs and the post titles of the relevant public officers after the re-organisation of the policy bureaux; and</p> <p>(b) Section 62(1) of Cap. 1 provided that where any Ordinance conferred a power or imposed a duty upon the Chief Executive ("CE"), the exercise of such power or the performance of such duty might be signified under the hand of any public officer specified in Schedule 6 to Cap. 1.</p> <p>Mr CHEUNG Man-kwong's views that no appointment should be made to the posts of DSoDs on 1 July 2012 given that it was not a public office created by local legislation. He asked whether a judicial review could be sought against the decision of the Administration.</p> <p>The Administration's reiteration that the public office of DSoD did not have to be created in local legislation, citing the example that Permanent Secretaries were similarly not expressly created under the law.</p> <p>H/CEEO's remark that having regard to the roles and functions of DCS and DFS as set out in LC Paper No. CB(2)2158/11-12(01), the performance of such duties basically did not involve the exercise of statutory powers, and thus there was no need to transfer the statutory powers of SoDs to the two DSoDs.</p>	
005546 - 010547	<p>Chairman Mr KAM Nai-wai H/CEEO Administration Ms Emily LAU</p>	<p>Referring to item 6 of the duty list of DFS at Annex B to LC Paper No. CB(2)2158/11-12(01), Mr KAM Nai-wai's enquiry about the scope of power to be exercised by DFS and the procedure to confer such power. H/CEEO's response that the duty list was a broad description only, and such powers or duties might be conferred or imposed upon DSoDs by virtue of section 43(1) of Cap. 1.</p> <p>Considering that the duties of FS might be delegated to DFS in future, Mr KAM's request that the Subcommittee should be advised on the statutory functions currently exercised by FS.</p>	

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		<p>Ms Emily LAU requested the Administration to confirm in writing the legality of creating the rank and post of DSoD as a public office, and the functions to be delegated to him or to be entrusted by law, and to whom he would be accountable, and which officer would deputise the post of DSoD while the substantive post-holder was absent. H/CEEO undertook to provide the requisite information.</p>	<p><b>Admin</b> (para. 2(a) of the minutes)</p>
010548 - 012542	<p>Chairman Dr Margaret NG Administration Mr LEUNG Kwok-hung</p>	<p>Dr Margaret NG's views that the Order would seek to establish the public offices of DCS and DFS in local legislation and hence attenuating the statutory functions currently exercised by CS/FS respectively upon delegation of authority.</p> <p>Dr NG's view that the transfer of statutory functions amongst DoBs would suffice in the present exercise and DSoD should be deleted from the Order.</p> <p>Dr NG asked whether the Order could still be proceeded with even if the resolution was not passed by the Legislative Council ("LegCo"). Dr NG requested the Administration to provide a list of statutory functions presently exercised by SoDs which might be exercised by DSoDs in future through delegation of authority.</p> <p>The Administration's explanation that the resolution would only affect the transfer of statutory functions of DoBs, not DSoDs. As regards the Order, it would be issued subject to the creation of DSoDs posts following the ESC/FC processes. The Administration's further explanation that when FC had approved the creation of two DSoD posts and Central People's Government ("CPG") had appointed the persons concerned as DSoDs pursuant to BL and on nominations made by CE, those persons who had taken up the posts of DSoD were "public officers". Under section 43(1) of Cap. 1, a specified public officer might, when the need arose, 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 was therefore in conformity with BL and local laws.</p> <p>Mr LEUNG Kwok-hung's views that while the DSoD was explicitly provided in BL, it should be established through local legislation.</p>	<p><b>Admin</b> (para. 2(b) of the minutes)</p>



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012543 - 013619	Chairman Mr CHEUNG Man-kwong Administration H/CEEEO	<p>Mr CHEUNG Man-kwong's views that DSoDs were important officials who were above the rank of DoB, and SoDs might delegate their powers to them. These two DSoDs might also give directives to DoBs which were not under their direct purview. He considered that there was actually no legal basis for creating the posts of DSoDs and queried why statutory functions were not conferred upon DSoDs before 1 July 2012.</p> <p>The Administration and H/CEEEO pointed out that under the existing law, any powers conferred or duties imposed by any Ordinance were generally conferred or imposed upon the head of the organisation concerned who might delegate the exercise of those powers and performance of those duties to his/her subordinates by virtue of section 43(1) of Cap. 1. The proposed arrangements with regard to the statutory powers and duties of two DSoDs were in line with current practice.</p>	
013620 - 014141	Chairman Mr Alan LEONG H/CEEEO	<p>Mr Alan LEONG queried why the creation of an additional layer of administration would achieve more efficiency. He shared the concerns of Mr CHEUNG Man-kwong and Dr Margaret NG that creation of the two DSoDs was to check and balance, or even undermine, the powers of CS and FS. His suggestion that those controversial issues should be removed from the re-organisation proposals.</p>	
014142 - 015928	Chairman Mr Albert HO Administration Mrs Sophie LEUNG Mr LEUNG Kwok-hung	<p>Mr Albert HO held the view that it was inadequate to introduce DSoDs by way of a resolution given that its legal basis was the decision of CE-in-Council but the decision concerned was not formally promulgated. He cautioned that subsequent to FC's approval of the creation of the two DSoD posts, there was a potential risk that CE might change their duties and responsibilities by administrative means.</p> <p>The Administration's response that any such change of major duties of FC approved posts would have to be reported to LegCo in accordance with the established procedures.</p> <p>Mrs Sophie LEUNG expressed agreement with the Administration's position concerning the constitutionality and legality of creating the rank and post of DSoD.</p>	

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		Mr LEUNG Kwok-hung's view that the issue of duties to be exercised by DSoD should require further examination.	
015929 - 021023	Chairman Dr Margaret NG H/CEEO Administration Dr Priscilla LEUNG	<p>Dr Margaret NG's enquiry on whether and how the resolution could be amended to the effect that the scope of power of DSoDs be limited. Her suggestion that the scope of the re-organisational proposals should be reduced.</p> <p>The Administration's response that while amendments could be introduced to the resolution, there was no reference to the posts of DSoDs in the resolution. The Order would take effect following its gazettal and the negative vetting procedure by LegCo.</p> <p>Extension of meeting.</p> <p>Dr Priscilla LEUNG's view that the question at issue was that whether members would support the CE-elect to put in place a suitable Government structure to implement his policies.</p>	
021024 - 021847	Chairman Mr CHEUNG Man-kwong Administration H/CEEO	<p>Mr CHEUNG Man-kwong pointed to the fact that an amendment to the resolution did not touch upon the DSoD posts. He requested an explanation for the legal basis for creating the posts.</p> <p>H/CEEO's explanation that Section 8 of the Public Finance Ordinance provided that FC might approve changes to the estimates of expenditure upon a proposal of FS. ESC under FC examined and made recommendations to FC on the Administration's proposals for creating new ranks and/or posts. The Administration had, 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.</p> <p>H/CEEO's further advice that under the existing law, any powers conferred or duties imposed by any Ordinance were generally conferred or imposed upon the head of the organisation concerned who might delegate the exercise of those powers and performance of those duties to his/her subordinates by virtue of section 43(1) of Cap. 1.</p>	

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021848 - 021957	Chairman Mr CHEUNG Man-kwong Dr Margaret NG	Closing remarks  Next Meeting	

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Legislative Council Secretariat  
27 September 2012