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the Administration)

Panel on Constitutional Affairs

Minutes of special meeting
held on Monday, 4 June 2012, at 4:45 pm
in Conference Room 1 of the Legislative Council Complex

- Members present** : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon Margaret NG
Hon CHEUNG Man-kwong
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Cyd HO Sau-lan
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun, JP
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
- Members absent** : 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-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 WONG Kwok-kin, BBS
Hon Paul TSE Wai-chun, JP
Dr Hon Samson TAM Wai-ho, JP
Hon WONG Yuk-man

**Public Officers : Item I
attending**

Constitutional and Mainland Affairs Bureau

Mr Raymond TAM Chi-yuen
Secretary for Constitutional and Mainland Affairs

Mr Ivanhoe CHANG Chi-ho
Principal Assistant Secretary (Constitutional and Mainland
Affairs)

Chief Executive's Office

Professor Gabriel LEUNG
Director of the Chief Executive's Office

Mr Kenneth MAK Ching-yu
Permanent Secretary of the Chief Executive's Office

Administration Wing

Miss Jennifer MAK
Director of Administration

Item II

Office of the Chief Executive-elect

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 Raymond TAM Chi-yuen
Secretary for Constitutional and Mainland Affairs

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

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

Financial Services and the Treasury

Ms Esther LEUNG Yuet-yin
Deputy Secretary for Financial Services and the Treasury
(Treasury)

Ms Karyn CHAN Ching-yuen
Principal Assistant Secretary for Financial Services and the
Treasury (Treasury)

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

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

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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I. Report of the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests

[LC Paper Nos. IN13/11-12, CB(2)1239/11-12(02), CB(2)1669/11-12(03), CB(2)1679/11-12(05), CB(2)2128/11-12(01) and CB(2)2233/11-12(01)]

The Chairman said that the purpose of the special meeting was for members to discuss with the Administration its follow-up on the

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recommendations of the Report of the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests ("the Report") published on 31 May 2012.

Briefing by the Administration

2. At the invitation of the Chairman, Secretary for Constitutional and Mainland Affairs ("SCMA") said that the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests ("the Committee") had put forward 36 recommendations to improve the present system, which included, inter alia, strengthening the guidelines in the Code for Officials under the Political Appointment System ("the PAO Code") for the acceptance of advantages and those for the acceptance of entertainment, adopting and publishing guidelines for handling of conflict of interest questions concerning politically appointed officials ("PAOs") and also guidelines for considering applications from PAOs for special permissions to accept advantages. The Chief Executive ("CE") had accepted the Report and the Administration would progressively implement the recommendations through measures in the short, medium and long term.

3. SCMA further said that soon after the Report was issued, a joint meeting with relevant parties chaired by the Director of the Chief Executive's Office ("D/CEO") was held to discuss the recommendations of the Report and make plans for carrying out the recommendations in the short, medium and long term. SCMA and D/CEO outlined the measures in the short to medium term, including measures that would shortly be implemented to enhance transparency such as uploading to the websites the declarations of interests by PAOs and statistics of Executive Council ("ExCo") members withdrawing from meetings; and uploading to the relevant websites the documents relating to the regulatory regime for prevention and handling of conflict of interests concerning CE, PAOs and ExCo Members (recommendations 31 – 33). In the medium term, the Administration would seek to implement the application of the statutory regime on the solicitation and acceptance of advantages governing PAOs and civil servants to the office of CE through legislative means (recommendations 16, 17 and 22); as well as changes to the provisions in the PAO Code to improve upon the systems applicable to PAOs (recommendations 4, 6 – 8 and 11) in consultation with the CE-elect's Office.

4. Members noted that it was recommended by the Committee that legislation should be enacted to apply sections 3 and 8 of the Prevention of Bribery Ordinance ("POBO") (Cap. 201) to CE such that the acceptance of any advantage by CE required permission of a statutory Independent

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Committee; and that the offeror of advantages to CE would be subject to regulation. The Independent Committee should consist of three members appointed jointly by the Chief Justice of the Court of Final Appeal and the President of Legislative Council ("LegCo"). Director of Administration ("D of Adm") said that work had commenced for the preparation of the draft Drafting Instructions, and issues regarding the Independent Committee, notices and guidelines for enhancing transparency were being explored.

Discussions

Present system for prevention and handling of conflict of interests

5. Ms Emily LAU said that the public had strong views against the incidents of acceptance of hospitality from tycoons by CE who was however not subject to the same set of standards as rigorous as those applied under the relevant civil service conduct rules. She said that the Report had refuted the reasons put forward by the Administration for not applying sections 3 and 8 to CE when amending POBO in 2008. Ms LAU enquired how the incumbent CE would be held accountable for his actions; and how the Administration would ensure that the new CE and his political team would be subject to the proposed changes to the regulatory regime as recommended in the Report.

6. SCMA said that CE-elect had welcome the recommendations in the Report in his press statement issued on 31 May 2012. CE-elect had, on his own initiative, followed the declaration of interests arrangement as in line with that of the civil service. SCMA undertook to expedite action to issue the proposed revision to the PAO Code to the CE-elect's Office for consideration of its application to PAOs of the fourth-term government.

7. Ms Emily LAU said that the Administration should assure members that PAOs of the fourth-term government would abide by the regulatory measures as recommended in the Report, adding that this should include the revised PAO Code or any subsequent changes upon a review by the Administration. Dr Margaret NG considered that PAOs should observe a proper standard of conduct, and those who found themselves unable to meet the requisite standard should not take up the appointment. D/CEO said that he would strive to provide the revised PAO Code to the CE-elect's Office as soon as possible and would follow up with the CE-elect's Office on its views. Responding to Ms LAU, D/CEO said that CE had offered his sincere apologies for his mishandling of the various events which had undermined the community's confidence in the integrity of the system and had disappointed colleagues in the civil service. It was the wish of CE to explain to Members

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personally at the CE's Question & Answer Session scheduled for 14 June 2012.

8. Mr CHEUNG Man-kwong suggested that the revision to the PAO Code should include the following : (a) in deciding on conflict of interest questions concerning PAOs, CE should adopt an approach which should be at least as stringent as that applicable in the civil service (recommendation 1), and the control period for post-office employment applicable to PAOs should be brought in line with that of the equivalent rank of the civil service counterparts; (b) introducing intermediary disciplinary measures including warning, public reprimand, suspension and dismissal (recommendation 4); (c) in formulating, adopting and publishing guidelines for considering applications by PAOs for special permission to solicit or accept advantages (recommendation 5), the Administration should include measures to regulate acceptance of deferred rewards as there was no effective mechanism to prevent PAOs from gaining deferred rewards after stepping down from office; (d) the advice of the Advisory Committee on Post-office Employment for Former CEs and PAOs ("Advisory Committee") should be legally binding (recommendation 13). Mr CHEUNG urged that the PAO Code should be revised in time so as to make it binding on the new CE and PAOs who took office on 1 July 2012.

9. SCMA said that the revision to the PAO Code would incorporate different disciplinary sanctions specified in recommendation 4 of the Report. It should however be noted that while it was recommended under recommendation 13 that the Administration should conduct a review of the control regime for post-office outside work of PAOs, the Committee recognized the differences in the nature of employment between PAOs and civil servants (recommendation 14) and considered that this should be taken into account in considering whether and if so, how the control arrangements for PAOs should be revised in the Administration's review. Besides, in the review of the control regime for post-office outside work of PAOs, under recommendation 15, it was recommended that the following possibilities might be considered: (i) whether to provide for different control periods for PAOs of different ranks with different lengths of service; and (ii) whether to make the control restriction on the advice of the Advisory Committee legally binding. SCMA pointed out that recommendation 1 referred to the general principle for CE to adopt in deciding on conflict of interest questions concerning PAOs. He said that the revision to PAO Code would provide clarity to the provisions regulating acceptance of advantages in private capacity, following the principle as set out under recommendation 1.

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10. Mr LEUNG Kwok-hung opined that for the short term measure, CE should resign from office immediately in order to be accountable to his people. In the medium and long term, the next-term CE should offer his views, if any, on the recommendation of the Committee, and the whole governing team should be subject to the regulatory measures as recommended in the Report. In his view, the Administration and those Members who viewed any regulation of CE as compromising his constitutional status and hence putting CE under the statutory control under sections 3 and 8 of POBO as inappropriate committed a very serious mistake that had led to the present outcome.

11. Dr Margaret NG said that the proposal of the pro-democratic parties for applying sections 3 and 8 of POBO to the office of CE, which the Administration failed to heed, was indicated by the Committee. Ms Audrey EU supplemented by pointing out that at that time the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB") objected to their proposal of applying sections 3 and 8 to the office of CE. According to the Committee, there was no justification for exempting CE from the strict regime regulating the solicitation or acceptance of advantages which was applicable to PAOs and the civil service which he led, and it was totally inappropriate for CE to have no record of the internal rules (and instances of their application) which were not consistent with the proper conduct of public administration.

12. The Chairman clarified that the position of DAB at that point in time was that the CE's unique constitutional status posed difficulties in fitting him within the structure of the existing offence provisions in POBO. He said that the DAB would support the Committee's proposal for an appropriate means to achieve the purpose without compromising CE's special constitutional position.

13. Dr Margaret NG urged that the Administration should put forward a legislative proposal within the current LegCo term so as to expeditiously legislate for the regulation of the conduct of CE in this regard. She added that it was time to do so and she expected that no strong opposition would be likely from Members of the current term. SCMA referred to the Administration's previous position on application of POBO sections 3 and 8 to the office of CE as set out in paragraph 4.60 of the Report. Now that having regard to the recommendations of the Committee, the Administration had commenced the drafting of legislation which would be submitted to LegCo by the fourth-term CE. On the other hand, those recommendations relating to

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PAOs and for enhancing transparency would be implemented by the current-term government. Dr Margaret NG expressed dissatisfaction that the Administration did not accord the highest priority to the issue but would rather wait until the next-term LegCo. She considered that the Administration should provide a legislative timetable. D/CEO elaborated on the details of the steps involved in amending the legislation. He advised that draft Drafting Instructions were being drawn up but a timetable was not available at this stage.

14. Mrs Sophie LEUNG said that it was necessary to see how inadequacy of the current system could be improved. Referring to paragraph 4.61 of the Report, she was concerned how the issue of the special constitutional status of CE could be better addressed. She also noted that reference was drawn to overseas practices in selected overseas jurisdictions but it appeared that the control regime was largely applied to ministers while the head of the government was not included. Mrs Sophie LEUNG suggested that the Administration should consider the matter more thoroughly as it touched upon a constitutional issue. SCMA and D of Admin said that the Administration would consider the proposal of creating a statutory Independent Committee thoroughly and the Department of Justice would have particular regard to the constitutional aspect of the issue.

15. Referring to the Director of Audit's report issued on 31 May 2012 on the hotel accommodation arrangements for CE's duty visits outside Hong Kong, Dr Margaret NG and Ms Audrey EU asked how SCMA made himself doubly responsible as he described himself to the media, and whether CE should pay back the public money for the amount spent on expensive rooms. D/CEO said that the Director of Audit's report had put forward a number of recommendations to tighten the planning and approval process, including more thorough assessment on the different classes of accommodation and proactive disclosure of duty visit expenditure. The CE's Office generally accepted the recommendations. SCMA said that he had fully elaborated his views in the press statement and had nothing further to add.

16. Ms Audrey EU expressed dissatisfaction that the Administration had not provided a paper to elaborate on its plan on whether and how the 36 recommendations would be implemented and the relevant time frame. Ms EU also urged that the impeachment procedure should be initiated against CE and she solicited Members' support to invoke the procedure. SCMA undertook to issue the revised PAO Code to the CE-elect's Office incorporating the recommendations in respect of PAOs for consideration of CE-elect's Office early in the following week and to provide a paper on the

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issue as requested by Ms EU. Ms Emily LAU suggested that the Panel should discuss the Administration's paper at a future meeting.

17. Ms Audrey EU said that the new-term Government should undertake to implement the recommendations in relation to PAOs, including recommendations 4 and 13 regarding disciplinary sanctions and deferred rewards respectively so that the relevant PAOs would be subject to the regulatory regime, and the revised PAO Code should form part of the terms and conditions of employment. Noting that the CE-elect had undertaken to accept all the recommendations in the Report and the current-term Government would strive to implement the recommendations within the current term, Ms EU enquired whether the Head of the CE-elect's Office ("H/CEEEO") would specify the time frame for implementation. H/CEEEO said that the CE-elect welcomed the recommendations of the Report and would work out in the first place amendments to the PAO Code. As regards those measures such as post-service employment which might only be implemented after a review by the Administration in due course, she undertook to consider how the relevant provisions could be made binding on the relevant PAOs and where necessary, adding terms for variation of contract. Responding to Ms EU, SCMA said that recommendation 4 on various forms of disciplinary sanction was consistent with the reward and punishment mechanism being considered by CE-elect and would be incorporated in the revised PAO Code.

(Post-meeting Note: According to the Administration, the CE-elect's Office decided to adopt the revised PAO Code from 1 July 2012, a copy of which was circulated to Members vide LC Paper No. CB(2)2448/11-12(01) on 25 June 2012.)

Definition of entertainment and advantages

18. Ms Emily LAU said that the Administration should have distinguished clearly between "advantages" and "entertainment" in the revised PAO Code. Noting that the Committee considered that CE should observe rules that were at least as stringent as those applicable to PAOs and the civil service, Ms Emily LAU opined that CE should observe the highest standards of conduct to meet public expectation, and that the special constitutional status of CE made it all the more important that he should be a role model. Ms LAU referred to paragraph 4.44 of the Report regarding amendments to the provisions regulating acceptance of entertainment and enquired whether the Administration would adopt the same as proposed by the Committee.

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19. SCMA agreed that the existing PAO Code should provide clarity to the relevant provisions regarding "advantages" and "entertainment". He also shared the view of Ms LAU that holders of high public offices should observe the highest standards of conduct. He said that the PAO Code would be revised along the lines as recommended by the Committee.

Debts and liabilities and integrity checking

20. Mr Albert HO was concerned that CE and PAOs were not required to declare their personal debts and liabilities in their regular declaration of investments and interests under the existing mechanism. He noted that a similar mechanism was put in place in Australia, Canada and New Zealand. Mr HO considered that it should be made an additional requirement instead of as and when a potential conflict of interest arose. It was suggested under paragraph 4.139 of the Report that the debts and liabilities etc. of a PAO or a civil servant might be examined as part of his financial situation in the integrity checking process. However, Mr HO queried if the CE returned by election had to undergo an integrity checking prior to his appointment. SCMA said that while the current-term government was following up on the recommendations of the Committee, any further suggestions of members would be referred to the CE-elect's Office for consideration of the next-term CE. He said that the CE returned should make a statutory declaration to the effect that he was not a member of any political party as prescribed under the CE Election Ordinance (Cap. 569). SCMA noted that while extended checking would apply to all directorate appointments in the civil service and PAOs under the prevailing arrangement, he would look up the arrangement for the office of CE and would revert to the Panel after the meeting.

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Other issue

21. Ms Cyd HO said that it was inappropriate for the CE-elect to say that the incumbent CE should remain in office until the end of his tenure so as to facilitate the work on the transition arrangements. In her view, this would undermine the accountability system and she emphasized that a change of government would hinge on the system rather than an individual. Separately, Ms HO noted that many public records had been destroyed by the Administration, some of which had been classified as routine records but might contain accounting records in relation to government expenditure such as overseas duty visits. Ms HO called for enacting an archive law to ensure that public historical records that contained information on Government policies and matters of public significance were retained and made available.

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SCMA said that the subject matter was outside the remit of the Constitutional and Mainland Affairs Bureau and undertook to relay the concern to the relevant party for consideration.

II. Re-organisation of the Government Secretariat : Changes to the 2012-13 Estimates of Expenditure
[LC Paper No. CB(2)2233/11-12(02)]

Briefing by the Administration

22. SCMA said that at the Panel meeting on 21 May 2012, members were consulted on the changes to the establishment pursuant to the re-organisation proposals as outlined in the draft paper issued to all Members vide LC Paper No. CB(2)2058/11-12(03). Subject to endorsement by the Establishment Subcommittee ("ESC"), it was necessary to provide funding to effect changes to the 2012-13 Estimates of Expenditure which were consequential to the proposed re-organisation of the Government Secretariat for approval of the Finance Committee ("FC"), and a draft paper of which was issued to all Members vide LC Paper No. CB(2)2233/11-12(02).

23. Deputy Secretary for Financial Services and the Treasury (Treasury) ("DS(Tsy)) elaborated on the financial implication arising from the re-organisation proposals which would entail creation of new Heads and Subheads, change in the titles of Controlling Officers and Heads of Expenditure, consequential re-delegation of authority, transfer of commitments and changes in the establishment ceiling. The Administration proposed changes to the 2012-2013 Estimates of Expenditure with effect from the same date as the proposed re-organisation as set out in the Administration's paper.

Discussion

24. Ms Emily LAU said that when the Panel was briefed at its meeting on 21 May 2012, the budget sought by the Administration for the re-organisation proposals was about \$70 million. Ms LAU sought clarification as to the total amount being sought by the Administration and the number of submissions for funding approval of FC. She also enquired whether the amount sought would include the proposed salary adjustment to the civil service and PAOs of the fourth-term government.

25. SCMA and DS(Tsy) said that the net increase of \$43.952 million represented the additional staff cost for six additional PAOs (including two

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Deputy Secretaries of Department, two Directors of Bureau and two Deputy Directors of Bureau), two additional Permanent Secretaries and the necessary staffing support to them for the nine-month period up to March 2013, and the additional cost would amount to some \$60 million in a full year. There would be two submissions for consideration of FC, including the establishment proposal mentioned above and the current funding proposal. As regards the proposed salary adjustment for PAOs of the fourth-term Government, SCMA said that the Panel would be further updated on the issue. Ms Emily LAU noted that the remuneration level of PAOs was a cause for concern of the general public and she hoped that the new-term Government would take heed of the public views.

26. Ms Audrey EU opined that in order to facilitate members' understanding of the overall financial commitment, a mark-up copy highlighting the relevant changes to the approved estimates, revision in estimates, if any, and the relevant amount applied for, should be provided. DS(Tsy) referred to paragraph 14 of the Administration's paper regarding the financial implication of the proposal and details of the supplementary provision required and the offsetting amount in the Estimates as set out in Enclosure 4. She added that annexes to Enclosure 4 also set out details of the 2012-13 provision under the relevant Heads presented in the Estimates format with supporting explanation. The meeting noted that the Administration would submit the proposals to FC for approval at its meeting on 15 June 2012.

III. Any other business

27. There being no other business, the meeting ended at 6:35 pm.

Council Business Division 2
Legislative Council Secretariat
27 September 2012