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

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper summarises the major issues of concern raised by the Panel on Constitutional Affairs ("the CA Panel") when the proposals of the new organisation structure of the Government Secretariat envisaged by the Chief Executive-elect ("CE-elect") to be implemented with effect from 1 July 2012 ("the re-organisation proposals") were discussed at its special meetings on 9 and 15 May 2012, and related developments.

Background

2. Under Article 48(5) of the Basic Law ("BL"), the Chief Executive of the Hong Kong Special Administrative Region ("HKSAR") shall exercise powers and functions to nominate and to report to the Central People's Government for appointment the following principal officials: Secretaries and Deputy Secretaries of Departments ("DSoD"), Directors of Bureaux ("DoBs"), Commissioner Against Corruption, Director of Audit, Commissioner of Police, Director of Immigration and Commissioner of Customs and Excise; and to recommend to the Central People's Government the removal of the above-mentioned officials.

3. In his manifesto, the CE-elect has proposed to create two 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 HKSAR and the Mainland, and a number of cross-cutting policy issues¹.

¹ "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*)

Re-organisation proposals

4. The CE-elect has proposed to restructure the Government Secretariat 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 DoBs;
- (b) a new Culture Bureau 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").

5. With the re-organisation proposals in paragraph 4(c) and 4(d) above, policy responsibilities on housing and transport will be transferred from the CS' side to the FS' side. 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, the Environment Bureau, the Financial Services and the Treasury Bureau, the Food and Health Bureau, the Labour and Welfare Bureau, and the Security Bureau.

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

7. 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 of statutory functions pursuant to the re-organisation. The proposed resolution provides that, with effect from 1 July 2012, the functions currently exercisable by a certain public officer by virtue of the ordinances set out in the resolution will be transferred to another public officer who will take charge of the relevant policy responsibilities following the re-organisation of the Government Secretariat.

8. According to the Administration, after the resolution has been passed, the CE-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.

Major issues of concern

9. The CA Panel has so far held two special meetings on 9 and 15 May 2012 to discuss the re-organisation proposals with the Administration and the Head of the CE-elect's Office ("H/CEEO"). The major issues of concern raised at these two meetings are summarised below.

Timetable and public consultation

10. According to the Administration's timetable, the staffing and financial proposals in connection with the proposed re-organisation will be submitted to the Establishment Subcommittee ("ESC") and the Finance Committee ("FC") for approval on 6 and 15 June 2012 respectively. Notice has also been given to move a resolution at the Council meeting of 20 June 2012 to effect the transfer of statutory functions arising from the proposed re-organisation.

11. Some members have expressed concern about the tight timetable proposed by the Administration and queried the need for the proposed re-organisation to be implemented on 1 July 2012. Given the scale of the proposed changes and the large sum of public money involved, they consider that the Administration should have conducted a comprehensive public consultation exercise on the proposed re-organisation before its submission to LegCo for approval.

12. According to H/CEEO, the CE-elect had listened widely to the views and expectations of the public and various sectors of the community in the course of campaigning. To address their concerns, the CE-elect's manifesto has proposed a series of major initiatives covering housing, poverty alleviation and

economic development. For these initiatives to materialise at an early date, timely implementation of a suitable government structure is needed. Upon implementation of the re-organisation, the new politically appointed team consisting of both current and new officials would get together and have their organisational values and objectives aligned soon when they are all in post on 1 July 2012.

13. The H/CEEO has supplemented that over the past few months or so, the CE-elect's Office has been refining the re-organisation proposals with the current government and civil service bodies via the CE's Office. The manifesto of the CE-elect, which covered the re-organisation proposals, was drawn up after a community-wide consultation exercise with various sectors of the community. Amongst some 600 responses to the manifesto received from the public, no negative feedback had been received on the proposed re-organisation. The CE-elect's Office welcomes any opportunity to listen further relevant views from the public through various channels, including the meeting to be arranged by the CA Panel for receiving views from the public.

14. Some members have, however, stressed that while the CA Panel would hold special meetings to receive views from the public on the proposed re-organisation, the Executive Authorities must not be absolved from its duty to consult the public on issues of public concerns which are controversial in nature.

15. Some members have also queried that it is not in order for the Administration to seek funding approval for the proposed re-organisation before the relevant resolution is passed by LegCo.

16. The Administration has advised that the sequence of the procedural steps to seek ESC/FC's approval before passage of the resolution was adopted for the re-organisation exercise in 2007 and is similar to a recent example regarding the creation of the post of Head of Office of Create HK in 2009. Members also note the Administration's further explanation that the re-organisation exercise entails creation of posts and changes in post titles (and thereby the need to transfer statutory functions), and changes to the 2012-13 Estimates of the affected bureaux before 1 July 2012. Logically speaking, it should make more sense if the creation of post is completed before the transfer of powers. Otherwise, the Administration would be asking LegCo to pass the resolution to transfer powers to non-existent posts and at the same time taking away powers of existing public officers. In practice, the proposed changes to the Estimates cannot be implemented without the transfer of statutory functions to be effected through the resolution. When the Administration put the proposed changes to ESC and FC, it will make clear that if FC approves the proposed changes, the changes will only take effect if the resolution is enacted.

Justification for the proposed re-organisation

17. Some members have expressed support for the proposed re-organisation in order to facilitate the CE-elect to implement the priority policy initiatives pledged during the CE election with the ultimate aim of enhancing the effectiveness of governance and social harmony. They have generally recognised the need for a comprehensive government structure as envisioned by the CE-elect to facilitate implementing his policies to address the livelihood concerns in a timely and effective manner.

18. Some other members have, however, pointed out that the outcome of the last two exercises of the re-organisation of the Government Secretariat had fallen short of public's expectation. Taxpayers are asked again to foot another \$72 million per year to pay for the additional posts in order to implement the proposed re-organisation. They have queried whether the proposed re-organisation would bring about material improvements to important livelihood and economic issues, and the delivery of public services. For example, whether the waiting time for public housing would be shortened, how the development in the industrial and commercial sector would be promoted, and whether initiatives would be implemented to support Hong Kong's further development and enhance trade and financial co-operation between Hong Kong and the Mainland. These members have asked whether specific performance targets would be set if the proposed re-organisation is implemented on 1 July 2012.

19. According to H/CEEEO, the purposes of the proposed re-organisation are (a) to enhance the capacity of the team of politically appointed officials 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 further advised that the restructuring of the existing CEDB into two bureaux, namely TCB and CIB, is in recognition of 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. The new bureaux would facilitate pursuing the issues of concerns of the industrial and commercial sector. However, it would not be appropriate for the CE-elect's Office to make any commitment on performance targets on behalf of the politically appointed officials who will take office on 1 July 2012. The new governing team will have to consolidate the policy priorities of the Administration within the initial three months of the new-term government for

mission alignment. The CE-elect will explain his policy initiatives when delivering the 2012-2013 Policy Address in October 2012.

20. H/CEEEO has further explained that the Political Appointment System would be improved in that the directors of bureaux concerned would also take part in the recruitment process to identify persons of the right aptitude and calibre to fill the posts of Under Secretaries and political assistants; and that young talents are encouraged to pursue a career in politics through self-nomination for political appointments as well, thereby building a reserve of talents to sustain an effective governance.

Need to review the Political Appointment System

21. Some members are of the view that the Administration should have reviewed the Political Appointment System and identify shortfalls of the existing government structure before seeking its further expansion. They consider that there should be a clearer delineation of the role of political assistants. These members stress that without any critical review of the efficiency and effectiveness of the system, it is unreasonable to create an additional layer of politically-appointed officials under the politically appointed team.

22. According to H/CEEEO, the proposed re-organisation will bring about improvement to the Political Appointment System by strengthening policy planning and coordination which will be conducive to the long-term development of Hong Kong.

23. Some members have also expressed concern about the unclear division of the role and responsibilities between principal officials and civil servants under the Political Appointment System. They have questioned the role of civil servants in undertaking political work such as explaining Government policies.

24. According to H/CEEEO, civil servants will support the work of principal officials by explaining Government policies. Undertaking such work with political content is not in conflict with the political impartiality of the civil service.

Responsibilities of the two new Deputy Secretaries of Department

25. Some members have expressed support for the need to create the two DSoD posts to coordinate work of bureaux in achieving the desired results when cross-cutting policy issues are involved.

26. Some other members 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 would inevitably overlap to some degree with that of CS and FS, and may cause a delay in policy decision as the policy secretaries would need to route through an additional layer of administration.

27. According to H/CEEEO, DCS and DFS will share the workload of CS and FS respectively which has increased significantly over the years. Local politics and cross-border issues have taken up much of the time and energy of CS and FS. Their attention sometimes is pre-occupied with addressing urgent issues, and work related to long-term development may be accorded with lower priority. Creation of the two DSoDs will strengthen coordination of cross-cutting policy areas so as to formulate comprehensive and long-term projects. Given the wide span of control of CS, it is proposed that DCS would assist CS in coordinating policy formulation and implementation in policy areas pertaining to human resources (including education; manpower planning and development; welfare planning; and retirement protection), and culture. DCS will supervise three bureaux closely connected to these policy areas, namely Education Bureau, Labour and Welfare Bureau and Culture Bureau. With the support of DCS, CS could focus more on other cross-cutting policies requiring longer term planning, e.g. poverty alleviation and sustainable development, while maintaining direct supervision of six policy bureaux.

28. The H/CEEEO has further explained that to further promote the economic development of Hong Kong and enhance its competitiveness, it is proposed that DFS will assist FS in 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 Plan, and supporting the further development of trade and industries, including maritime, air, logistics and tourism; as well as technology and communications. DFS will supervise two bureaux closely connected to these policy areas, namely CIB and TCB.

Responsibilities amongst policy bureaux

Land planning and housing portfolio

29. The proposed re-organisation will restructure the existing DEVB and THB into HPLB. 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.

30. Some members are of the view that it is reasonable to put land planning and housing under the same bureau for smooth coordination so that more focused efforts would be put on solving the housing problem as soon as possible by means of thorough planning, increased housing supply and expedited provision of public housing.

31. Some other members have, however, queried the rationale for the CE-elect's remark that if the proposed re-organisation cannot be implemented on 1 July 2012, it would have an adverse impact on the housing development of Hong Kong. It has been pointed out that judging from the statistics on supply of housing in both public and private sectors over the last 20 years, the supply of housing units bore little or had no relation with the issue of whether the portfolios of land planning and housing were under the same bureau or two bureaux. They are of the view that the supply of housing over the past years was a policy decision of the Government. It is therefore misleading for the CE-elect to say that delay in implementing the re-organisation would have an adverse effect on the supply of housing.

32. According to H/CEEEO, the land planning portfolio has been transferred from the former Housing, Planning and Lands Bureau reporting to CS to DEVB reporting to FS since 2007, while the housing portfolio has been kept under the purview of THB reporting to CS. The proposed re-organisation seeks to combine the portfolios of land planning and housing under the new HPLB reporting to FS in order to achieve better coordination in the timing of land supply to meet the demand for both public and private housing. The HPLB would also assume policy responsibilities for developing a long-term housing strategy and urban renewal as well as building maintenance and safety.

Commerce and industries portfolio

33. The proposed re-organisation will restructure the existing CEDB into two new bureaux, namely TCB and CIB. The new TCB will be responsible for promoting innovative technology and communications in Hong Kong. It is transformed from the existing Communications and Technology Branch of CEDB except the Office of Create Hong Kong. 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, in recognition of the intimate connection between aviation, shipping and logistics with other sectors of the economy, such as tourism, import and export.

34. Some members consider that the maritime, aviation and logistics industries have not been given adequate policy support. They have asked how the new CIB would help promote the development of the "value-added logistics" industry. It is also suggested that the title of the new Bureau should

be revised to reflect the importance of work of maritime, aviation, and logistics under its portfolio.

35. The Administration has advised that the Maritime, Aviation, Logistics and Tourism Branch of CIB to be headed by a permanent secretary would provide holistic support to promote the development of the maritime, aviation, logistics and travel industries in Hong Kong so as to enhance their competitiveness within and penetration in the international market.

Culture portfolio

36. The proposed re-organisation will set up a new Culture Bureau to take over the Culture Branch and the WKCD Management Team from HAB, the Office of Create Hong Kong from CEDB, and the Commissioner for Heritage's Office from DEVB. Members in general are supportive of the proposal to set up the new Bureau. However, concerns are raised about the generality of its portfolio and the need for building an audience for cultural development.

37. According to H/CEEO, the Culture Bureau will provide a focal point and champion within the Government to devise a holistic culture policy, promote cultural activities and exchanges, nurture talents and cultural groups, and encourage community participation. Bringing the cultural affairs under the unified structure of a new Culture Bureau will enhance policy coherence and facilitate strategic planning on culture.

Financial implication of the re-organisation proposals

38. On the recommendation of the Independent Commission on Remuneration for Members of the Executive Council and the Legislature, and Officials under the Political Appointment System of the Hong Kong Special Administrative Region, the Administration has proposed the remuneration package for the politically-appointed officials serving in the fourth-term Government, including an increase of 8.1% in the cash remuneration for DoBs (i.e. from \$298,115 to \$322,260 per month); the cash remuneration for the new DCS and the new DFS be pitched at 1.75% above that for DoBs; and the cash remuneration for Under Secretaries be set at 70% of that for DoBs. On the other hand, the total cash remuneration for Political Assistant(s) engaged by each of the Secretaries of Departments, DSoDs and DoBs² will be capped at \$100,000 per month. An annual adjustment mechanism whereby the remuneration for the politically-appointed officials will be adjusted annually in line with the movement of Consumer Price Index (C) is also proposed.

² At present, the Secretary for Justice and the Secretary for the Civil Service are not underpinned by Political Assistants.

39. Members have enquired about the financial implication of the proposed remuneration package on the additional staff cost arising from the proposed re-organisation which is estimated to be around \$72 million per year. The Administration has advised that the increase in cash remuneration for DoBs and Under Secretaries, as well as the additional cash remuneration for the proposed new posts of DCS and DFS should be offset by the savings arising the proposed capping on the total cash remuneration for Political Assistants at \$1.2 million per annum. The Administration has undertaken to confirm the financial implication in due course.

Related development

40. The CA Panel has received views from the public at its special meeting on 19 May 2012 and is scheduled to hold another special meeting on 26 May 2012 to receive further views from the public.

41. At its regular meeting on 21 May 2012, the CA Panel was briefed on the changes in the establishment pursuant to the proposed re-organisation of the Government Secretariat and the proposed remuneration package for politically-appointed officials serving in the fourth-term Government. It is the Administration's plan to submit proposals to ESC and FC on 6 and 15 June 2012 respectively for approval of the staffing and financial implications arising from the re-organisation exercise, and to submit the financial proposal in respect of the remuneration package for politically-appointed officials to FC in June 2012.

Relevant papers

42. The relevant papers considered by the CA Panel are available on the LegCo website at <http://www.legco.gov.hk/yr11-12/english/panels/ca/general/ca1112.htm>.