

**立法會**  
**Legislative Council**

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LC Paper No. CB(2)36/12-13  
(These minutes have been seen  
by the Administration)

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

**Minutes of the eleventh meeting  
held on Tuesday, 12 June 2012, at 8:30 am  
in Conference Room 3 of the Legislative Council Complex**

- Members present** : Hon TAM Yiu-chung, GBS, JP (Chairman)  
Dr Hon Margaret NG  
Hon CHEUNG Man-kwong  
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP  
Dr Hon Philip WONG Yu-hong, GBS  
Hon WONG Yung-kan, SBS, JP  
Hon LAU Kong-wah, JP  
Hon Emily LAU Wai-hing, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon WONG Kwok-hing, MH  
Hon CHEUNG Hok-ming, GBS, JP  
Hon WONG Ting-kwong, BBS, JP  
Dr Hon Priscilla LEUNG Mei-fun, JP  
Hon WONG Kwok-kin, BBS  
Hon IP Kwok-him, GBS, JP  
Hon Alan LEONG Kah-kit, SC  
Hon Tanya CHAN
- Members absent** : Hon Jeffrey LAM Kin-fung, GBS, JP (Deputy Chairman)  
Hon Albert HO Chun-yan  
Hon LEE Cheuk-yan  
Hon LAU Wong-fat, GBM, GBS, JP  
Hon Miriam LAU Kin-yea, GBS, JP  
Hon Timothy FOK Tsun-ting, GBS, JP  
Hon LEE Wing-tat  
Hon CHAN Kin-por, JP  
Hon IP Wai-ming, MH  
Hon Mrs Regina IP LAU Suk-yea, GBS, JP

Dr Hon PAN Pey-chyou  
Hon Paul TSE Wai-chun, JP  
Dr Hon Samson TAM Wai-ho, JP  
Hon LEUNG Kwok-hung

**Public Officers** : Office of the Chief Executive-elect  
**attending**

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 Freely CHENG Kei  
Principal Assistant Secretary for Constitutional and  
Mainland Affairs

Department of Justice

Mr Gilbert MO Sik-keung  
Deputy Law Draftsman  
(Bilingual Drafting & Administration)

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

**Staff in** : Mr Kelvin LEE  
**attendance** : Senior Assistant Legal Adviser 2 (Acting)

Miss Cindy HO  
Senior Council Secretary (2)3

Mrs Fonny TSANG  
Legislative Assistant (2)3

Action

**I. Meeting with the Administration**

[CMAB F19/6/3/2, LC Paper Nos. CB(3)735/11-12, LS76/11-12, LS80/11-12, CB(2)2328/11-12(01) to (02), CB(2)2339/11-12(01) and CB(2)2344/11-12(01)]

The Subcommittee deliberated (index of proceedings attached at **Annex**).

Follow-up actions required of the Administration

2. The Administration was requested to provide supplementary information relating to delegation of statutory powers and duties to public officers.

*(Post-meeting Note : The Administration provided the relevant information in LC Paper No. FC132/11-12(01) (Annex 4) which was copied to all other Members.)*

3. The Subcommittee completed scrutiny of the Resolution and the draft Interpretation and General Clauses Ordinance (Substitution of Schedule 6) Order 2012.

4. The Subcommittee noted that the Chairman of the Subcommittee would submit a report to the House Committee at its meeting on 15 June 2012. The Administration had given notice to move the Resolution at the Council meeting of 20 June 2012. Members noted that the deadline for giving notice of amendments to the Resolution was 13 June 2012.

**II. Any other business**

5. There being no other business, the meeting ended at 11:00 am.

Council Business Division 2  
Legislative Council Secretariat  
16 October 2012

**Proceedings of the eleventh meeting of the  
Subcommittee to Study the Proposed Legislative Amendments Relating to the  
Re-organisation of the Government Secretariat  
on Tuesday, 12 June 2012, at 8:30 am  
in Conference Room 3 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
001350 - 001526	Chairman	Opening remarks	
001527 - 001846	Chairman Administration Mr CHEUNG Man-kwong SALA2 (Atg)	<p data-bbox="687 712 1303 875"><u>Scrutiny of the draft Interpretation and General Clauses Ordinance (Substitution of Schedule 6) Order 2012</u> ("draft Order") [with reference to CMAB F19/6/3/2, Legal Service Division ("LSD")'s Report LS76/11-12]</p> <p data-bbox="687 909 1303 969">SALA2 (Atg)'s confirmation that the drafting of the English version of the draft Order was in order.</p>	
001847 - 003852	Chairman Administration Mr CHEUNG Man-kwong Ms Emily LAU Head of the Chief Executive-elect's Office ("H/CEEEO")	<p data-bbox="687 1010 1303 1234">Briefing by the Administration on its follow up papers on the issues of creating the posts of Deputy Secretaries of Department ("DSoDs") and delegation of powers/duties of Secretaries of Departments ("SoDs") to DSoDs to supplement the previous briefings [LC Paper No. CB(2)2328/11-12(01)-(02), CB(2)2344/11-12(01)].</p> <p data-bbox="687 1267 1303 1659">Ms Emily LAU's concern about the impropriety of not conferring statutory powers on DSoDs through legislative means; and her view that it was unclear as to whether and how DSoDs would be given statutory powers and duties in future. To bring the arrangement in line with Principal Officials ("POs") who had to carry out statutory functions as specified under the law, Ms LAU suggested that statutory powers and functions should more appropriately be conferred on DSoDs by law since they were of even higher position above the rank of Director of Bureau ("DoB").</p> <p data-bbox="687 1693 1303 1753">The Administration's explanation regarding transfer of functions that –</p> <p data-bbox="687 1787 1303 1977">(a) under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) ("IGCO"); the Legislative Council ("LegCo") could by resolution provide for the transfer to any public officer of any functions exercisable by virtue of any Ordinance by another public officer;</p>	

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		<p>(b) in case there was a genuine need for DSoDs to exercise statutory powers in coordinating the formulation and implementation of policy, such powers or duties might be conferred or imposed upon DSoDs by virtue of section 43(1) of IGCO; and</p> <p>(c) executive responsibilities would be delegated within the Administration through internal administrative procedures.</p> <p>H/CEEO's explanation that under the existing arrangements, any powers conferred or duties imposed by any Ordinance were generally conferred or imposed upon the head of the organisation concerned who might delegate certain powers to his subordinates by virtue of section 43(1) of IGCO for performing the duties. During the absence of the head, his deputy who assumed the duties on his behalf performed the statutory functions of the head. The proposed arrangements with regard to the statutory powers/duties of DSoDs were in line with current practice.</p>	
003853 - 004754	Chairman SALA2 (Atg)	<p>Briefing by SALA2 on LS80/11-12 which set out the legal basis for powers to be given to DSoDs. His explanation that Specification of Public Offices (Cap. 1 sub. leg. C) ("the Specification") contained the titles of public offices and correspondingly ordinances which conferred powers or imposed duties upon them respectively as specified in Notices published in the Gazette pursuant to section 43(4) of IGCO, citing the example of a delegation made by L.N. 99 of 2009. A specification under section 43 of IGCO only identified the specified public officer who was allowed to delegate his powers or duties but not the public officer to whom the power was delegated.</p> <p>SALA2(Atg) pointed out that in the Schedule to the Specification, Chief Secretary for Administration ("CS") and Financial Secretary ("FS") had already been specified for the purpose of certain Ordinances. The effect was that CS and FS might delegate their powers and duties under those ordinances to any public officer. However, no information could be found in the Laws of Hong Kong as to whether CS and FS had delegated any of the powers and duties or to whom if there had been any delegation.</p>	

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		<p>Under section 62(1), where any Ordinance conferred a power or imposed a duty upon the Chief Executive ("CE") or the CE in Council to make, among other things, subsidiary legislation or appointment, the exercise of such power or the performance of such duty might be signified by any public officer specified in Schedule 6. Section 62(1) was therefore a provision by which the acts of CE might be evidenced by certain public officers.</p>	
004755 - 005453	<p>Chairman Mr WONG Kwok-hing H/CEEO</p>	<p>Consideration of the Administration's follow-up paper on the issues raised by members at the meeting on 5 June 2012 (LC Paper No. CB(2)2328/11-12(01). Mr WONG Kwok-hing's expression of support and his view that paragraph 6 of the paper was clear enough to dispel doubts about the scope of work and power of DSoDs.</p> <p>Mr WONG Kwok-hing's enquiry and H/CEEO's confirmation that no new statutory power was sought in the current exercise for transfer of statutory functions.</p>	
005454 - 005758	<p>Chairman Mrs Sophie LEUNG SALA2 (Atg)</p>	<p>Mrs Sophie LEUNG doubted the appropriateness of the Chinese rendition ("轉授權") of "delegation" and SALA2(Atg)'s advice that the wording was in line with the Chinese version of section 43 of IGCO.</p>	
005759 - 010530	<p>Chairman Mr CHEUNG Man-kwong SALA2 (Atg) Administration H/CEEO</p>	<p>Mr CHEUNG Man-kwong's enquiry on whether the transfer of functions could be made under section 54 of IGCO.</p> <p>SALA2(Atg)'s advice that a motion moved under section 54A of IGCO could only deal with existing statutory functions of a public officer. Subject to the Administration's policy intent, statutory functions of CS and FS might be the subject of a proposed transfer in such a motion. Transfer of power by virtue of sections 54A or 43 of IGCO would be legally in order.</p> <p>The Administration's explanation that whether DSoDs would be given statutory powers and duties was a policy consideration subject to the Administration's policy intent and not a legal issue.</p> <p>H/CEEO's confirmation that the two DSoDs would mainly be tasked to assist CE and SoDs in formulating long-term plans, to co-ordinate the</p>	

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		<p>formulation and implementation of policy, as well as to assist in supervising the relevant policy bureaux. The performance of such duties basically did not involve the exercise of statutory powers, and thus there was no need to transfer the statutory powers of SoDs to DSoDs.</p>	
010531 - 011211	<p>Chairman Ms Tanya CHAN SALA2 (Atg) Administration</p>	<p>Ms Tanya CHAN's query as to whether DSoDs would be delegated the power by virtue of section 43(1) of IGCO under the Schedule to the Specification; and why such power was not transferred to DSoDs by virtue of section 54A of IGCO.</p> <p>SALA2(Atg)'s advice that a specification under section 43 of IGCO only identified the specified public officer who was allowed to delegate his powers or duties but not the public officer to whom the power was delegated. The delegation itself did not entail legislative amendment.</p> <p>Ms Tanya CHAN expressed reservations about the future delegation arrangement which would not be subject to LegCo's scrutiny.</p>	
011212 - 011733	<p>Chairman Mr WONG Yung-kan H/CEEO SALA2 (Atg)</p>	<p>Mr WONG Yung-kan's views that the Administration should state clearly the functions of DSoDs and the statutory powers to be conferred upon them so that they should be held accountable.</p> <p>H/CEEO said that while DSoDs would be entrusted with both statutory functions and administrative functions, they had to bear political responsibilities as politically appointed officials.</p> <p>SALA2 (Atg)'s reiteration that in the Schedule to the Specification, CS and FS had already been specified for the purpose of certain Ordinances. The effect was that CS and FS might delegate their powers and duties under those ordinances to any public officer through administrative arrangements.</p>	
011734 - 012042	<p>Chairman Mrs Sophie LEUNG SALA2 (Atg)</p>	<p>Mrs Sophie LEUNG's views on the application of the respective provisions under sections 54A or 43 of IGCO on the transfer of powers and duties.</p>	
012043 - 014314	<p>Chairman Ms Emily LAU SALA2 (Atg)</p>	<p>Ms Emily LAU's dissatisfaction that there were uncertainties on the powers to be exercised by DSoDs in future.</p>	

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	Administration H/CEEEO	<p>The Administration's elaboration that in case there was a genuine need for DSoDs to exercise statutory powers in co-ordinating the formulation and implementation of policy, such powers might be exercised by the public officers already vested with the powers, or such powers or duties might be conferred or imposed upon DSoDs by virtue of section 43(1) of IGCO.</p> <p>Ms Emily LAU's concerns about delegations made which were not subject to LegCo's scrutiny. She was particularly concerned that information could not be found in the Laws of Hong Kong as to whether CS and FS had delegated any of the powers and duties or to whom if there had been any delegation. This would mean that delegation of both statutory and administrative functions would not be subject to LegCo's scrutiny.</p> <p>H/CEEEO's views that as far as delegation of executive responsibility was concerned, arrangements would be made according to the internal operation of the Government which should be left to the Administration.</p>	
014315 - 020105	Chairman Mr Alan LEONG Administration H/CEEEO Mr IP Kwok-him	<p>Mr Alan LEONG's expression of views of the Civic Party that the creation of DSoDs would attenuate the roles of SoDs. His concern about the monitoring of transfer of powers and duties from SoDs to DSoDs including political duties. He requested that the Administration should list out the duties which CS and FS might not further delegate.</p> <p>The Administration's response that section 43(2) of IGCO provided that nothing in section 43(1) shall authorise a specified public officer to delegate any person to make subsidiary legislation or to hear any appeal. Individual provisions under the Hong Kong legislation also provided for power to be exercised by CS and FS personally.</p> <p>Mr IP Kwok-him's views that the work of political appointees would be subject to LegCo's scrutiny; and the distribution of work between SoDs and DSoDs was internal matters of the Administration which LegCo should not intervene.</p>	
020106 - 021214	Chairman Mr Alan LEONG H/CEEEO	Mr Alan LEONG's views that the alleged political intervention of mainland officials remained a valid concern of the general public. His concern that	



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	Dr Priscilla LEUNG Mr IP Kwok-him	<p>DSoDs would be able to exercise the full duties of SoDs and therefore safeguards should be put in place.</p> <p>Dr Priscilla LEUNG's views that the composition of the governing team was the prerogative of the Administration, and the question at issue was whether the new-term government should be given the freedom to put in place a structure of the Government Secretariat which could better fulfill the policy objectives and priorities pledged by the CE-elect.</p>	
021215 - 022428	Chairman Ms Emily LAU Secretary-General of the Chief Executive-elect's Office ("SG/CEEO")	<p>Ms Emily LAU's view that the proposed DSoDs posts should be deleted from the staffing proposal. Referring to the respective duty lists of Deputy Chief Secretary for Administration and Deputy Financial Secretary as provided in LC Paper CB(2)2158/11-12(01) which included the exercise of relevant statutory functions delegated by CE and/or CS/FS, or vested in him by law, Ms LAU requested that such duties had to be clearly specified to facilitate consideration of the Finance Committee.</p> <p>SG/CEEO's elaboration on the relevant procedures for public officers to be vested with statutory powers and duties which were subject to LegCo's scrutiny. At the request of Ms Emily LAU, the Administration undertook to provide supplementary information relating to delegation of statutory powers and duties to public officers.</p>	<b>Admin</b> (para. 2 of minutes)
022429 - 022907	Chairman Mrs Sophie LEUNG Mr CHEUNG Man-kwong Administration	<p>Discussion of members on the application of sections 54A or 43 of IGCO on the delegation of powers and duties.</p> <p>The Administration reiterated that as the performance of the proposed duties of DSoDs generally did not involve the exercise of statutory powers, there was no need to transfer the statutory powers of SoDs to the two DSoDs.</p>	
022908 - 022956	Chairman	Closing remarks	