

立法會
Legislative Council

LC Paper No. CB(2)1802/99-00

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**Legislative Council
Panel on Constitutional Affairs**

**Minutes of special meeting
held on Saturday, 8 April 2000 at 9:00 am
in Conference Room B of the Legislative Council Building**

Members Present : Hon Andrew WONG Wang-fat, JP (Chairman)
Hon LEE Wing-tat
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon Jasper TSANG Yok-sing, JP
Dr Hon YEUNG Sum

Members Absent : Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Hon Gary CHENG Kai-nam
Hon Howard YOUNG, JP
Hon Ambrose LAU Hon-chuen, JP
Hon SZETO Wah
Hon Ronald ARCULLI, JP

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in Attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser

Mr Paul WOO
Senior Assistant Secretary (2)3

I. To consider written submissions on the "Development of the Hong Kong Special Administrative Region's political system"

(LC Papers Nos. CB(2)1076, 1111, 1130, 1133, 1141, 1151, 1211, 1284, 1290, 1405, 1422, 1432, 1610/99-00 - Written submissions received by the Panel)

(LC Paper No. CB(2)1624/99-00(01) - A summary of views received by the Panel)

Submission from Professor Joseph Y S CHENG

(LC Paper No. CB(2)1111/99-00(02))

Contract system for appointment of senior government officials

Members discussed the point raised in Professor CHENG's submission concerning the introduction of a system under which senior government officials would be appointed on contract terms.

2. Mr LEE Wing-tat, Dr YEUNG Sum and Mr CHEUNG Man-kwong were in support of a system whereby senior government officials would be appointed on contract with terms providing for termination of appointment. Their views were summarized as follows -

- (a) As compared with the present system which provided for security of tenure of office for civil servants employed on permanent and pensionable terms, a contract system would be more flexible and effective in achieving the objective of enhancing greater accountability of government. Under the existing appointment system, principal officials would not have to be held responsible and face the risk of being removed from office even in serious blunders causing great damages to the community, such as the new Airport incident and the recent defective piling scandal in public housing etc. This was a highly undesirable situation. In fact, there were strong arguments that from a public interest point of view, senior government officials involved in those incidents who failed to make proper judgments and exercise effective supervision to prevent such incidents from happening should be held accountable for their actions;
- (b) The reason for not implementing a contract system for principal officials on the ground that they were appointed by the Central People's Government (CPG) as specified under the Basic Law (BL) could not stand. In fact, BL 48(5) provided that the Chief Executive (CE) had the authority to nominate to the CPG for appointment of the

principal officials, and to recommend to the CPG the removal of those officials. It was only a matter of political decision of the Government on whether or not a contract system of appointing principal officials should be implemented; and

- (c) A contract system of appointment of principal officials should be implemented as an interim arrangement during the transition to a democratically elected CE and a ministerial system.

3. Mr TSANG Yok-sing referred to BL 103, which stated that "*...Hong Kong's previous system of recruitment, employment, assessment, discipline, training and management for the public service, including special bodies for their appointment, pay and conditions of service, shall be maintained,...*". He said that while BL 103 should not be interpreted as being totally devoid of flexibility with regard to its applicability, proposals for making fundamental changes to the public service appointment system should be carefully considered to ensure that they would not infringe the principle and spirit of the BL.

4. Miss Margaret NG opined that some provisions in the BL were very rigid. However, there were also provisions which were less rigid and more directional in nature and could be interpreted with some degree of flexibility. The latter category included some of the provisions in section 6 of Chapter IV of the BL, of which BL 103 was a part, which dealt with public servants and how public service should be managed in the Hong Kong Special Administrative Region (HKSAR). She said that it might be worthwhile to seek the Administration's view on how it would interpret the meaning of the expression "*previous system*" in BL 103, and ask the Administration to clarify its stance on whether appointing principal officials on contract would be contrary to the intention of BL 103.

5. Mr LEE Wing-tat opined that BL 103 should be given liberal interpretation. He pointed out that the newly proposed Management-Initiated Retirement Scheme, under which directorate level civil servants would be offered compensation to retire early from service for specific reasons such as non-performance and lack of potential etc., was a new initiative of the Government not envisaged under BL 103. Mr CHEUNG Man-kwong said that according to the Administration, the Scheme would not apply to the principal officials who were appointed by the CPG under the BL. The Chairman pointed out that there were provisions for a civil servant to retire in the public interest under the existing Civil Service Regulations and the former Colonial Regulations, although such provisions had rarely been invoked.

6. The Chairman supported a contract system of appointment of principal officials with the flexibility that the appointment might be terminated at any time,

if necessary. He said that under an appointment system which provided security of tenure of office, it was unlikely that a civil servant would be willing to shoulder responsibility for serious errors.

7. Miss Margaret NG expressed reservation about such a system which could result in losing competent officers in no time, particularly under a system of government characterized by collective responsibility.

8. Mr TSANG Yok-sing said that a system of termination of service under a contract for the purpose of enhancing accountability of principal officials was unprecedented in Hong Kong. Should such a system be implemented, it was likely to give rise to worries and anxieties in the civil service. Hence, it was essential to explain clearly the rationale for adopting the system and how the system would operate in practice. He added that there were arguments that it would not be fair to hold a civil servant accountable for a policy failure where the role of endorsing policies was vested in the Executive Council (ExCo).

9. Mr TSANG Yok-sing further pointed out that the system adopted in UK was one of collective responsibility coupled with ministerial responsibility. Where a mishap occurred, it was not necessarily the case for the minister concerned to resign from office. In the end, it was a matter of political decision to be made by the ruling party as to what it saw was the most appropriate means to preserve its credibility.

10. Miss Margaret NG said that the issue of enhancing accountability of principal officials might also be considered in the context of constitutional convention. She pointed out that in jurisdictions like UK, parliamentary practices and conduct of the public service followed certain customs and convention. For example, it was the constitutional convention for the monarch to appoint the leader of the majority party as the Prime Minister, who would then form his own Cabinet and appoint the ministers. In the event of a minister having committed a grave policy mistake, the minister concerned would be expected to resign from office. In contrast to dismissal, a resignation in accordance with convention was a more dignified way of stepping down from office.

11. Miss Margaret NG added that under the principle of a high degree of autonomy in the HKSAR and through negotiation between the HKSAR Government and the CPG, it might be possible to develop a customary practice akin to a constitutional convention in that whenever the CE had made a recommendation to the CPG that it was in the public interest of the HKSAR to remove an official from office, the CPG should endorse the proposal.

12. Dr YEUNG Sum agreed that under a contract system of appointing principal officials, all the contractual rights and obligations should be clearly specified. It was also necessary to explain in detail the circumstances for triggering the mechanism for removing an officer from office. Referring to Miss Margaret NG's comments in paragraph 10, he opined that consideration should be given to the possibility of adopting both systems in Hong Kong. He considered that more in-depth study would be required in this regard.

13. Mr CHEUNG Man-kwong considered that the problem concerning accountability stemmed from the fact that under the current system of an executive-led government with collective responsibility and permanent tenure of office, top government officials would continue to hold office even though they had committed major errors. He said that it might be possible to break away from this deadlock by means of a dual-track approach, i.e. -

- (a) to introduce in the long term a more democratic system of government, e.g. a ministerial system with politically appointed ministers assuming full policy accountability; and
- (b) to implement in the short term an interim arrangement by way of appointing principal officials such as the policy secretaries under a contract system. The principal officials could be dismissed from office at any time under the terms of a contract. This would enhance effective monitoring by the public and the Legislative Council (LegCo) of the performance of the Government.

14. Miss Margaret NG pointed out that termination of service under the terms of an employment contract involved the contractual right of the employer and the employee concerned. This should not be a matter for the LegCo to interfere with, even in the case of a non-confidence vote passed by LegCo on a particular government official.

15. The Chairman added that a vote of no confidence or censure passed by the legislature did not necessarily have the constitutional consequence of dismissal by the legislature of a minister or principal official. However, a constitutional convention could evolve through voluntary resignation or dismissal of the minister by the CE, thus ensuring accountability of the executive to the legislature.

16. On the monitoring role of LegCo, Dr YEUNG Sum said that an important issue hinged on how to achieve a right balance of power between the executive and LegCo. He considered that with the implementation of direct election of the CE and all Members of LegCo by universal suffrage, there would be a change in

the dynamics of the role played by LegCo Members in that they would become more exposed to public pressure and hence be required to heed the overall interests of the community more cautiously. Mr LEE Wing-tat expressed similar views.

17. Miss Margaret NG considered that the LegCo should develop its own convention for the purpose of enhancing public confidence. She said that this issue could be further explored in the context of improving the relationship between the Executive and LegCo and how a system of checks and balances should operate between the two.

18. The Chairman sought members' views on whether the term of a contract of appointment of a principal official could extend beyond the term of office of the CE.

19. Mr CHEUNG Man-kwong preferred the term of office of the principal officials to be pegged to that of the CE. He said that this would avoid a difficult situation faced by the officials in case the new CE's political beliefs were different from that of the outgoing CE. In any event, a contract could be renewed subject to agreement of both parties.

20. Miss Margaret NG held a different view. She said that the CE and the principal officials having the same term of office could result in a superior/subordinate relationship which might discourage the principal officials from offering bold and independent advice on policy matters. The Chairman also pointed out that a major feature of a ministerial system was that career civil servants could maintain political neutrality and independence.

21. The Chairman also sought members' views on the desirability to extend the contract appointment system to ExCo Members and chairmen of advisory bodies and other public organizations.

22. Dr YEUNG Sum and Miss Margaret NG supported the proposal. Dr YEUNG said that a number of advisory bodies and statutory/public bodies assumed an important role in the formulation of government policies. Hence they formed an integral part of the political system in Hong Kong. Miss Margaret NG added that the powers and responsibilities of these organizations and how they performed their intended functions could be covered in future discussion of political reform.

23. In summing up the discussion, the Chairman concluded that there was a consensus among members at the meeting that the issue of a contract system for appointing principal officials warranted further study in any future consultation exercise.

Submissions from Miss Eliza W Y LEE; Mr K Y SHAW; Hong Kong Institute of Real Estate Administration; A Hong Kong Citizen; and Democratic Party
(LC Papers Nos. CB(2)1111/99-00(03) & (04); 1133/99-00(02) - (04))

24. Members noted the above submissions and considered that the Panel's earlier discussion had gone beyond the scope of those submissions.

Submission from Dr LI Pang-kwong
(LC Papers Nos. CB(2)1130/99-00(01) & 1133/99-00(01))

Co-opting elite members of the community in committees of the government and statutory bodies

25. LEE Wing-tat considered that the reference to "elite members" would need to be defined.

Submission from the Citizens Party
(LC Paper No. CB(2)1141/99-00(01))

Constitutional convention on political reform

26. The Chairman considered that a constitutional convention in the nature of that proposed by the Citizens Party would have to be conducted by the Administration. The LegCo could hold discussions and inquiries on the subject and put forward recommendations to the Administration. He further pointed out that it was necessary to enact legislation for the purpose of establishing a constitutional convention.

27. Mr LEE Wing-tat said that it would be more appropriate to wait for the completion of the Administration's territory-wide consultation on the development of Hong Kong's political system before considering the issue of constitutional convention as proposed by the Citizens Party.

28. Members agreed that wide public consultation was necessary to determine whether it was necessary to conduct a constitutional convention on political reform. Miss Margaret NG suggested that LegCo could hold a motion debate on

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the issue in due course. The submissions received by the Panel and the Panel's report on the subject could be distributed to relevant bodies and organizations taking an interest in the subject to facilitate them to conduct their own consultations.

II. Date of next meeting

29. Members agreed to continue discussion of the rest of the submissions at the next Panel meeting on 17 April 2000.

30. The meeting ended at 11:15 am.

Legislative Council Secretariat

14 April 2000