

For information on  
25 October 1999

## **Legislative Council Panel on Constitutional Affairs**

### **Designation of officials to attend LegCo meetings**

#### **Purpose**

This paper informs Members of the Government's considerations in the designation of officials to attend meetings of Legislative Council (LegCo) under Article 62(6) of the Basic Law.

#### **Background**

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

#### **Designation of Officials under BL 62(6)**

3. The designation procedure under BL62(6) is primarily focused on formal LegCo proceedings rather than committee and panel business. 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. Viewed in this light, Members will no doubt appreciate that the list of designated officers is not in any way intended as limiting the scope of Government's accountability to LegCo.

4. The purpose of designating officials under BL 62(6) is therefore to enable relevant officials to appropriately sit in on the meetings of the LegCo and to speak on behalf of the Government. Designated officials may attend meetings of the 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.

5. The designation made by the CE on 31 December 1998 includes only officials who are part of the Administration since they are best placed to speak on behalf of the Government on matters relating to their respective policy areas. It is not appropriate to designate responsible persons of the Office of Judiciary, the Office of the Ombudsman, the Equal Opportunities Commission, the Office of the Privacy Commissioner for Personal Data, the Hospital Authority, the Hong Kong Housing Authority and the Securities and Futures Commission because –

- (i) 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
- (ii) responsible persons of independent statutory bodies are responsible for undertaking their statutory functions and responsibilities. It is therefore not appropriate for them to be designated under BL 62(6) to speak on behalf of the Government.

6. 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 these bodies is at Annex. It is hence not considered appropriate for members of these bodies to be designated under BL 62(6).

7. The Hong Kong Monetary Authority (HKMA) is included in the designation instrument since HKMA is part of the Administration. HKMA 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).

### 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)                                  | 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.”  |
| Securities and Futures Commission | Securities and Futures Commission Ordinance (Cap. 24)         | Section 3(2) of the Ordinance provides that “the Commission shall be a body corporate with power to sue and be sued.”   |

| <p align="center"><b>Name of Organisation</b></p> | <p align="center"><b>Name of Ordinance under which the Organisation is established</b></p> | <p align="center"><b>Relevant Provisions in the Ordinance</b></p>  |
|---|--|--|
| <p>Office of the Ombudsman</p>                    | <p>The Ombudsman Ordinance (Cap. 397)</p>  | <p>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.</p> |