

立法會
Legislative Council

LC Paper No. CB(2)609/99-00

Ref : CB2/PL/CA

Paper for the House Committee meeting on 17 December 1999

**Report of the Panel on Constitutional Affairs on
Designation of officials to attend Legislative Council meetings**

Purpose

This paper informs House Committee members of the deliberation of the Panel on Constitutional Affairs on the subject of designation of officials to attend meetings of the Legislative Council (LegCo).

Background

2. Article 62(6) of the Basic Law (BL) provides that the Government of the Hong Kong Special Administrative Region (HKSAR) shall designate officials to sit in on the meetings of LegCo and to speak on behalf of the government. On 31 December 1998, the Chief Executive (CE), as head of the Government of the HKSAR, signed two instruments on the designation of officials to attend meetings of LegCo, its committees and subcommittees under BL 62(6). These instruments superseded those signed by CE on 26 June 1998.

3. The following persons included in the previous instruments dated 26 June 1998 are excluded from the instruments dated 31 December 1998 -

- (a) The Judiciary Administrator and all directorate officers in the Office of Judiciary;
- (b) The Ombudsman and all directorate officers in the Office of the Ombudsman;
- (c) Chairperson and all directorate officers of the Equal Opportunities Commission;

- (d) Privacy Commissioner for Personal Data, all directorate officers and the Legal Adviser in the office of the Privacy Commissioner for Personal Data;
- (e) The Chief Executive of the Hospital Authority, all deputy directors, all hospital chief executives;
- (f) Chairperson of the Housing Authority; and
- (g) Chairperson and all Executive Directors and the Chief Counsel of the Securities and Futures Commission.

4. Some Members raised concern about exclusion of certain persons from the designation instruments signed by CE on 31 December 1998. The House Committee discussed the matter at its meetings on 5 and 26 February and 16 April 1999, and agreed that it should be followed up by the Panel on Constitutional Affairs.

Discussion of the Panel

5. In response to the Panel, the Administration has explained its considerations in the designation of officials to attend meetings of LegCo. The designation referred to in BL 62(6) is primarily focused on formal LegCo proceedings rather than committees of the Council. Its main significance is that since no government officials are Members of LegCo, there must be some mechanism to ensure that the officials who conduct Government's formal business in LegCo (e.g. introducing bills, replying to motions) are doing so with authority. The purpose of designating officials under BL 62(6) is to enable relevant officials to sit in on the meetings of LegCo and to speak on behalf of the Government. Designated officials may attend meetings of LegCo and its committees to speak on behalf of the Government and, where appropriate, give notice of items of business, make statements, present papers, answer questions, present bills and move amendments, etc. The Administration has assured members that the list of designated officers is not in any way intended as limiting the scope of Government's accountability to LegCo.

6. The Administration has also explained that the designation made by CE on 31 December 1998 includes only officials who are part of the Administration because they are best placed to speak on behalf of the Government on matters relating to their respective policy areas. The persons listed in paragraph 3 above are excluded because –

- (a) the Judiciary is constitutionally independent of the Administration. This constitutional relationship renders it inappropriate for members of one body to speak on behalf of the other; and

- (b) the statutory bodies are separate from and independent of the Administration by virtue of their separate legal personalities or independent status as indicated, either expressly or by implication, in the statute under which they are established. A summary of the relevant provisions of the Ordinances of these bodies is at **Appendix**.

7. As regards the inclusion of the Hong Kong Monetary Authority (HKMA) in the designation, the Administration has advised that HKMA is part of the Administration. It does not have a separate legal personality under the Exchange Fund Ordinance. Nor is it a body whose ordinance provides that it is independent from or not the agent of the Government. Under section 5A of the Exchange Fund Ordinance, it has to perform such functions as the Financial Secretary may direct. Given it is part of the Administration, it is appropriate for the Chief Executive of the HKMA to be included in the designation instruments under BL 62(6).

8. Some members consider that persons who are involved in public service such as responsible persons of independent statutory bodies should make it a practice to appear before LegCo committee meetings. The Administration has advised that most of the persons involved in the conduct of public affairs would derive authority from some ordinances which were passed by LegCo. It is not intended to deny LegCo's role in inviting or summoning a person to whom statutory powers and functions have been given under one of the ordinances passed by LegCo. The power of LegCo to order the attendance of persons at committee and subcommittee meetings of LegCo under its Rules of Procedure is not restricted to designated officials.

9. Some members are particularly concerned about the attendance of the Chairpersons of the Housing Authority and the Hospital Authority at LegCo committee meetings in the past. The Panel has subsequently noted that the Chairpersons of the two statutory bodies were not invited to attend any LegCo committee meetings in person, e.g. Panel or bills committee meetings in the past four LegCo sessions. However, it is a normal practice for the Chief Executive or deputy directors of the Hospital Authority to attend relevant Panel meetings for discussion of agenda items relating to the Hospital Authority. In the current session, the Chairperson of the Housing Authority attended the special meeting of the Panel on Housing on 9 December 1999 in response to an invitation by the Panel.

Conclusion

10. The Panel is of the view that since the designation under BL 62(6) is to provide authority for officials to conduct formal business in LegCo, the designation does not prejudice LegCo's power to invite any persons including responsible persons of independent statutory bodies to attend committee and subcommittee meetings of LegCo if considered necessary. In the event that an invitation to a

person could not secure the person's attendance, the committee or subcommittee, where so authorised by LegCo, may summon the person concerned in accordance with the provisions in the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) which is reflected in the Rules of Procedure.

Advice sought

11. Members are invited to note this paper.

Legislative Council Secretariat

14 December 1999

Appendix

Summary of Provisions Concerning Statutory Bodies

Name of Organisation	Name of Ordinance under which the Organisation is established	Relevant Provisions in the Ordinance
Equal Opportunities Commission	Sex Discrimination Ordinance (Cap. 480)	<p>Section 63(1) and (2) of the Ordinance provide that the EOC be established as a body corporate and shall have perpetual succession and a common seal and shall be capable of suing and being sued.</p> <p>Section 63(7) of the Ordinance provides that “the Commission shall not be regarded as a servant or agent of the Government”.</p>
Office of the Privacy Commissioner for Personal Data	Personal Data (Privacy) Ordinance (Cap. 486)	<p>Section 5(2) of the Ordinance provides that “the Commissioner shall be a corporation sole with perpetual succession and shall have and may use a seal and shall be capable of suing and being sued.”</p> <p>Section 5(8) and (9) of the Ordinance provide that except for the purpose of the Prevention of Bribery Ordinance, the Privacy Commissioner shall not be regarded as a servant or agent of the Government or as enjoying any status, immunity or privilege of the Government.</p>

Name of Organisation	Name of Ordinance under which the Organisation is established	Relevant Provisions in the Ordinance
Hospital Authority	Hospital Authority Ordinance (Cap. 113)	<p>Sections 3(1) and (2) of the Ordinance provide that the Hospital Authority be established as a body corporate and shall have perpetual succession and a common seal and shall be capable of suing and being sued.</p> <p>Section 3(6) of the Ordinance stipulates that “the Authority shall not be regarded as a servant or agent of the Government or as enjoying any status, immunity or privilege of the Government”.</p>
Hong Kong Housing Authority	Housing Ordinance (Cap. 283)	<p>Section 6 of the Ordinance provides that “the Authority shall be a body corporate with perpetual succession and a common seal and, for the purposes of the Ordinance, with a capacity to acquire and hold land and to sue and be sued in the corporate name of the Authority.”</p>
Securities and Futures Commission	Securities and Futures Commission Ordinance (Cap. 24)	<p>Section 3(2) of the Ordinance provides that “the Commission shall be a body corporate with power to sue and be sued.”</p>

Name of Organisation	Name of Ordinance under which the Organisation is established	Relevant Provisions in the Ordinance
Office of the Ombudsman	The Ombudsman Ordinance (Cap. 397)	Under section 9 of the Ordinance, the Ombudsman is empowered to determine whether to undertake, continue or discontinue an investigation in accordance with her own discretion, subject to the provisions of the Ordinance. Any question as to whether a complaint is duly made under the Ordinance shall be determined by the Ombudsman.