



ACCOUNTABILITY WITHOUT DEMOCRACY?

THE PRINCIPAL OFFICIALS ACCOUNTABILITY SYSTEM IN HONG KONG

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Acknowledgments

Political developments in Hong Kong provide a picture of a polity in transition from a colony under British sovereignty to a Special Administrative Region of the People's Republic of China. The Principal Officials Accountability System (POAS), newly implemented on July 1, 2002 is part of that continuing transformation.

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Civic Exchange is an independent, non-profit, public policy think tank based in Hong Kong. Civic Exchange's mission is to promote civil education, public awareness and participation in governance by strengthening civil participation in public life.

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In Hong Kong, NDI works with political parties and other democratic activists to encourage public discussion and debate on political reform. The Institute provides technical assistance to Hong Kong political parties and civil society organizations seeking to strengthen their abilities to increase citizen participation in the Special Administrative Region's political life.

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EXECUTIVE SUMMARY

The political evolution of the Hong Kong Special Administrative Region (HKSAR) should continue to command international attention not only because it provides a unique example of a polity in transition but also because it gauges China's tolerance for political experimentation in the only part of the country that has a constitution permitting gradual political reform.

The introduction on July 1, 2002 of the Principal Officials Accountability System (POAS) represents the first significant point of departure from Hong Kong's colonial system since Hong Kong reverted to Chinese sovereignty and began its fundamentally important experiment with "one country, two systems" five years earlier. Hong Kong is halfway through a 10-year period of transition toward a possible system of elections based on universal suffrage, as established by its Basic Law.

More fundamental than the change upon reversion from a government headed by a British governor to a government headed by a chief executive from Hong Kong, the HKSAR now has for the first time professional politicians rather than civil servants in top policy-making positions. Essentially, the POAS is a ministerial system that creates a new class of government officials who are appointed by the Chief Executive with the approval of the Central People's Government. Intended to make government officials more "accountable" for their actions, the POAS makes it easier for the Chief Executive to remove officials for poor performance.

While the new system may increase the accountability by senior government officials ("principal officials") to the Chief Executive, it does not provide greater accountability to the public or to the legislature. It does not increase democratic accountability through elections, either of principal officials or of the Chief Executive. Neither does it increase executive accountability to the legislature. Thus, the principal officials and executive branch policy-making still lack a democratic mandate.

The failure to link the issues of accountability and democracy is a missed opportunity. Given the 10-year transition period established by the Basic Law, the POAS could have served as the first explicit intermediary step towards achieving democracy in the HKSAR.

Under the Basic Law, Hong Kong's Legislative Council (LegCo) has relatively narrow powers and has no role in government formation. The POAS does nothing to strengthen the role of the legislature, nor does it elaborate the LegCo's given oversight powers in the Basic Law, though it could have been designed differently to allow greater accountability by the Chief Executive and the new principal officials to the LegCo.

The reorganization of the Executive Council (ExCo) as part of the POAS essentially has created a cabinet as in a parliamentary system, subject to the principle of collective responsibility, and has brought political party leaders into the Executive Council for the first time. The merger of the Executive Council Secretariat with the

Chief Executive's office and the creation of a Director of the Chief Executive's office give the Chief Executive more control over the Executive Council. Because the POAS puts an end to "executive-led" government by civil servants, government leaders must work out practical means to maintain the integrity and neutrality of the civil service.

The POAS makes the political parties whose leaders have joined the ExCo part of a new kind of governing coalition and provides opportunities for members of the ruling elite to build a broader power base. This represents a substantial challenge to the pro-democracy "opposition" in LegCo. The ultimate effect of the POAS on the political evolution of Hong Kong remains to be seen.

The new system continues to concentrate power in the hands of the Chief Executive and make that one individual fully responsible for government performance. While the Chief Executive's motivation in adopting the new system was to improve the governance of Hong Kong, the personal goals, ambitions and management style of the Chief Executive and his new principal officials will color the outcome of this political experiment. This leaves the Chief Executive and his personally chosen governing system open to criticism in the event of future policy-making missteps. Early indications point to a difficult road ahead.

The process of developing the POAS was also flawed. The POAS was designed and imposed without sufficient input from LegCo, the civil service or the public. The government has yet to build broad support for the new system.

By arguing that the Basic Law permits these changes because they are not expressly forbidden, the government has now established a precedent for making possible future changes that are not specifically prohibited. The Basic Law explicitly establishes the "ultimate aim" of electing all members of the legislature and a chief executive through universal suffrage after a transition period. It is ironic that the government supports substantial change not contemplated in the Basic Law by introducing a ministerial system, while at the same time it urges extreme caution about approaching the more democratic elections actually anticipated, if not promised, in the Basic Law. This inconsistency may reveal the government's profound mistrust of genuine democracy in the HKSAR.

Despite fundamental shortcomings, the adoption of such a monumental change to the HKSAR's governance system suggests an encouraging political dynamism. The possibility of such change serves to remind the people of Hong Kong of the potential for significant reforms in the direction of greater democracy. Despite some disappointing early results of a hurriedly implemented plan, Hong Kong should seize the opportunities available to improve the governance of the HKSAR and the people should indeed hold the Chief Executive and new principal officials fully accountable, not only for their policies but also for fulfilling the promise of democratization in the Basic Law.

CHAPTER 1: INTRODUCTION

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The introduction on July 1, 2002 of the Principal Officials Accountability System (POAS) represents the first significant point of departure from Hong Kong's colonial system. Essentially, the POAS is a ministerial system that creates a new class of government officials who are appointed by the Chief Executive with the approval of the Central People's Government. Intended to make government officials more "accountable" for their actions, the POAS makes it easier for the Chief Executive to remove officials for poor performance. Although many aspects of the system remain to be worked out, this reform will have far reaching consequences for Hong Kong as a whole.

On July 1, 1997, sovereignty over Hong Kong changed from British to Chinese hands, but Hong Kong retained essentially the same system of government after the reversion. Indeed, the goal at that time was preservation of the status quo for the sake of stability and certainty. The Sino-British Joint Declaration in 1984 on the future of Hong Kong, which established the basic principles of government that would apply upon reversion, provided for considerable continuity in the system of government. The principal changes were that the government would be composed of "local inhabitants" and a chief executive would replace the British governor.¹ The Basic Law of the Hong Kong Special Administrative Region, enacted by the government of the People's Republic of China to become the constitution of Hong Kong upon reversion, also demonstrates this commitment to continuity and provides for a government very similar in style and principle to the colonial government that preceded it.²

While the new system may increase the accountability by senior government officials ("principal officials") to the Chief Executive, it does not provide greater accountability to the public or to the legislature. It does not increase democratic accountability of the executive branch through elections. It does not increase executive accountability to the legislature. Thus, the principal officials and executive branch policy-making still lack a democratic mandate.

The POAS was designed and imposed quickly, without sufficient input from the legislature, the civil service and the public. Chief Executive of the HKSAR, Tung Chee-

¹ Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, December 19, 1984, paragraph 3(4).

² For general background on the Basic Law and the prospects for democratization in Hong Kong, please see National Democratic Institute for International Affairs, *The Promise of Democratization in Hong Kong: NDI Pre-Election Report #1*, June 10, 1997.

hwa, first proposed a new “executive accountability” system during his annual policy address on October 1, 2000.³ A year later, he promised to present “feasible proposals” for this new system. With his term set to expire in 2002, however, the decision to implement this reform would fall to the next Chief Executive.⁴ In his campaign platform for a second term in office, Tung made it clear that he wanted to put the system in place by July 2002, at the start of the next term.⁵ Facing no opposition, Tung secured a second term in late February. On April 17, 2002 he announced the details of the POAS to the Legislative Council (LegCo).⁶ LegCo was pressured to approve the proposed system within two months. During a government motion in LegCo to approve the POAS in principle on May 20 and 30, 2002, many legislators complained that they had been given insufficient time to deliberate the issues involved.

Despite the haste with which it was promoted, the POAS is an important milestone in Hong Kong’s political evolution. It has introduced fundamental change, unprecedented in scope and complexity, to Hong Kong’s governing system. This reform has presented opportunities as well as pitfalls. Importantly, the POAS represents a tacit acknowledgement that the governance system envisaged in the Basic Law, Hong Kong’s post-1997 constitution, was not functioning well.

While critics point to the Chief Executive’s lack of effective leadership, they have also acknowledged that the tension between the executive and civil service has hampered his efforts to address the HKSAR’s problems. In this respect, the POAS represents a partial victory for the Chief Executive over top administrators. With its promise to improve the administrative apparatus, however, the POAS has raised expectations. The executive’s performance will be constantly monitored, and public pressure for improvement will be high. Making the POAS work will require the Chief Executive and his close advisers to build a wider base of political support, one that includes the battered civil service. Moreover, with Tung Chee-hwa ineligible for a third term of office in 2007, the POAS provides a new testing ground for ambitious politicians.⁷

Beijing originally envisaged Hong Kong as an economic city with benign politics. The economic problems of recent years suggest that the Central People’s Government might find that economic policies cannot be developed and implemented in a modern society without rigorous public debate as well as popular participation via the ballot box. Regardless of whether Hong Kong was intended to be an experimentation ground for political reform, the HKSAR is the only part of China where democratic reform is openly and regularly discussed. As such, despite constraints on the ability of Hong Kong to develop a fully democratic system, the HKSAR will continue to provide a window

³ Chief Executive Policy Address, *Serving the Community, Sharing Common Goals*, paragraphs 109 to 113, October 11, 2000. (Most government documents can be found at the Hong Kong government website, www.info.gov.hk.)

⁴ Chief Executive Policy Address, *Building on our Strengths, Investing in our Future*, paragraphs 130 to 140, October 10, 2001.

⁵ Tung Chee-hwa, *My Pledge to the People of Hong Kong*, January 2002.

⁶ Tung Chee-hwa, Address to the Legislative Council on the Introduction of the POAS, April 17, 2002. (Hereafter cited as Tung, Speech to LegCo on the POAS, April 17, 2002.) See Appendix I for the full text.

⁷ Article 46 of the Basic Law limits the Chief Executive to two consecutive terms.

through which the world can observe the subtleties of Chinese politics – and assess Beijing’s appetite for “controlled” political reform.

Although the Basic Law anticipates major changes to the electoral system some time after 2007, including the popular election of the Chief Executive and all members of the legislature,⁸ questions remain about the commitment of the current government and authorities in Beijing to these reforms. The POAS represents a fundamental alteration to the system of governance in Hong Kong, and how well it works in addressing concerns about the performance of the government will greatly affect the extent of support for future reforms. Moreover, future reforms will necessarily take the POAS as a starting point. As it now stands, the POAS does not go far enough to fulfill the promises of better governance, and further adjustments will be required. Eventually, the executive and legislative branches must develop a functional relationship.

Despite the prospect of increased pressures for reform, the next few years present a tremendous challenge to the “opposition” – Hong Kong’s current crop of professional and elected politicians in LegCo. The POAS is likely to create a new political elite with

⁸Although the Basic Law does not mandate a move to universal suffrage for the election of the Chief Executive and LegCo in 2007, it does strongly suggest that moves towards universal suffrage are expected by 2007 or shortly thereafter. Article 45(2) of the Basic Law provides in part: “The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.” Similarly, Article 68(2) provides in part: “The ultimate aim is the election of all the members of the Legislative Council by universal suffrage.” Annex I of the Basic Law sets down the “Method for the Selection of the Chief Executive” of the HKSAR. Section 7 of Annex I states that

If there is a need to amend the [current] method for selecting the Chief Executives for the terms subsequent to the year 2007, such amendments [to the Basic Law and related legislation] must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and with the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People’s Congress for approval.

Annex II of the Basic Law sets down the “Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and its Voting Procedures.” Part III of Annex II states that

With regard to the method for forming the Legislative Council of the Hong Kong Special Administrative Region and its procedures for voting on bills and motions after 2007, if there is a need to amend the [current] provisions of this Annex [and any related legislation], such amendments must be made with the endorsement of a two-thirds majority of all the members of the Council and with the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People’s Congress for the record.

Note, the wording of mechanism for changing the method of choosing a Chief Executive is *different* from that relating to changing the method of forming LegCo. In the former case, the Standing Committee of the National People’s Congress (SCNPC) must *approve* any such change. In the later case, the HKSAR only needs to *report* relevant changes to the SCNPC. That is, the Basic Law, on the face of it, allows for the HKSAR to change the formation method for LegCo within Hong Kong whereas no change can be made to the method for choosing the Chief Executive without the express approval of the SCNPC. Professor Yash Ghai suggests that Part III of Annex II seems to give the Chief Executive and LegCo a specific power of Basic Law amendment with respect to changing the method for the formation of LegCo. That is, to effect such a change, there may be no need to use Article 159 of the Basic Law, the general amendment provision. Article 159 provides, inter alia, that the [general] power of amendment of the Basic Law is vested in the National People’s Congress. See Yash Ghai, *Hong Kong’s New Constitutional Order* (2nd edition) (Hong Kong: Hong Kong University Press, 1999) page 390.

the advantage of executive power on its side. As such, the “opposition” in the legislature will be forced to adapt to a different, and potentially disadvantageous, environment.

This report seeks to discuss a range of issues related to the POAS. These include:

- The background to the introduction of the POAS;
- The fundamentals of the POAS;
- The constitutionality of and legal framework for the POAS;
- Notions of accountability pre- and post-POAS;
- The issues arising from the implementation of POAS; and
- A best practices ministerial model for Hong Kong.

CHAPTER 2: BACKGROUND

Impetus for the New System

Upon reversion, the new HKSAR Government faced a series of challenges from the beginning.⁹ The Asian financial crisis that began in 1997 reverberated through all the region's economies. The authorities had to confront volatile conditions in the property and stock markets as well as rising unemployment.¹⁰ An avian flu outbreak in 1997 resulted in a mass slaughter of more than 1.3 million chickens and ducks. The discovery of piling defects in several public housing blocks led to calls for the resignation of housing officials. The opening of the new airport at Chek Lap Kok was chaotic. The decision to bypass existing tender procedures to award the Cyberport development to one party added to the perception of poor leadership.¹¹ During the first three years in office, the legislature raised motions of no confidence against two senior members of the executive, adding to the general sense that Hong Kong suffered from poor governance.¹²

The leadership's failure to articulate clear political objectives for its various policies and build the necessary consensus both within the administration and with the public contributed to the problems of the early years. Consequentially, the relationship between the Chief Executive and top civil servants deteriorated. For example, in 1998, the Chief Executive embarked on a major initiative to build 85,000 housing units a year but failed to enunciate clearly the political objectives, policy strategies, and technical and procedural goals of this policy. This left the administration as a whole unable to coordinate its response in the face of a deteriorating economic environment. While the Chief Executive felt the civil servants did not sufficiently support his efforts, the civil servants in turn believed that the Chief Executive and his other advisors had failed to heed their advice. Within 18 months, the target was simply dropped without proper explanation, catching senior housing authorities off guard and causing much public

⁹ For a useful record of the early years, see Lau Siu-kai (editor), *The First Tung Chee-hwa Administration – The First Five Year of the Hong Kong Special Administrative Region* (Hong Kong: The Chinese University Press, 2002). (Hereafter cited as Lau, *The First Tung Chee-hwa Administration*, 2002.) Lau was appointed to head the Central Policy Unit for the Chief Executive's second term of office.

¹⁰ Many of the government responses to the HKSAR's ongoing problems have been criticized as ineffective or counterproductive. For example, the HKSAR Government's intervention in the stock market in 1998 caused considerable controversy.

¹¹ Many critics saw the development as essentially a property rather than a specialized information technology development that any developer should have been able to do. However, the HKSAR Government promoted it as an Information Technology project, arguing that the designated party was the best one to develop the site.

¹² Although unsuccessful, the motion of no confidence raised on March 11, 1999 against the Secretary for Justice for her decision not to prosecute newspaper publisher Sally Aw Sian, whose deputies were convicted of corruption charges, damaged the government's credibility. On June 28, 2000 the legislature passed a motion of no confidence against the Chairperson of the Housing Authority (who was also an Executive Councilor) and the Director of Housing for defective piling in a number of public housing blocks. The chairperson had in fact resigned on the June 24, 2002.

confusion, thereby damaging the credibility of both the Chief Executive and the civil service.¹³

Amid the challenges presented by the external economic conditions and other unexpected problems, the crisis of leadership sapped Hong Kong's overall confidence in government. Serious intra-executive tensions emerged between the Chief Executive and his close advisers on the one hand and the senior ranks of the civil service on the other hand. It became apparent that there were two different understandings of what an "executive-led" government meant.¹⁴ Tung and his close advisers saw power arising from the Chief Executive in a style of executive government more akin to the running of a private corporation. The civil service operated in accordance with past practice, essentially a bureaucratic-led administration steeped in a tradition of public service. Senior civil servants regarded the incoming Chief Executive and his advisers as inexperienced. They also believed it was their responsibility to present the Chief Executive with honest advice, regardless of whether it ran counter to his personal preferences. Tung and his advisers in turn viewed the administrators as disrespectful and obstructionist. Substantial differences and disagreements on a variety of issues also abounded, including ones over the relationship with Beijing and matters of human rights and political freedoms.¹⁵

LegCo's Call for Accountability

The series of missteps by the first HKSAR Government provoked public discussion of how to make decision-makers "accountable" for their decisions. Accountability in this sense meant that officials should take political responsibility for their decisions, through resignation if necessary. In June 2000, LegCo recommended that the HKSAR Government should:

Explore the feasibility of developing constitutional conventions under which principal officials shall voluntarily resign as a result of having committed serious mistakes in the formulation or implementation of government policies; and study the proposal of implementing a more

¹³ On June 30, 2000, the Chief Executive revealed on a TV program that he had dropped his target for 85,000 housing units in 1998. Lok Sang Ho provides a useful summary of land and housing policy issues in "Policy Blunder of the Century Threatens Hong Kong Economic Future" in Chapter 8, Lau, *The First Tung Chee-hwa Administration*, 2002.

¹⁴ See Anthony Cheung, *Transforming the Post-97 Hong Kong Civil Service: Reconfiguring the Mandarin and the Rise of a Political Class*, Session 39: Crisis and Transformation in China's Hong Kong since 1997, Academic Affairs Section 54th Annual Meeting, April 4-7, 2002.

¹⁵ Lau Siu-kai notes, "The relationship between ExCo [Executive Council] and the civil servants is uneasy and occasionally combative ... most of the ExCo members appointed by Tung hold different political views and policy ideas from those of the civil servants. Moreover, a number of ExCo members, especially those with pro-Beijing bias or business background, hold the [civil servants] in contempt, which is fully and bitterly reciprocated." "Tung Chee-hwa's Governing Strategy: The Shortfall in Politics," in Lau, *The First Tung Chee-hwa Administration*, 2002, pages 12-13.

flexible contract system so that principal officials may be held politically accountable for their decisions.¹⁶

In his October 2000 Policy Address, the Chief Executive responded: “As Hong Kong people are now running Hong Kong, I appreciate their aspirations for the SAR Government to be subjected to a higher degree of accountability.” He undertook to review “the accountability of principal officials for their respective policy portfolios” by devising a new system of appointment.¹⁷

The response of LegCo and the public was on the whole positive.¹⁸ Government papers show that the Chief Executive set up and chaired a special Steering Group to consider a new accountability system.¹⁹ The Steering Group concluded that there was “broad consensus on the need to re-jig the top echelon of senior officials and for a new system of appointments, but views on the detailed arrangements differed.”²⁰

In his October 2001 Policy Address, the Chief Executive described the basic framework of the new accountability system. He made it clear that the new system of appointing principal officials would be in place by the Chief Executive’s second term of office (2002-2007) and that the Chief Executive would nominate and recommend candidates to the Central People’s Government for appointment.²¹

On December 13, 2001, Chief Executive Tung Chee-hwa declared his intention to stand for a second term of office. In his published pledge, he stated that:

Over the past four years or so, I have constantly reflected on how we could have done better, for there are undoubtedly deficiencies. In particular, I believe the development and implementation of some policy initiatives could have been better managed; the interests of different sectors better balanced; the reform initiatives better prioritized; and the response and reaction of the community better assessed.²²

A key plank of his second term platform was to implement the new accountability system by July 1, 2002. He justified the proposition of this system, stating:

¹⁶ LegCo adopted in a motion debate on June 14, 2000 the report of its Panel on Constitutional Affairs on *The Development of the Political System of Hong Kong*. LegCo Paper No.CB(2)2207/00-01(01), August 27, 2001. All LegCo Papers referred to in this report can be found at www.LegCo.gov.hk/yr01-02/english/hc/sub_com/hs51/papers/hs51_ppr.htm.

¹⁷ Chief Executive Policy Address, *Serving the Community, Sharing Goals*, October 2000, paragraphs 111 and 122.

¹⁸ LegCo Paper CB(2)2007/00-01(01), August 27, 2001.

¹⁹ Members of the Steering Group were the most senior officials – Chief Secretary, Financial Secretary, Secretary for Justice, Secretary for Constitutional Affairs, Secretary for the Civil Service, Head of the Central Policy Unit and Information Coordinator.

²⁰ LegCo Paper CB(2)2261/00-01(01), paragraphs 3 and 4, August 27, 2001.

²¹ Chief Executive Policy Address, *Building on our Strengths, Investing in our Future*, October 2001, paragraphs 130 to 140.

²² Tung Chee-hwa, *My Pledge to the People of Hong Kong*, January 2002, pages 4 and 5.

Through a more accountable system, senior officials will better serve the community. In addition, we believe this will foster a more service-oriented culture within the entire civil service that is in tune with the times. Following introduction of the new accountability system, we will restructure the Executive Council to ensure that this body performs its role in an effective manner.²³

By the end of the nomination period for Chief Executive on February 28, 2002, Tung Chee-hwa had secured 714 valid nominations from the 800-member Election Committee and was declared the “winner” of the selection process. Once selection formalities were completed, he announced the details of the POAS at a special LegCo meeting on April 17, 2002. He again made it clear that he wanted it in place by July 1, 2002.

²³ Ibid.

CHAPTER 3: FUNDAMENTALS OF THE POAS

Objectives, Elements and Arrangements

The Constitutional Affairs Bureau produced a briefing paper that explains the fundamentals of the POAS.²⁴ The HKSAR Government noted six objectives and seven major elements of the POAS, upon which three sets of specific arrangements were based.²⁵

The objectives are:

1. To enhance the accountability of principal officials for their respective policy portfolios;
2. To enable senior government officials to appreciate the aspirations of and respond to the community better;
3. To select the best and most suitable persons to take up the principal positions;
4. To enhance the cooperation between the Government and LegCo;
5. To coordinate better the formulation and implementation of policies; and
6. To maintain a permanent and politically neutral civil service.

The major elements are that principal officials:

1. Shall be accountable for matters falling within their portfolios and may have to step down for serious failures;
2. Should not come under the civil service establishment;
3. May come from outside or within the civil service;
4. Should be directly responsible to the Chief Executive;
5. Shall be members of the Executive Council and take part in high level decision-making process;
6. Shall keep close tabs on public sentiments to ensure greater responsiveness; and
7. Shall engage more proactively in communication with LegCo.

The specific arrangements of the POAS are:

1. Increased “flexibility” for the Chief Executive to appoint whom he sees fit as principal officials;
2. Making principal officials members of the Executive Council, which gives them “better defined powers commensurate with their responsibilities” and puts them in a better position to coordinate policy priorities, implementation and resource allocation;
3. The expectation that principal officials will communicate more with LegCo and make district visits, which is meant to “foster a culture of enhanced accountability.”

²⁴ The briefing paper, *Accountability System for Principal Officials*, for LegCo accompanied the Chief Executive address on the April 17, 2000.

²⁵ Secretary for Constitutional Affairs in moving a motion on the POAS in LegCo on May 29, 2002. (Hereafter cited as Suen, Speech to LegCo, May 29, 2002.)

Reorganization of Portfolios

The Chief Executive appointed a total of 14 principal officials, including the Chief Secretary, the Financial Secretary and the Secretary for Justice,²⁶ and 11 Directors of Bureaus.²⁷ A number of the policy portfolios were subsequently amalgamated. In response to criticisms of legislators, changes were announced at the time of the LegCo debate on the May 29, 2002 to reorder some of the responsibilities. (See Appendix II for a comparison of the previous structure, the first proposed structure, and the final reorganized structure.)

Revamped Executive Council

Previously, the Executive Council was an advisory body that provided counsel to the Chief Executive. It had no role in managing government departments and was not itself a decision-making body. Article 54 of the Basic Law provides that the Executive Council is an “organ for assisting the Chief Executive in policy-making.” Apart from the Chief Executive, Chief Secretary, Financial Secretary and Secretary for Justice, former Executive Councilors served on a part-time basis; most of them had private sector, full-time commercial commitments.

Article 55 of the Basic Law permits members of the Executive Council to be drawn from among the principal officials, legislators and public figures. All the principal officials are now members of the Executive Council. In addition, there are five members, including two legislators, with no portfolio responsibilities: James Tien who chairs the Liberal Party and Tsang Yok-sing who chairs the Democratic Alliance for the Betterment of Hong Kong. The appointment of political party members sets a new convention that people with political affiliation can serve on the Executive Council.²⁸ Of the other three members without portfolio, Leung Chun-ying runs a property-related business, Andrew Liao is a practicing barrister and Cheng Yiu-tong chairs the Federation of Trade Unions.

During LegCo’s scrutiny of the POAS, legislators questioned whether a person who is a member of a foreign or non-Hong Kong-based political party, such as the Chinese Communist Party or the Taiwanese Kuomintang, could become a principal official. The official response was that “freedom of association is protected by law in Hong Kong,” and that it was for the prospective principal official to consider whether his or her affiliation would give rise to conflict of interest. The affiliation should be

²⁶ During the scrutiny process, some legislators objected to the position of Secretary for Justice as a political appointment and suggested that the Secretary’s power to make prosecution decisions should be transferred to the Director of Prosecution. Their suggestion was rejected. See the Secretary for Justice speech, May 30, 2002.

²⁷ The title “Director of Bureau” is the official designation of a principal official although s/he is referred to as the “Secretary” of the relevant bureau.

²⁸ Although Tam Yiu-chung, a member of the Democratic Alliance for the Betterment of Hong Kong, was appointed to the Executive Council during the Chief Executive’s first term of office, the appointment was seen more as a gesture to include someone from the labor sector rather than to include political parties.

disclosed to the Chief Executive, and the Chief Executive would decide whether to nominate the candidate.²⁹

In total, there are 19 members in the Executive Council, making it a much larger body than the previous one, which had 12 members including the Chief Executive. For the first time in Hong Kong, the Executive Council is now clearly dominated by full-time professional politicians. These changes have effectively turned the Executive Council into a proto-cabinet.

While these individuals clearly represent Hong Kong's political elite, the Executive Council remains first and foremost an advisory body to the Chief Executive. The official position states: "There will not be any difference in the functions and operations of the Executive Council as provided by the Basic Law."³⁰ This position forestalls the need to amend the Basic Law, which the creation of a real cabinet would have required. Article 56(2) of the Basic Law provides that the Chief Executive shall consult the Executive Council before making important policy decisions, introducing bills to the legislature, making subordinate legislation, or dissolving LegCo. The Chief Executive chairs Executive Council meetings. According to Article 56(3), if he does not accept a majority opinion of the Executive Council, he "shall put the specific reasons on record." However, Executive Council papers and records are kept confidential.

Members of the Executive Council abide by the principle of collective responsibility. In British parliamentary tradition, this means that all ministers assume responsibility for cabinet decisions and action taken to implement those decisions. As such, there must be a display of public unanimity on all decisions and actions.³¹ The two chairmen of political parties in Hong Kong would therefore not be able to criticize Executive Council decisions after they took office. To what extent this arrangement will bind members of these parties in LegCo to vote for all Executive Council decisions remains to be seen.

The Secretariat of the Executive Council, which was previously attached to the Chief Secretary's Office, was merged with Office of the Chief Executive. This move is a clear indication that the Chief Executive desires direct control of his key advisory body.

²⁹ LegCo Paper CB(2)2171/01-02 paragraphs 44 and 45. See also CB(2)2066/01-02(04), paragraph 5, May 25, 2002.

³⁰ LegCo Paper CB(2)2034/01-02(01), May 21, 2002.

³¹ A minister may disagree with a cabinet decision or with the manner of its implementation, but if s/he wishes to express dissent in public s/he should first resign. This is the general rule that applies in all systems employing a Westminster system of cabinet government. See Stanley de Smith and Rodney Brazier, *Constitutional and Administrative Law* (6th Edition) (London: Penguin Books, 1990), pages 181-192. It appears that this rule would apply in Hong Kong in view of the significant historical impact of the Westminster tradition on Hong Kong political practice.

Director of the Chief Executive's Office

The political post of Director of the Chief Executive's Office was created to oversee the running of the Executive Council Secretariat and to act as the official spokesperson for this office. His duties have clear political content. While not a principal official or member of the Executive Council, the Director is "part of the senior team of the HKSAR Government" and attends Executive Council meetings, and, if invited, the Director will provide input. He cannot vote, however.³²

Summary of Duties of the Director of the Chief Executive's Office	
Overseeing Executive Council Secretariat	Information Coordination
(a) Ensure the meeting agenda reflects the overall policy of the government as determined by the Chief Executive.	(a) Formulate media and PR strategy.
(b) Ensure expeditious discussion of the Executive Council's sub-committees' advice.	(b) Serve as spokesperson for Chief Executive and media liaison.
(c) Ensure proper recording of decisions.	(c) Plan the Chief Executive's public engagement program.
	(d) Monitor public opinion.

Heated controversy arose during LegCo's discussion of the creation of this post. Some legislators feared that the Director might become a "special envoy" of the Chief Executive with excessive influence to determine the agenda of Executive Council meetings as well as act as a personal missionary outside of the government for the Chief Executive. The concern was informed by the controversy surrounding an incident in 2000 in which a university professor felt pressured to downplay polls showing public dissatisfaction with the Chief Executive.³³

³² While the post is clearly a key political appointment, the Director cannot be a principal official because that role is not provided for in the Basic Law. LegCo Paper CB(2)1929/01-02(01), May 13, 2002.

³³ Robert Chung stated in a newspaper article on July 7, 2000 that the Chief Executive had, on several occasions, passed to him an indirect message that his polls on the Chief Executive's performance were unwelcome. In 1999, the Chief Executive's senior special assistant, Andrew Lo, had discussions with the Chancellor of the University of Hong Kong regarding the Chief Executive's dissatisfaction with Professor Chung's work in carrying out public opinion surveys. According to Chung, these conversations led to the Chancellor pressuring him to change his work. The incident eventually resulted in a university-appointed inquiry and the resignation of the Chancellor, thus implicating Lo and the Chief Executive. Despite mounting public pressure, the Chief Executive refused to remove Lo from his post. See Johannes Chan, "Civil Liberties: Rule of Law and Human Rights," for a succinct summary of the "Robert Chung Affair," in Lau, *The First Tung Chee-hwa Administration*, 2002, page 114.

There has also been considerable concern about the Director's role in setting the meeting agenda of the Executive Council. The government response has been that the Chief Executive will determine the overall policy agenda with the assistance of the Chief Secretary and the Financial Secretary, while the Director will only ensure that the Executive Council meeting agenda reflects the priorities of the overall government agenda.³⁴

The appointment of Lam Woon-kwong, a long-time civil servant with a reputation for competence and integrity, as the Director went a long way to allay fears that the role might be used as a "persuading emissary." According to Lam, the Director's role is entirely new and should not be compared to that of either the previous information officer or special senior assistant.

Chief Secretary Position

Although the Chief Secretary remains the most senior among the principal official posts, he no longer makes final decisions on policy. Under the previous system, the Chief Secretary chaired the most powerful body within the administration, the Chief Secretary's Policy Committee, composed of a series of policy groups made up of the heads of the policy bureaus. The Chief Secretary played a leading role in coordinating policy-making and arbitrating conflicts among the bureau heads. With the POAS designed to make the principal officials take direct political responsibility, the Chief Secretary is expected to play more of a coordination role.

Under the new system, the Chief Secretary chairs a committee to vet government policies before they go to the Executive Council for approval. The committee includes all the principal officials and meets once a week. It is supposed to ensure that relevant bureaus and departments have done the necessary co-ordination regarding proposals including the timing of implementation and that the proposals are in line with the overall policy agenda of the Chief Executive. There are two sub-committees, one to advise on subsidiary legislation to be presented to LegCo and another to study policies relating to land matters.³⁵ The Chief Secretary is also tasked with assisting the Chief Executive in supervising the policy bureaus. Finally, the Chief Secretary is responsible for forging a

³⁴ LegCo Paper CB(2)2068/01-02(01) provides the job description of the Director.

³⁵ "Group to vet policies for Exco," *The Standard*, September 3, 2002. The Financial Secretary (FS) chairs the committee when matters relate to economic, monetary and financial affairs. It appears that the original idea was for the Executive Council to have two subcommittees covering general and financial/monetary policies, which was redesigned as one committee with either the Chief Secretary or FS chairing depending on the subject. The change was apparent at the Q&A session at a luncheon talk sponsored by the British Chamber of Commerce on April 25, 2002 where the Chief Secretary said that: "The idea is that the FS will sit in my subcommittees as a member and I'll sit in his subcommittee as a member. So we'll know the entire cross-section of the Hong Kong Government activities as we try to promote a political agenda for the next five years. It will be more coherent, with a sharper focus, and I think working for the first time as a real political team in action." See also Tung, Speech to the LegCo on the POAS, April 17, 2002.

better relationship with the Legislative Council and for designing the government's legislative program.³⁶

Chief Executive in Council

In the British tradition, there has been a longstanding practice for a subject to appeal to the “King (or Queen) in Council” on certain matters. Known as the Privy Council, it includes the body of persons appointed (by the Crown) to advise the sovereign. In a jurisdiction such as Hong Kong, with many residual aspects of a colonial governance system, the “Chief Executive in Council” retains the power to hear appeals against certain decisions. Most of these rights to appeal, which are in addition to any other applicable legal rights, are now set down in legislation. The “Chief Executive in Council” sits to hear appeals in an administrative and not a judicial capacity.

Legislators questioned how appeals to the Chief Executive in Council regarding decisions of principal officials or their deputies would be handled under the POAS. Hong Kong ordinances have 689 references to the term “Chief Executive in Council.”³⁷ Where an appeal arises from a decision of a bureau or department, the principal official who holds the relevant portfolio is given legal advice as to whether he should excuse himself from the particular appeal. Legislators suggested instituting a mechanism to deal with appeals that go to the Chief Executive in Council regarding decisions of principal officials to ensure consistency and transparency. According to judicial interpretation, when an appeal is made to the Chief Executive in Council, that administrative remedy is additional to, and not a substitute for, any remedy by way of judicial review of the original administrative decision.³⁸

Appointment and Removal of Principal Officials

Although the Chief Executive can appoint whom he sees fit to be a principal official, there are practical constraints. First, candidates must go through an integrity and medical check before they are nominated for appointment.³⁹ Second, since the Central People's Government, upon nomination by the Chief Executive, actually appoints the principal officials, the Chief Executive would likely have to be sensitive to Beijing's preferences. Third, candidates have to be willing to serve. It has been reported that

³⁶ Government General Circular No.4/2002, *Organizational Changes in the Government Secretariat of the Government of the HKSAR Arising from the Accountability System*, June 28, 2002. This document spells out the specific responsibilities of all 14 principal officials.

³⁷ Of these, 53 references provide for appeals in particular situations, such as decisions of the Director of Immigration; 32 references relate to approval of plans, such as those under the Town Planning Ordinance; and the rest relate to the making of subsidiary legislation, amendment of schedules of primary legislation and miscellaneous matters.

³⁸ LegCo Paper CB(2)1911/01-02(01), May 10, 2002.

³⁹ LegCo Paper CB(2)2075/02-02(02), May 2002 and CB(2)2171/01-02, June 6, 2002 paragraphs 37-40.

several candidates from the private sector and civil service declined the offer to serve when asked.⁴⁰

Civil servants who accept appointments as principal officials under the POAS (with the exception of the Secretary for the Civil Service) must resign from the civil service to become effectively full-time political appointees employed on contract. The new employment packages are no longer linked to the civil service pay scale but may be reviewed from time to time at the discretion of the Chief Executive.

Principal officials are employed for a term that does not exceed that of the Chief Executive who nominates them, and their employment may be terminated at any time without cause or compensation.⁴¹ Article 48(5) of the Basic Law provides the Chief Executive with the power to recommend to the Central People's Government the removal of principal officials.

The principal officials' contracts of service have a condition that they need to uphold the principle of maintaining an impartial civil service system, the terms of which are laid out in a new Code for Principal Officials under the Accountability System. At the same time, the government released a new General Circular to civil servants setting out the working relationship between civil servants and principal officials. The Code also applies to the Director of the Chief Executive's Office.⁴² These arrangements were put in place in recognition of the potentially sensitive relationship between civil servants and political appointees and are meant to ensure that individual civil servants are not put in a position that may compromise their integrity, probity or impartiality.

Former principal officials are also required to obtain the advice of a special advisory committee appointed by the Chief Executive before taking up any employment or going into any business within a year of stepping down from office.⁴³

Civil Service Reorganization

The most senior civil servants are now known as "permanent secretaries," and their role is to provide full support to the principal officials in formulating, explaining and defending policies, as well as in securing support of the public and LegCo. They will run the relevant bureaus and departments. In addition, they will represent the principal officials at LegCo panels, bills committees and public forums in order to relieve the

⁴⁰ See, for example, "San ju tou wu gu lu shi bai: Ma Shi Heng dai yi zhong," *Ming Pao* (Local News), June 19, 2002, page A1.

⁴¹ LegCo Papers CB(2)2075/02-02(02), May 2002 and CB(2)2171/01-02, June 6, 2002, paragraphs 37-40.

⁴² LegCo Papers CB(2)2101/01-02(01), May 2002 and CB(2)2171/01-02, June 6, 2002, paragraph 34, and CB(2)2467/01-02(01) June 28, 2002.

⁴³ LegCo Paper CB(2)2015/01-02, May 22, 2002, paragraphs 134-138.

principal officials of the tasks of internal coordination, administration and certain LegCo duties to focus on their priority policy roles.⁴⁴

Further changes are in store. Within 12 months, the principal officials will review the staffing and structure of the policy bureaus to streamline the structure and relationship between the policy bureaus and executive departments in the quest for greater efficiency and better implementation. The review would seek to prove that, other than the cost of principal officials' salaries, the introduction of the accountability system was a "cost neutral exercise."⁴⁵

The Secretary for the Civil Service has overall responsibility for the management of the civil service. The Chief Executive made it a point that this principal official would be appointed from among senior civil servants so that the appointee would have "a full understanding and appreciation of the civil service structure and system" and would therefore "be able to represent the expectations and interests of the civil service in the process of policy-making at the highest level of government."⁴⁶ This position was designed to assuage fears that the political neutrality of the civil service would be compromised. Despite being a principal official, the Secretary for the Civil Service will, upon the end of his or her term of service, be able to return to another civil service posting.⁴⁷

⁴⁴ LegCo Paper CB(2)1711/01-02(01), April 23, 2002. The General Circular No.4/2002 issued by the HKSAR Government Secretariat on June 28, 2002 provides in Annex F the responsibilities of the permanent secretaries.

⁴⁵ LegCo Paper CB(2)2066/01-02(04), May 25, 2002, paragraph 2.

⁴⁶ Tung, Speech to LegCo on POAS, April 17, 2002.

⁴⁷ Ibid and Suen, Speech to LegCo, May 29, 2002.

CHAPTER 4: CONSTITUTIONALITY AND LEGAL FRAMEWORK

Enacting the POAS

Legislators complained that they did not have sufficient time to scrutinize the proposal. Officials promoting the POAS defended the tight timetable by saying that the new system had first been mentioned in October 2000, so there had already been adequate time for discussion, and that the government had already exchanged views with legislators and others on various occasions.⁴⁸ Moreover, they claimed that the government had the public's support to push ahead as evidenced by an opinion survey conducted in May 2002.⁴⁹ Critics argued that, despite earlier allusions to the new system, solid details of the proposal had not been previously articulated.

The HKSAR Government used subsidiary legislation in the form of a resolution to effect this substantive change in the government structure and to create a new class of political appointees – the principal officials.⁵⁰ Some legislators complained that the executive should have proposed new primary legislation to establish the POAS in view of the far-reaching effect of the new system and fundamental change to the government structure. Nevertheless, officials maintained that the new system could be implemented by means of a resolution. The Secretary for Justice argued: “There is no requirement in the Basic Law that policy decisions of the Chief Executive, or the Chief Executive in Council, must be formally promulgated.”⁵¹ Legislator Margaret Ng noted that LegCo was being asked:

To take away all the powers and functions exercised by civil servants, and put them in the hands of these ministers. This is a kind of transfer that this Council has certainly never seen before, neither in kind or scope....This Resolution affects at least half of the sum total of executive powers and functions our laws have conferred on the entire government.⁵²

Moreover, since the implementation of the POAS required a re-organization of a number of policy bureaus, the government used an Order – another form of subsidiary

⁴⁸ LegCo Paper CB(2)2015/01-02, May 22, 2002.

⁴⁹ Critics argued that the survey asked leading questions, the principle one being: “Do you support the HKSAR Government’s proposal to introduce the Accountability System for Principal Officials to enhance its accountability to the public?”

⁵⁰ The purpose of the Resolution under Section 54A of the Interpretation and General Clauses Ordinance (Cap.1) (Resolution) was to effect a transfer with effect from July 1, 2002 of statutory functions of certain “Secretaries” who would be involved in the amalgamation of policy portfolios pursuant to the proposed accountability system. Details of the resolution can be found in LegCo Paper LS112/01-02, June 5, 2002.

⁵¹ LegCo Paper CB(2)2000/01-02(01), May 17, 2002, and speech of the Secretary for Justice at the LegCo motion debate on May 30, 2002.

⁵² Speech by Margaret Ng at the debate on the passage of the resolution, June 19-20, 2002.

legislation – for the other amendments needed to revise the changes to post titles of the bureau heads who were to take charge of the re-organized bureaus.⁵³

The HKSAR Government moved and successfully passed a motion debate in LegCo on May 29, 2002 to seek support for the POAS.⁵⁴ On June 14, LegCo agreed to funding of HK\$42 million (US\$5.4 million) to meet the costs of the new principal officials positions.⁵⁵

On June 19, LegCo passed the resolution to effect the reorganization of the policy bureaus, thereby completing the process for setting up the POAS.⁵⁶ On June 24, the Chief Executive announced the new line-up for his second term of office: the principal officials, the new members of the Executive Council, the Director of the Chief Executive's Office and the Head of the Central Policy Unit (a government think tank).⁵⁷

The POAS and the Basic Law

The Basic Law was designed to establish a political system where power flows from the office of the Chief Executive. Tung has countered criticism that the POAS further concentrates the Chief Executive's power by stating that his office already had this power and that the POAS facilitates the devolution of authority to his principal officials:

The Basic Law provides that the Chief Executive is the head of the HKSAR Government. He leads the Government and the civil service. According to the Basic Law, the powers of the officials of the HKSAR Government originate from the Chief Executive. It is for the Chief Executive to determine how he should delegate his authority according to his policy agenda. As the Basic Law has already conferred all necessary powers on the Chief Executive, there is no need for these powers to be strengthened by the new system ... In fact, in implementing the Accountability System, the Chief Executive will be devolving further his authority ...⁵⁸

⁵³ LegCo had to pass a new Order subsequent to the passage of the Resolution under Schedule 6 to the Interpretation and General Clauses Ordinance to effect changes to post titles. See LegCo Paper CB(2)2068/01-02(02), May 2002.

⁵⁴ The motion was passed 35 in favor and 17 against.

⁵⁵ The cash remuneration of the 14 principal officials is among the highest in the world, commensurate with pay in the private sector for top executives. Per month, the Chief Secretary earns HK\$345,850 (US\$44,400), the Financial Secretary earns HK\$334,150 (US\$43,000), the Secretary for Justice earns HK\$322,850 (US\$41,400), and each of the other 11 principal officials earn HK\$311,900 (US\$40,000). Justification of the financial implications of the POAS can be found in LegCo Paper CB(2)2068/01-02(03), May 27, 2002.

⁵⁶ The Resolution was passed 36 in favor and 21 against.

⁵⁷ Press Releases: "Statement by the Chief Executive," June 24, 2002; "Permanent Secretary Postings," June 24, 2002; and "Heads of CE's Office and CPU named," June 24, 2002.

⁵⁸ Tung, Speech to LegCo on POAS, April 17, 2002. The Chief Secretary also emphasized in a speech to the British Chamber of Commerce on the April 25, 2002, "If you look at the Basic Law, the Chief

Although the POAS represents the most significant step in political reform to date and the first major departure from the colonial style of governing, the HKSAR Government determined that the Basic Law did not need to be amended to implement the POAS. During legislative scrutiny of the POAS, critics questioned whether it accorded with the constitution since Basic Law drafters had sought to preserve a civil service-led system. The sections of the Basic Law relating to the civil service clearly indicate that the constitution envisages not only a civil service-led system but also the continuation of civil servants assuming both administrative and ministerial roles.⁵⁹

The HKSAR Government argues that the POAS is consistent with the Basic Law because there is no specific prohibition against appointing political heads to government departments, nor is there a requirement that principal officials must be employed as civil servants. The government also argues that the constitution does not prevent changes.⁶⁰ Regarding democratic development, however, officials maintain that despite the Basic Law's explicit statement that the HKSAR's ultimate aim is a fully elected LegCo and directly elected Chief Executive, Hong Kong needs to move ahead cautiously.

A Hybrid System

Hong Kong is a unique political entity, neither an independent country nor a typical province or city. In contrast to other British colonies, Hong Kong did not gain independence in 1997. It is not a nation-state but a Special Administrative Region of the People's Republic of China. Hong Kong differs from a typical Chinese province, county, city or municipality because of its extensive autonomy and ability to deal in external relations, but this does not make it an independent entity.⁶¹ Likewise, the position of Chief Executive of the HKSAR is unique. On the one hand, he is able to participate in some international gatherings of heads of state.⁶² On the other hand, his position is similar to that of a typical large city mayor. Despite his international standing, the Chief Executive cannot be compared to a national president or a prime minister.

The governance system that developed within British Hong Kong and was inherited by the HKSAR is neither clearly presidential nor parliamentary. The

Executive has all the power he needs. All political and administrative power flows from his constitutional position at the apex of government in Hong Kong.”

⁵⁹ Basic Law, Articles 99 to 103.

⁶⁰ While the Basic Law does not provide for a ministerial-type of appointment, it does not explicitly prohibit it. Similar issues have arisen in other jurisdictions. For example, Australia's written constitution has no specific provision about cabinet government and a range of other aspects related to a Westminster-style ministerial system. Nevertheless, it is well established that those “extra-constitutional” measures are legitimated and permitted under the constitution. Some of the practices, such as ministerial responsibility, are classified as constitutional conventions. LegCo Paper CB(2)1735/01-02(01), April 25, 2002.

⁶¹ Chapter VII of the Basic Law allows the HKSAR to conduct extensive external relations that falls short of diplomatic affairs.

⁶² For example, Hong Kong can be a member of international bodies with a separate identity from China, such as the World Trade Organization and Asia Pacific Economic Council (APEC). Thus, in the case of APEC, the Chief Executive attends meetings together with other heads of state on an equal footing.

parliamentary (or Westminster) system deliberately sought to prevent excessive executive power by strengthening the legislature. The US presidential system, on the other hand, embodies a range of crucial checks and balances designed to guard against an over-reaching executive government.

Hong Kong's system of government bears a greater structural resemblance to a presidential system, like that in the United States, than to the ministerial or parliamentary system used in Britain. Nevertheless, the dominant influence on Hong Kong's original, colonial model has been the UK parliamentary tradition. This helps to explain LegCo's *de facto* capacity to hold the government to account in a quasi-parliamentary manner. Hong Kong has thus inherited a somewhat schizophrenic political personality.

Official documents always refer to the "Principal Officials Accountability System," or simply the "Accountability System." Neither the term "ministerial system" nor "cabinet" is officially used.⁶³ Nevertheless, the media and the public typically refer to the new principal officials as "ministers." In fact, the POAS is a form of ministerial system in the traditional definition of that term.⁶⁴ Professional politicians have taken key positions of public responsibility and formed a governing collective under the leadership of a chief minister, the Chief Executive in Hong Kong's case. The Chief Secretary confirmed this at a press conference on the POAS on April 17, 2002: "An Executive Council comprising, at its core, the Chief Executive and all of his Principal Officials is much more in tune with the Cabinet-style principles and practices of executive-led government."⁶⁵

What prevents the POAS from qualifying as a true ministerial system is the fact that Hong Kong's ministers are not elected. The general understanding of a ministerial system includes an expectation that the ministers should be regularly accountable to the people through some form of popular election. Although principal officials may be more readily dismissed for poor performance than under the previous system, the POAS lacks any institutionalized system of popular – or democratic – accountability.

The POAS also differs from a typical presidential cabinet system. While cabinet secretaries, unlike ministers in a parliamentary system, are not themselves accountable through elections, the executive who appoints them is directly elected. Moreover, in the United States and other presidential systems, the elected legislature has a role in cabinet appointments. In the United States, the Senate has a constitutional role to "advise and consent" on major executive branch appointments including cabinet members, which means that it investigates, holds confirmation hearings and votes on whether to confirm cabinet nominations. There is no comparable role for LegCo in the POAS.

⁶³ Nevertheless, the Chief Secretary, at a luncheon talk sponsored by the British Chamber of Commerce on 25 April 2002 used the word "cabinet" several times.

⁶⁴ For a detailed definition of "Minister," see Iain McLean (ed), *The Concise Oxford Dictionary of Politics* (Oxford: Oxford University Press, 1996).

⁶⁵ The merger of the Executive Council's Secretariat with the Chief Executive's Office may have been driven by the Chief Executive's desire to reduce intra-executive tension that existed between him and his non-civil service advisors and the civil servants during his first term of office. Press Release, "CS' opening remarks at the press conference on accountability," April 17, 2002.

One Country, Two Systems

The “one country, two systems” principle forms the main pillar of Beijing’s Hong Kong policy, enabling the HKSAR to exercise “a high degree of autonomy” and to have “Hong Kong people ruling Hong Kong.” Beijing’s policy, enshrined in the Basic Law, allows socialist China to coexist with capitalist Hong Kong within “one country.” This policy, encapsulated in the phrase “*changqi dasuan, chongfen liyong*,” was designed to enable Beijing to use Hong Kong to the maximum extent to contribute to China’s economic modernization and facilitate other areas of policy development.⁶⁶ Scholars Poon Kit and Kuan Hsin-shi point out that it also represents “a credibility test for China as a world power, demonstrating its willingness to honor its international pledge toward Hong Kong and its capability to manage a world-class city” after British rule.⁶⁷

Since the transition in 1997, Beijing has shown a high degree of self-restraint in leaving the Hong Kong authorities to govern Hong Kong. Self-restraint has not meant disinterest, however. Indeed, Beijing has kept a close eye on Hong Kong. Its overall stance has been to show support for the Chief Executive, who is directly accountable to the Central People’s Government.⁶⁸ Tung Chee-hwa was Beijing’s original choice to lead Hong Kong, and authorities in Beijing backed him for a second term.⁶⁹

Most observers believe that the Chief Executive had extensive discussions with Beijing on the development of the POAS. In fact, the procedure for installing the principal officials entails a nomination by the Chief Executive and actual approval by the Central People’s Government.⁷⁰

Beijing will likely remain wary of substantial political reform in the HKSAR for the foreseeable future. During an interview in June 2002, Vice-premier Qian Qichen reminded the public of Beijing’s reluctance:

To promote democracy in Hong Kong, one cannot have Hong Kong emulate the system of other regions...Hong Kong is a commercial city and it is one of our country’s special administrative regions. This determines that it cannot copy the political systems of another country. The past practices have shown that the model based on functional constituency elections is an effective way to ensure that people from various walks of life can have balanced participation in political life. As a result, this should be kept intact.

⁶⁶ Other areas of policy include using Hong Kong to earn hard currency, to provide a window to the outside world, and to provide neutral ground for conducting informal contacts with Taiwan. Hou Li, *The Closure of a Hundred Years of Humiliation: The Beginning and the End of the Hong Kong Issue* (Beijing: Central Documentary Press, 1997), 125.

⁶⁷ Poon, Kit and Hsin-shi Kuan, *The Hollowing Out of the “One Country, Two Systems” Framework: China’s Hong Kong Policy in a Changing Context*, unpublished manuscript from the authors.

⁶⁸ Basic Law, Article 43.

⁶⁹ Tung Chee-hwa was chosen prior to 1997 through a selection process by a selection committee of 400 people. In 2002, he was the sole candidate for re-selection. Several top Chinese leaders had publicly stated that they supported Tung for a second term.

⁷⁰ Basic Law, Article 15.

Other systems that also conform to Hong Kong's characteristics should also be retained.⁷¹

Regardless of how the introduction of the POAS affects the hallowed status of the Basic Law, it provides a new staging-point for future political reforms to deal with other challenges to governance in Hong Kong. By arguing that what is not expressly prohibited in the Basic Law is consistent with the Basic Law, the HKSAR Government has opened the door for others to co-opt that rationale to propose further reforms. In the future, it will be difficult for the HKSAR Government to argue that what is not expressly provided for is inconsistent with the Basic Law.⁷²

Limited Scope for Further Reform

The prospects for a more significant legislative role in government do not appear bright. Despite provisions in the Basic Law that open the possibility of constitutional change after 2007,⁷³ Article 59 explicitly states that the government of the HKSAR "shall be the executive authorities," which does not include the legislature. While Article 64 makes the government (headed by the Chief Executive) accountable to the legislature, the Basic Law does not envisage a power-sharing relationship between the executive and the legislature. For that to happen, the whole of the Basic Law would need to be amended. Most observers cannot imagine that Beijing in the near term would allow such a substantial reform within the "one-country, two systems" framework. Yet, there is room for incremental electoral reform, which represents an important opportunity to create and define a unique polity within an otherwise one-party state. The legislature's oversight role could also be strengthened without constitutional amendment.

⁷¹ "HK democracy must forge own path, not emulate others," *South China Morning Post*, June 26, 2002.

⁷² During the LegCo scrutiny process, legislators pointed out that the HKSAR Government "should not use different reasoning at different times to suit different needs, and that a consistent approach should be adopted in interpreting the Basic Law." LegCo Paper CB(2)2015/01-02, May 22, 2002.

⁷³ Basic Law, Articles 45 and 68 and Annex II provide the possibility for electoral reform in the future.

CHAPTER 5: ACCOUNTABILITY – THEN AND NOW

“Accountability” can have several meanings. In the narrowest sense, “accountability” means simply the obligation to account for or explain one’s actions. In the sense of “administrative accountability,” the term refers to performance and deals with the relationship between subordinates and superiors. In the still broader sense of “political accountability,” the term refers to the relationship between authorities and the public or its representatives. In order to compare accountability under the new system with Hong Kong’s previous system, it is important to understand the sense in which this term is being used.

Colonial Legacy

During British rule, decision-makers in the Hong Kong government were not accountable in a political sense. Until 1997, Hong Kong had a colonial system of government where bureaucrats acted effectively as both administrators and ministers. They were accountable in an administrative sense to their superiors and had to abide by civil service regulations, but they were not accountable politically.⁷⁴ They were answerable in the sense that they provided answers to the public directly and via the legislature.

The fusion of politics and administration in the colonial model of government downplayed the importance of politics and political participation in policy-making. At the same time, the top layer of the civil service was in fact politicized as it also effectively played a political role. Civil servants developed and justified public policies and defended them in front of legislators, parties and the public.

Hong Kong’s post-1997 political system retained much of the former colonial structure. Written in the mid-1980s, the Basic Law enabled the colonial “executive-led” (i.e. civil service-led) system to continue essentially unchanged. While somewhat vague, the relevant articles of the Basic Law do not require these executive branch individuals to be politically accountable. Indeed, the Basic Law envisioned that, together with the Chief Executive, civil servants would continue to play the most important political role in post-1997 Hong Kong. Article 48(5) refers to a number of the most senior official posts, most of which were filled by civil servants, as “principal officials.”⁷⁵ The administrative apparatus and the Chief Executive together make up the “executive authorities,” which is the HKSAR Government.⁷⁶ While the Basic Law provides that the HKSAR Government

⁷⁴ Civil service regulations are in the form of subsidiary legislation. The Public Service (Administration) Order and Public Service (Disciplinary) Regulation spell out civil service appointments, dismissal, suspension and disciplinary procedures.

⁷⁵ The majority of the principal officials were civil servants. The Director of the Independent Commission Against Corruption (ICAC) and the Director of Audit were not employed as civil servants but on contract terms.

⁷⁶ Basic Law, Articles 59 and 60.

is “accountable” to the legislature, it does not seem to incorporate the notion of political accountability.⁷⁷ Article 99 makes it clear that “public servants” (a category that includes civil servants) are responsible to the HKSAR Government and not to the legislature.⁷⁸

Civil Servants and Accountability

It is therefore understandable why a large number of civil servants have not seen themselves as being responsible politically.⁷⁹ Instead, according to an official study prepared for LegCo, civil servants should only be “accountable for administrative and managerial mishaps, as well as for personal misconduct.” Noting the existence of a “well-established civil service appointment, management and disciplinary system,” the study concludes that “it would not be appropriate to ask civil servants to assume political responsibility” because it “would seriously undermine the political neutrality of the civil service and the integrity of the civil service system.”⁸⁰ Former Secretary for Constitutional Affairs Michael Suen argued:

There are increasing calls for senior civil servants to be held accountable for policy failures, including calls for some of them to step down. These charges have shown an inherent mismatch between the civil service status of these officials and the demands placed on them ... Holding them responsible and expecting them to step down in the case of serious policy failures is incompatible with the underlying philosophy of a permanent civil service and its established appointment and removal system.⁸¹

In announcing the POAS, the Chief Executive sought to strengthen accountability of officials to the executive by requiring principal officials to be responsible to him for their policy portfolios. According to the Chief Executive, principal officials would be “accountable to the Chief Executive for the success or failure of their policy initiatives. Under the leadership of the Chief Executive, they will be accountable to the community. Where necessary, the Chief Executive may terminate their contracts.”⁸²

⁷⁷ Basic Law, Article 64.

⁷⁸ “Public servants” is a wider term than civil servants and cover legislators, principal officials, as well as appointees to public bodies, who are not employed on civil service terms, and mainstream civil servants. LegCo Paper CB(2)1809/01-02(03) provides the official definitions for “civil servants” and “public servants.”

⁷⁹ A University of Hong Kong survey in 1999 of civil servants showed that less than 44.5 percent of the senior official respondents believed that the civil service should be accountable to the legislature. Furthermore, 51.4 percent believed that being accountable did not mean that they should resign to take responsibility for policy errors, reflecting the civil service’s position as a whole. A majority of 58.9 percent believed that “executive-led” government meant that the government could implement policy that had not first been approved by LegCo.

⁸⁰ LegCo Paper CB(2)194/01-02(01), October 26, 2001.

⁸¹ Suen, Speech to LegCo, May 29, 2002. Another useful reference is the speech of the former Chief Secretary, Anson Chan, on June 28, 2002 at the LegCo motion of no confidence on short piling, *Official Record of Proceedings*, Legislative Council, pages 9317-9320.

⁸² Tung, Speech to LegCo on POAS, April 17, 2002. Also, Article 99 of the Basic Law, provides that public servants are responsible to the HKSAR Government.

As stated, however, the accountability is to the Chief Executive and not to either Hong Kong's elected legislature or to the electorate. The POAS is therefore not a system that provides political accountability in a democratic sense.

Under the Basic Law as it is currently drafted, democratic political accountability is not available. Principal officials are still considered to be "public servants" and are thus not accountable to the legislature.⁸³ The Basic Law contains no provision for the legislature to remove a principal official through a vote of no confidence. LegCo only has power to impeach the Chief Executive.⁸⁴ However, the Chief Executive has said that if LegCo passes a motion of no confidence against a principal official, he would "consider among other things the circumstances leading to such a motion."⁸⁵

However, the lack of conventional political accountability within an economically and socially mature jurisdiction has meant that the role of public opinion, as a part of the political process, tends to be amplified. Although Hong Kong's people are denied access to a fully democratic system for choosing who governs them, they have had access to one of the most active and free media sectors in the region. Public opinion on many issues is widely, swiftly and vigorously expressed through the print and electronic media. The HKSAR Government has been sensitive to public opinion.

The existing constitutional framework did not anticipate the emergence of professional politicians, and the government was unprepared to seek amendment of the Basic Law. Principal officials under the POAS have thus had to be fitted within the existing framework of the Basic Law. This has led to their being described as – and regarded as – "public servants." It is clear that the new principal officials, like professional politicians and legislators in other jurisdictions, are "public servants" in a general sense. But, although they are in "public service," Hong Kong's new principal officials are not subject to the rules, norms and accountability systems applying to civil servants and executive branch employees within the HKSAR. A key point of the POAS was to terminate the civil service status of almost all the new principal officials.

With respect to the eligibility of members of LegCo to serve, *concurrently*, as principal officials under the new system, the question of whether the new POAS principal officials are not just generic public servants but also "public servants" within the strict meaning of the Basic Law arises. Under the pre-POAS system, it was clear that LegCo members could not, also, be principal officials, because Article 79(4) of the Basic Law provides that a legislator is to be disqualified if he accepts a "government appointment *and becomes a public servant.*" It is less clear-cut now that a serving LegCo member is prohibited from being concurrently appointed as a principal official. If a strictly-defined public servant is a civil servant, then one can argue that a currently serving member of LegCo could be appointed as a principal official *without* endangering his or her eligibility

⁸³ LegCo Paper CB(2)693/01-02(01).

⁸⁴ Basic Law, Article 73(9).

⁸⁵ LegCo Paper CB(2)1711/01-02(01), April 23, 2002.

to hold a LegCo seat.⁸⁶ The practical solution appears to be the appointment of a legislator as a principal official without portfolio.

Article 55 of the Basic Law specifically allows legislators to join the Executive Council. Thus, there is no problem with a legislator also being a member of the Executive Council – provided the LegCo member does not hold a specific portfolio. Ultimately, Article 55 negates any attempt to draw an implication from Article 79(4) that such an appointee (without portfolio) could be considered to be a “public servant” within the meaning of that Article.⁸⁷

Accountability to LegCo

Article 64 of the Basic Law provides that the Government is accountable to LegCo. Specifically, the Government shall:

1. Implement laws passed by the Council already in force;
2. Present regular policy addresses to the Council;
3. Answer questions raised by members of the Council; and
4. Obtain approval from the Council for taxation and public expenditure.

Thus, on the surface, the accountability to LegCo is restricted to four areas. Article 74 further constrains the power of LegCo by providing that legislators cannot propose private bills that relate to public expenditure, political structure, or the operation of government without the written consent of the Chief Executive. With respect to public expenditure, LegCo can only accept or reject proposals from the executive but not amend them. Articles 50 to 52 of the Basic Law provide that if there is deadlock over legislation or a budget, the Chief Executive may dissolve LegCo. Only if the new legislature also reached deadlock over the same issue would the Chief Executive be required to resign.

Under the Basic Law, LegCo has no role in government formation. The POAS does nothing to strengthen the role of the legislature, nor does it elaborate the LegCo’s given oversight powers in the Basic Law, though it could have been designed differently to allow greater accountability by the chief executive and the new principal officials to

⁸⁶ In the pre-POAS era, certain principal officials were, explicitly, *not* civil servants. The Director of Audit and the Director of the ICAC were in this category. They were employed on contracts *outside* of the civil service in order to strengthen their independence and make clear their direct line of accountability to the Governor and then Chief Executive. Therefore, in constitutional theory, it may be that the Basic Law does not expressly prohibit a non-civil servant principal official such as the Director of Audit from concurrently being a member of LegCo. Yash Gai, *Hong Kong’s New Constitutional Order* (2nd edition) (Hong Kong: Hong Kong University Press, 1999) page 295.

⁸⁷ The ambiguity with respect to whether principal officials under the POAS are “public servants” within the strict meaning of the Basic Law noted leaves open the possible interpretation that the Basic Law may allow for serving LegCo members to be appointed *with portfolio*.

the LegCo.⁸⁸

Although LegCo's constitutional powers to hold the government accountable are limited, the Power and Privilege Ordinance gives LegCo enormous power to investigate possible government wrongdoing. LegCo invoked this Ordinance in 1994 to investigate the dismissal of a high-ranking corruption investigator; in 1997 to investigate questionable actions of the Director of Immigration; in 1998 to investigate the problems associated with the opening of the Chek Lap Kok airport; and in 2001 to investigate defective construction. The Ordinance provides the legislature with the power to summon the Chief Executive and anyone else in the jurisdiction for questioning.

While motion debates in LegCo carry no legislative effect and are therefore purely persuasive in nature, motions can be influential if carried. On both occasions when motions of no confidence against specific officials were moved, they were highly charged and solemn events where the executive lobbied hard against them.⁸⁹ In the future, if the legislature were to pass a motion of no confidence against a principal official, it would likely be extremely difficult for the person concerned to remain in office.

⁸⁸ That is, the POAS could have made provisions for greater LegCo oversight of the HKSAR Government *without* amending the Basic Law. For example, the POAS could have stipulated that the new principal officials would go to LegCo to make important policy announcements and would take questions from LegCo prior to any press briefings on such policy initiatives. This would fit with Hong Kong's British political-constitutional tradition.

⁸⁹ See footnote 12 for details of these two motions.

CHAPTER 6: ISSUES ARISING FROM IMPLEMENTATION OF THE POAS

The Price of Expediency

The POAS was designed and imposed quickly, without sufficient input from LegCo, the civil service and the public.⁹⁰ There were only two and a half months from the time the POAS was formally announced to its implementation. No detailed public consultation paper was released. Instead, the HKSAR Government preferred to use the short scrutiny process in LegCo through questions and answers with legislators as a substitute for a fuller consultation. This process was unfortunately characteristic of the leadership style of the past few years. Head of the Central Policy Unit and scholar Siu-kai Lau has called the Tung administration “a paternalistic regime” and concluded that its “decision-making style ... is characterized by a top-down policy making format and limited public consultation.”⁹¹

Although a more comprehensive consultation likely would not have addressed every detail of or concern about the new system, the lack of thorough discussion, especially within the civil service and with LegCo, may come cause trouble for the Chief Executive when problems arise, because he could be blamed for inadequate planning. For example, within a month of the introduction of the new system, a change to the portfolio structure at the permanent secretaries level was found necessary at the Environment, Transport and Works Bureau.⁹²

Within the first month of implementing the POAS, Tung faced his first political “crisis” arising from the stock exchange’s publication of proposed criteria for continuing listing eligibility. The incident, which embroiled the responsible principal officials and the heads of the stock exchange and securities regulatory body in controversy, offers early insights into the functioning of the POAS.

The crisis began when the stock exchange announced proposals for consultation on the criteria for continuing listing eligibility of stocks, which led to a panic sell-off of micro-cap stocks the following day, taking HK\$10 billion off the market. The stock exchange immediately announced that it would extend the consultation period to avoid

⁹⁰ Among the most senior ranks of the civil service, a facilitation system known as RootMap system was used when they discussed the development of the POAS. This was made known on the August 26, 2002 when the HKSAR Government organized a four-day forum for 14,000 civil servants.

⁹¹ Siu-kai, Lau, “Tung Chee-hwa’s Governing Strategy: The Shortfall in Politics” in Lau, *The First Tung Chee-hwa Administration*, 2000, page 16.

⁹² The original bureau structure divided responsibilities between two permanent secretaries. One looked after environmental issues, and the other transport and works. The revised proposal put transport responsibilities with environmental issues as the combined responsibilities of transport and public works appeared too large. The revised proposal has to be put to LegCo for endorsement in October 2002, when legislators are likely to criticize the government for poor planning. See “Reshuffle of bureau portfolios ‘will lighten workload,’” *South China Morning Post*, August 2, 2002.

confusion and then withdrew the proposals altogether.⁹³ Public discussions turned on who should be held accountable for not having foreseen the market reaction. Those involved included the heads of the exchange and the Securities and Futures Commission (the regulator reporting to the government), the Secretary for Financial Services and the Treasury and the Financial Secretary, who have various oversight responsibilities.

Within days, LegCo called an urgent meeting to seek clarification. To diffuse tension, the Financial Secretary sent a letter to LegCo prior to the meeting informing legislators that he had appointed a two-person panel to investigate and report on the circumstances leading to the event and to recommend corrective measures.⁹⁴ However, legislators questioned the Financial Secretary's actions. Under Hong Kong law, in order for the panel to have the proper powers of investigation, it would have had to have been appointed by the Chief Executive. Moreover, the Financial Secretary was also a party to be investigated by the panel.

There are several hundred references to the Financial Secretary in Hong Kong's statute books. The Financial Secretary's major powers and functions include the supervision and regulation of companies, the Monetary Authority and the Securities and Futures Commission. In the past, the Financial Secretary was defined as the "Financial Secretary of the HKSAR and the Secretary for the Treasury." This meant that any power of the Financial Secretary could be exercised by the Secretary for the Treasury. This was acceptable because the Secretary for the Treasury reported to the Financial Secretary under the old hierarchical civil service structure.

With implementation of the POAS, the Secretary for the Treasury has been changed in the law books to the Secretary for Financial Services and the Treasury. This newly created post allows the principal official to exercise all the powers and functions of the Financial Secretary. However, as an equal-ranking political appointee rather than a civil servant, the Secretary for Financial Services and the Treasury no longer reports to the Financial Secretary yet can exercise all the powers and functions of the Financial Secretary in law. The Resolution that was passed to effect the transfer of functions from one secretary to another, did not take this new political situation into account. Thus there is no clear delineation of powers and functions to be exercised by these two principal officials. Although this issue was raised during LegCo's scrutiny of the POAS, the government had provided no clear response.⁹⁵

⁹³ For a useful summary of the events leading up to the "crisis," see "The Delisting Fiasco," <http://webb-site.com/articles/delisting.htm>.

⁹⁴ Government press release, July 31, 2002.

⁹⁵ LegCo Paper CB(2)2122/01-02(01) Annex C, pages 1-2 show textual amendments provided for in the Resolution relevant to the transfer of statutory functions from the former civil service Secretary for Financial Services to the new Secretary for Financial Services and the Treasury relating to the Securities and Futures Commission. In legislator Margaret Ng's speech during the passage of the Resolution on June 19-20, 2002, she said: "The office of Secretary for Financial Services and the Treasury will be added to our statute books by this Resolution. Yet, the simple question, 'What powers and functions does the [Secretary] have?' has no answer. I asked Mr Suen [Secretary of Constitutional Affairs] the question. He told me bluntly that the Government has not yet sorted that out, and will do so only in the coming year."

It has become clear that more time should have been given to the important task of clearly establishing the powers, functions and duties of the principal officials. Moreover, there was no transition period between previous bureau heads and the new principal officials. A more systematic handover would have been particularly useful for those appointees who came from the private sector.⁹⁶

Power and Pressure Concentrated in the Chief Executive

The Basic Law reflects a political design that downplays the role of political parties, elections and the legislature. With such a concentration of power in the Chief Executive, the Hong Kong governing system puts tremendous pressure on one person. The current holder of the post has no political party structure to rely on and relatively few experienced politicians and political advisers he can call upon for advice. He had little experience in public life before 1997. The Chief Executive has no public mandate despite this power.

With heightened public expectations, the new executive team will be under tremendous pressure to perform. Responding to this growing pressure, the Chief Executive has delayed his annual policy address usually scheduled for the first Wednesday in October to coincide with the start of the new LegCo session after the summer recess in mid-January 2003 to give his new team and himself time to formulate policy priorities. Yet, time may not be on the side of the new governing team. At the same time that the government seeks these new policies, it has had to continue to confront new daily challenges. The penny stocks episode has already called into question the ability of the new system to deliver greater accountability. The pressure to perform has been immediate and looks unlikely to relent.

Policy-Making Mechanisms

The Chief Executive in his second term will have to craft an agenda and generate public debate that will resonate with Hong Kong's people. The Chief Executive has proposed new mechanisms to improve government policy-making. These include:

⁹⁶ Under the POAS, two bureaus covering financial services and the treasury were amalgamated. The previous civil service head for financial services became the principal official for economic development and labor on July 1, and the former head of the treasury became the permanent secretary for commerce and industry in another bureau. There was no handover period for either the principal official (Secretary for Financial Services and the Treasury) who came from the private sector and took office on July 1 or the permanent secretary for financial services, who was suddenly transferred from the Housing Department. During a LegCo meeting held on July 31 to seek clarification on the penny stocks "crisis," Frederick Ma, Secretary for Financial Services and the Treasury, came under fire for saying it was not his duty to know details of the proposals. See "Battered Ma admits: I'm no wizard," *The Standard*, August 1, 2002. See also "The Delisting Fiasco," <http://webb-site.com/articles/delisting.htm>, for a longer discussion.

- (a) Putting in place “an effective opinion survey system to ensure the highest level of Government is aware of community attitude, sensitivity, and reaction to policy initiatives;”⁹⁷
- (b) Strengthening the role of the Central Policy Unit in gauging community views and sentiments;⁹⁸ and
- (c) Reviewing and revising “the structure covering over 400 advisory boards and committees, so that the organizational arrangements will enable us to consolidate the views and contributions of different sectors including the political, business, academic, and grassroots sectors, among others.”⁹⁹

The Chief Secretary noted that the government would not only strengthen the Central Policy Unit but also tap into research institutes, universities and think tanks in Hong Kong: “By necessity, there will be more research into individual policies when principal officials will be held personally accountable for his end results.”¹⁰⁰ His statement seems to acknowledge that government policies might not have been adequately researched in the past.¹⁰¹

Better research and more comprehensive surveys of public opinion alone will not be sufficient in themselves unless the whole policy-making, consultation, and implementation process better responds to community concerns – something the Chief Executive and his principal officials will have to prove that they are capable of doing.

Policy Uncertainty

The Chief Executive will need to manage his new principal officials to ensure a unified front and produce policies that are well integrated across policy areas. This is particularly difficult in Hong Kong, however, for a couple reasons. First, the political party system does not unite the officials. Second, because the officials did not come to power through elections, they lack any mandate from the people to govern according to values and policies enunciated during an election campaign.

Recruitment of the principal officials took place outside an institutionalized political party system that in other jurisdictions would have offered the public a more reliable view about the leaders’ values and policy objectives. In Hong Kong’s case, these values and objectives are tied to the personal preferences of the Chief Executive and

⁹⁷ Tung Chee-hwa, *My Pledge to the People of Hong Kong*, January 2002, page 5.

⁹⁸ Tung Chee-hwa, speech delivered at the Second Term Government Swearing-in Ceremony, July 1, 2002.

⁹⁹ Ibid. The vast array of government advisory committees could be consolidated. While they perform useful tasks, many observers believe that the benefits they produce do not always match the demands they make on both officials and private citizens. Substantial benefits may be possible by rationalizing and sharpening their roles.

¹⁰⁰ Donald Tsang, Q&A session at a luncheon talk hosted by the British Chamber of Commerce on April 25, 2002 in Hong Kong.

¹⁰¹ For example, a discussion of the problems of policy decision making in Hong Kong in the transport area is covered in Chapter 7 of *Sustainability Transport in Hong Kong: Directions and Opportunities* (Hong Kong: Civic Exchange, June 2002).

principal officials. This creates a degree of uncertainty for the political environment, as the public has no way to predict the particular policy preferences of the principal officials. Furthermore, the preferences of one principal official could affect the portfolio of another, which could cause not only rivalry but also confusion, thereby affecting the credibility of the government as a whole.

Some principal officials from the private sector created controversy within days of their appointment. The Secretary for Financial Services and the Treasury, for example, appeared to have overstepped his jurisdiction by asserting his preferences on whether the Hong Kong Stock Exchange should keep its listing committee and even expressed his personal preference on the exchange's opening hours.¹⁰² The Secretary for the Environment, Transport and Works said that she had been liaising informally with Guangdong authorities on a cross-border emissions trading scheme even before she formally took office and had time to speak to colleagues responsible for energy.¹⁰³

Executive Councilor and LegCo member James Tien publicly clashed with Secretary for Education and Manpower Arthur Li. On July 23, Tien commented that it was "dangerous" for some principal officials to be speaking out before they fully understood their portfolios. As Chair of the Liberal Party, he also said that if policy was not first properly discussed in the Executive Council, the principal officials could not count on his party support for LegCo votes. Li responded on August 1 that he had the right to voice his own opinions, and that "Mr Tien is of course entitled to his own personal opinions. And his personal opinions are not government policies."¹⁰⁴

Regardless of ambitions to make their mark early on, particularly by those principal officials who did not come from the civil service, the new appointees have been reminded of the need to focus on "their first priority." According to the Chief Secretary, this is "to draw up a five-year plan for their areas of responsibility" and gain internal support before going public.¹⁰⁵ Chief Secretary Donald Tsang commented,

These plans will need to be approved by the Chief Executive-in-Council. Before that, they will have to be argued out in ExCo sub-committees chaired by the Chief Secretary or Financial Secretary. So plans and priorities will have been exhaustively sieved and sifted even before they reach the full 'Cabinet.'¹⁰⁶

¹⁰² "U-turn on listing committee," *South China Morning Post*, July 4, 2002. See also a commentary of the Secretary's decision in "Real problem dodged," *South China Morning Post*, July 5, 2002 as well as "Listing Chaos" at <http://webb-site.com/articles/listingchaos.htm>, July 28, 2002.

¹⁰³ The Secretary only took up her post formally on August 1, 2002. "Cross-border pollution scheme 'in 3 years,'" *South China Morning Post*, July 11, 2002.

¹⁰⁴ "Tung's recruits told to button lips," *South China Morning Post*, July 24, 2002, and "Outspoken minister to stick to his guns," *South China Morning Post*, August 2, 2002.

¹⁰⁵ Donald Tsang at a luncheon talk sponsored by the British Chamber of Commerce on April 25, 2002.

¹⁰⁶ *Ibid.*

Relationship with the Legislature

The Chief Executive has also been reluctant to interact with LegCo directly in open sessions. With LegCo having a stronger public mandate than the Chief Executive, signs of reluctance on his part towards the legislature may be interpreted as being disrespectful of an elected institution.¹⁰⁷ To achieve the POAS's stated goal to "improve the relationship between the Executive and the LegCo," the Chief Executive will have to better mitigate the reservations he may have about the legislature. One way in which this could be achieved in keeping with Hong Kong's British political-constitutional tradition is for the government to develop a convention for the Chief Executive and the principal officials to go to LegCo to make important government announcements and take questions before any press briefings, so as to acknowledge LegCo's role as Hong Kong's representative body.¹⁰⁸

When LegCo returns from its summer recess, legislators will also have to consider how they may wish to reorganize their panels to reflect the new structure of the policy bureaus. This will be an early test of the evolution of executive-legislative relationship stemming from the POAS. In turn, the frequency of attendance at LegCo meetings by the principal officials is likely to be used by legislators as an indicator of how willing the principal officials are to engage the legislature.

Party Politics and Alliances

The Basic Law is silent on whether the Chief Executive can be a member of a political party. However, the Chief Executive Election Ordinance provides that he should not have any party affiliation.¹⁰⁹

Hong Kong's political parties and groupings may be said to be divided along two fault lines: on socio-economic policy and on the pace of democratization. While the Chief Executive has appointed representatives with socio-economic views that vary from his, he was unwilling to include legislators who prefer a faster pace of democratic reform.¹¹⁰

The significance of the inclusion of two party chairmen in the new Executive Council remains to be spelled out. In one respect, the Chief Executive will have access to first-hand advice on working more successfully with LegCo. The government and the five Executive Councilors without portfolio recently reached "consensus" that the five

¹⁰⁷ All 60 seats are elected. Twenty-four seats are directly elected by geographical constituencies, 30 seats by functional constituencies, and six seats by the same 800-member election committee responsible for selecting the Chief Executive.

¹⁰⁸ For a useful discussion on the subject, see Shiu Hing Lo, *Constitutional Conventions and Ministerial Accountability in Hong Kong*, June 3, 2002 (paper delivered at the University of Hong Kong).

¹⁰⁹ See Section 31 of Chief Executive Ordinance, which requires the winning candidate to declare that he is not a member of any political party.

¹¹⁰ The two legislators on the new Executive Council also have good relations with Beijing.

will take an active part in the early stages of the policy-making process.¹¹¹ Nevertheless, how these two party members reconcile their requirement to abide by the rule of collective responsibility for government policies made after July 1, 2002 with their role as party leaders is not easy to see.

The Chief Executive cannot take for granted that the three legislators can, or will, always secure votes of their own political party members or fellow trade unionists. While the three Executive Councilors will have to vote for all government motions, bills and expenditure proposals, their members and affiliates do not. For example, in July 2000, the Democratic Alliance for the Betterment of Hong Kong legislators, despite one of the party's senior members sitting on the Executive Council and the government's strong lobbying efforts, voted for the motion of no confidence related to defective public housing construction.¹¹² The Chairman of the Liberal Party has said that due to his role as a member of the Executive Council the Liberal Party would continue to air its opinions in LegCo, "but the difference is that it will, in the end, cast its votes in support of the government."¹¹³ He also said that the other seven Liberal Party members in LegCo could apply for "exemptions" from the party line if it clashed with the interests of constituencies.¹¹⁴

The political parties and groupings in LegCo have come together on several occasions in the past, most notably to lobby on budgetary issues.¹¹⁵ A likely effect of the addition of party leaders to the Executive Council is a reduction of future broad cross-party alliances in LegCo to pressure the government. The various parties are scheduled to meet on October 4, 2002 to decide on their future collaboration.¹¹⁶

The participation in government by leaders of the Liberal Party and the Democratic Alliance for the Betterment of Hong Kong may also lead to greater cooperation between those two parties. James Tien of the Liberal Party already noted

¹¹¹ "Tung's pledge on policy-making," *South China Morning Post*, July 29, 2002. In that report, Tsang Yok-sing, the chairman of the Democratic Alliance for the Betterment of Hong Kong was quoted as saying: "A consensus has been reached among the ministers and the permanent secretaries that we will be able to participate in the policy formulation at a very early stage."

¹¹² Tam Yiu-chung, a member of the Democratic Alliance for the Betterment of Hong Kong who was both a member of LegCo and the Executive Council in the Chief Executive's first term, voted against the motion of no confidence but his party voted in favor of it.

¹¹³ "Liberals beg to differ, but will still back government policy," *South China Morning Post*, July 24, 2002.

¹¹⁴ "I'll quit or be fired if no Liberal Party proposal accepted, says James Tien," *South China Morning Post*, August 5, 2002. In that report, Tien said that: "I have told Mr Tung that most likely, such exemptions will be limited to one or two members of our members. Mr Tung certainly finds it all right."

¹¹⁵ For example, the parties and groups came together to put pressure on the government not to raise taxes on the 2002-2003 Budget.

¹¹⁶ "Coalition to discuss future after convener quits," *South China Morning Post*, August 17, 2002. Liberal Party Chair James Tien was the convener of the cross-parties coalition in LegCo but he stepped down on August 16, 2002 because he said he felt that it would be "confusing" as he was now a member of the Executive Council. The proposal to rotate the position of the convener was turned down as the Democratic Alliance for the Betterment of Hong Kong said it would be unacceptable to their members for their main electoral rivals – the Democratic Party and The Frontier – to become convener, even if on a rotational basis.

that the two parties formed “a ruling coalition in LegCo.”¹¹⁷ However, while both parties are conservative on political reform, their political constituencies and their policy preferences on socio-economic issues are considerably different. Nevertheless, their cooperation in the Executive Council may help them to join forces formally or informally in the 2004 (or future) LegCo elections to compete with the Democratic Party, The Frontier and the Association of Democracy and People’s Livelihood.¹¹⁸

Relationship with the Media

It has often been remarked that the Chief Executive seems uncomfortable with the media. In his announcement of the POAS, Tung Chee-hwa complained that the media was “increasingly progressive and aggressive” subjecting the government to “increasing public scrutiny and pressure.”¹¹⁹ The Chief Executive will undoubtedly expect his principal officials to do most of the communicating with the media, but as head of government he will still need to cultivate a direct relationship with both the local and the international media.

New Governing Coalition

The Hong Kong political system before and after 1997 co-opts business and professional groups into a leading role within the power structure. “During the colonial era, the British had sought to enhance their legitimacy in the absence of democracy through endorsement from representatives of the ‘business elite,’” argues former Head of the Central Policy Unit Leo Goodstadt. “Chinese officials ... proved equally eager to have this group’s support, and well before 1997 China ha[d] replaced ‘the colonial bureaucracy as the political partner of the bourgeoisie’ and was recruiting a majority of its new political establishment from the business elite.”¹²⁰ Tung Chee-hwa was a member of the Hong Kong business elite. His governing style has often been described as being more corporate than political. Indeed, the Head of the Central Policy Unit Lau Siu-kai once described Tung’s attitude towards politics as “apolitical or even anti-political.”¹²¹

¹¹⁷ “Liberals beg to differ, but will still back government policy,” *South China Morning Post*, July 24, 2002.

¹¹⁸ James Tien has so far said that the parties have not considered cooperation and that “it would surely not happen in 2004.” Ibid.

¹¹⁹ Tung, Speech to LegCo on POAS, April 17, 2002.

¹²⁰ Goodstadt, Leo, “China and the Selection of Hong Kong Post-Colonial Political Elite,” *The China Quarterly*, September 2000, Number 163, page 721.

¹²¹ Siu-kai, Lau, Preface in Lau, *The First Tung Chee-hwa Administration*, 2002, pages viii – ix.

Lau Sui-kai has publicly advised the Chief Executive to develop political allies and build political organizations. The Chief Executive can already do this in part through his appointments of up to 25 percent of the members of the 18 District Councils.¹²²

As the principal officials look for opportunities to build a power base in the districts, they could spend time in the districts with District Councilors and local community organizations. This would enable them to gather input from the public and to build district-based constituencies. Unlike elected representatives, principal officials have real power to respond directly to many public demands. The principal officials are also likely to influence appointments to the government's vast array of advisory bodies and committees, as well as powerful institutions with executive power, such as the boards of the Urban Renewal Authority, the Hospital Authority and the Airport Authority.

By developing direct connections in the community, they will also be able to compete head-to-head with the elected legislators in the political popularity stakes. A more politically aggressive ruling elite presents a substantial challenge to the "opposition" in LegCo, in particular the Democratic Party and The Frontier, whose members have been among the most popular politicians in Hong Kong for many years (although recent surveys show a steady decline in their popularity).¹²³ The opposition will need to respond with innovative strategies.

Political Neutrality and the Civil Service

The POAS effectively ends the "executive-led" government by civil servants. Official pronouncements continue to emphasize the need to maintain the integrity and neutrality of the civil service. Various documents indicate that there was some negotiation between the Chief Executive and the civil service on what is considered acceptable behavior of principal officials towards civil servants.¹²⁴

A clear demarcation of functions between the principal officials and the most senior civil servants is necessary. It is unclear at present how the work of the permanent secretaries under the POAS will differ from the previous system. The permanent secretaries will still "formulate and implement policies, listen to the views of the public and LegCo, explain policies to these respective groups, respond to questions raised and gain support from different quarters for government policies."¹²⁵ Permanent secretaries are also expected to "defend" government policies.¹²⁶ Indeed, the permanent secretaries

¹²² Seventy-five percent of the seats on the District Councils are elected by universal suffrage. The next District Council election will be in September 2003. Immediately after the election, the Chief Executive can make appointments to 25 percent of the seats.

¹²³ The Hong Kong Transition Project, *The First Five Years – Floundering Government, Floundering Democracy?* May 2002.

¹²⁴ The Circular could also be renamed the Civil Service Code to give it the same gravity as the Code of Practice for Principal Officials. In Britain, there is debate about legislation to give the values of a permanent, neutral, professional and impartial civil service the protection of law.

¹²⁵ Tung, Speech to LegCo on POAS, April 17, 2002.

¹²⁶ LegCo Paper CB(2)711/01-02(01) paragraph 18(a), April 23, 2002.

may well attend most of the LegCo meetings and public forums in order to “relieve the principal officials from ... certain LegCo duties, so that they can focus on their priority policy roles.”¹²⁷

In Westminster systems, permanent secretaries may appear before parliament to explain government policies but are not required to defend them, as that would be seen to contradict the principles of neutrality and accountability through the ministers.¹²⁸ An explanation describes what the policy is and how it works, whereas a policy defense requires justification of the rationale and the values behind the policy. The distinction may be hard for both the principal officials and the permanent secretaries to draw. The principal officials could regard defense of government policy as part of an explanation. Moreover, the permanent secretaries, who have played administrative-political roles, are used to defending policies. But having to publicly defend policies will make civil servants appear partisan. To protect the political neutrality of a permanent civil service, both the principal officials and civil service will need to further consider this issue.

Rebuilding Relations with the Civil Service

Scholar and Chairman of SynergyNet Anthony Cheung remarked, “The ministerial system introduced ostensibly to enhance accountability, has effectively relieved the civil servants of governing power. By bringing in ‘outsiders’ to help him lord over the mandarins who had proved to be troublesome during his first term, Chief Executive Tung Chee-hwa has staged a silent coup with Beijing’s blessing.”¹²⁹ Nevertheless, the Chief Executive and the new principal officials depend on the civil servants to help with policy formulation and implementation.

Civil servants have a litany of complaints. Senior civil servants, including some who are now principal officials, believed the Chief Executive had not adequately consulted them on the POAS. Many permanent secretaries and their deputies have complained they were not consulted about the last-minute rearrangement of the policy bureaus. Rank and file civil servants remain angry because they felt used as scapegoats to placate public demand to cut civil service pay earlier this year. The civil servants wanted to negotiate to reduce pay and resented the decision of top policy makers to use legislation. With about 70 percent of the civil service belonging to more than 200 staff associations or unions, a militant civil service could become a serious opposition force to the executive.¹³⁰

¹²⁷ Ibid.

¹²⁸ SynergyNet, *How to Take Governance Reform Forward? Accountability to Whom and How?*, June 2002. See also John P Burns, *Accountability and the Senior Civil Service in the HKSAR*, June 3, 2002 (paper delivered at the University of Hong Kong).

¹²⁹ Cheung, Anthony, “Guidelines needed to negotiate change,” *South China Morning Post*, July 20, 2002.

¹³⁰ There are approximately 184,000 civil servants in Hong Kong. The service had been downsized by 7 percent from about 198,000 in March 2000. More than 30,000 civil servants and their families took to the streets to protest on July 7, 2002 against the use of legislation to cut their pay. Thus, with the legislation passing the following week, relations remain tense today. Anthony Cheung provides a useful summary of

The government arranged a forum for more than 14,000 middle and senior ranking civil servants to help team building efforts.¹³¹ Over 1,000 senior officials attended a half-day gathering together with the principal officials in September to help rally the civil servants behind the political appointees.¹³²

the civil service pay cut saga in “Guidelines needed to negotiate change,” *South China Morning Post*, July 20, 2002.

¹³¹ The forum, entitled “Civil Management Forum – A World-class Government for Asia’s World City” was held on August 26-29, 2002.

¹³² The Symposium on Leadership Development for the Civil Service was held on the September 4, 2002.

CHAPTER 7: A “BEST PRACTICES” MINISTERIAL MODEL FOR HONG KONG

This section sets down a range of primary benchmarks in what could be termed a “Model Ministerial System.” By drawing on the experiences of other jurisdictions with ministerial systems, it is possible to put together a “best practices” model. This model provides one useful tool for observing, and adjusting the future operation of, the POAS.

Although Hong Kong’s new POAS is unique, it retains hallmarks of a full ministerial system. In particular, it comprises a group of avowedly professional politicians led by a chief minister who has stated unequivocally that his new set of principal officials are to be accountable to him. It is thus appropriate to set down a series of key expectations for what is customarily expected of a modern ministerial system. It is still entirely proper that the new system be open to, and subject to, benchmarking. Not all of these requirements can be applied directly to the new Hong Kong system because of the absence of any acceptable electoral accountability mechanism within the POAS. The majority of the provisos set out below, however, do (or can) operate without relying on a system of direct electoral accountability. Indeed, the lack of suitable electoral checks and balances suggests an even greater need than usual for establishing standards as a means by which to measure the POAS in operation.

Benchmarking Ministerial Systems

The following outline draws on a review of systems operating within both presidential and parliamentary frameworks. It summarizes best practices and operational principles from both. This inventory is not meant to be exhaustive. It does seek to identify, in precise form, certain key requirements for choosing, monitoring and dismissing ministers in a transparent and effective way.

For a ministerial system to achieve good standing in terms of integrity, effectiveness and openness, the following requirements should be met:

- Ministers must satisfy key integrity, competence and suitability assessments.
- Ministers should be dismissed or resign from their portfolios for any serious mal-administration, fraud, negligence, conflict of interest, corrupt practice or breach of the ministerial Code of Conduct (see below). This requirement covers dismissal both for direct ministerial policy blunders and cases of significant operational or administrative failures within a department controlled by a minister.
- Ministers should be accountable or responsible to their superiors, peers in the legislature and ultimately to the voters or the people generally through a system of checks and balances.

- Most ministers will be the legal head of at least one government department, but ministers must not force the civil service to act in a corrupt or politically partisan manner.
- Decisions on any significant criminal prosecution should be made by an entity independent of the ministry and the police. As a general rule, the government should not pay for or underwrite, directly or indirectly, any civil action taken by a minister (for example, in defamation).
- Ministers should conduct themselves in their private capacity so as to provide a good example. Ministers should strive to avoid intemperate or scandalous behavior in their private lives. Ministers who fail to maintain such standards of general behavior may be judged as unfit to continue as a minister especially if their inferior general behavior seriously impedes their performance as a minister.
- All ministerial conduct, decisions and documentation must be subject to scrutiny by other political institutions and personnel, courts, tribunals, the media and the public generally. All ministers must make themselves available to answer questions about their performance as ministers to the appropriate scrutinizing bodies.
- Ministers must be candid and direct in responding to appropriate enquiries. They must, at all times, avoid deceitfulness in dealing with such enquiries.

Ministerial Code of Conduct

Many jurisdictions with ministerial systems have ministerial codes of conduct or practice.¹³³ Often these codes have been created in response to significant public outcry about failures by ministers to resign after misconduct or major policy failures. Governments have felt compelled to set down express standards of performance and behavior. Typically, they have done so in order to curb public outrage – and reduce the risk of possible electoral defeat.

Hong Kong chose to forego establishing a Code of Conduct or Practice for principal officials per se and instead relies upon an employment contract with the government. The HKSAR Government should consider instituting a ministerial Code of Conduct or Practice for the sake of good administration, transparency and accountability. Furthermore, the present General Circular, which also serves to spell out the relationship between the principal officials and the civil service, would be more suitable as a Code of Conduct for civil servants passed as legislation. Their respective standards of performance and behavior would be much clearer.

¹³³ Australia provides a case in point. The Code of Conduct or Practice set out in this section draws on the Ministerial Code applied to members of cabinet by the current government in Australia.

The principal purpose of a ministerial Code of Conduct or Practice is to prohibit any form of conduct by ministers that creates a conflict of interest between their ministerial duties or privileges and the private interests of ministers and their near family. The following list encapsulates certain primary requirements for a firm and effective ministerial Code of Conduct or Practice:

- A minister and his/her family should divest themselves of any shareholdings, business relationships, etc. that fall within the subject areas of the particular portfolio held by the minister;
- No minister should assist in any way in obtaining employment for any member of his/her family or friends within the government;
- A minister must not accept any fringe benefit as part of his/her ministerial position that is not part of his/her normal government employment package, nor shall he/she use his/her ministerial privileges unfairly for his/her own benefit or that of his/her family; and
- A minister and his/her near family must not profit or benefit in any improper way from his/her ministerial position after he/she ceases to be a minister.

The Code of Conduct or Practice should prohibit any discrimination based on a minister's religious, sexual or cultural preferences.

APPENDIX I: Chief Executive on the Principal Officials Accountability System

The following is the government translation of the address by Chief Executive, Tung Chee-hwa, at the Legislative Council on the introduction of the POAS delivered on April 17, 2002.

In the 2000 Policy Address, I proposed that we should examine the possibility of introducing a new Principal Officials Accountability System. In my 2001 Policy Address, I set out in greater detail the framework of the Accountability System being considered. In the last two years, we have listened closely to the views of the community through various channels. This includes attending a series of meetings with the Legislative Council and listening to the views of Honorable Members. We are heartened that the community have generally identified with the concept of introducing the Accountability System. I have decided to come in person to the Legislative Council to introduce to Honorable Members the plans of the HKSAR Government for introducing the Accountability System on July 1, 2002, and to seek Members' support for the associated expenditure and the resolution for the relevant legislation to be amended, so as to transfer relevant statutory powers and functions to the respective Directors of Bureaux under the Accountability System. Our hope is that the Accountability System can be implemented on schedule.

In the last two Policy Addresses, I have emphasized that the purpose of introducing the Accountability System is to enable Principal Officials of the HKSAR Government to assume responsibility for their policy portfolios, to share a common agenda and to have clear directions. We need to feel the pulse of the community, to understand community sentiments, and to strengthen liaison and communication with the Legislative Council, different sectors of the community and the general public. We need to improve the prioritizing of the Government's agenda and to improve overall policy coordination, so that we would be in a position to provide better services to the community and the general public.

Now let me set out the principal elements of the Accountability System.

Firstly, the upper echelon of the Government, including the Chief Secretary for Administration, Financial Secretary, Secretary for Justice and all Directors of Bureaux, will be covered by the Accountability System. These officials will no longer be civil servants, but will be appointed on contract terms as Principal Officials under the Accountability System. They may serve for a term of five years, but not exceeding that of the Chief Executive who nominates them. They will cover the respective portfolios assigned to them by the Chief Executive, oversee the work of associated departments, formulate policies, explain policy decisions, market policy proposals and gain the support of the Legislative Council and the public. They will be accountable to the Chief Executive for the success or failure of their policy initiatives. Under the leadership of the

Chief Executive, they will be accountable to the community. Where necessary, the Chief Executive may terminate their contracts.

Secondly, all Principal Officials under the Accountability System will be appointed to the Executive Council. This will strengthen the work of the Executive Council. The Principal Officials will participate directly in the Government's policy decision-making, in prioritizing the policy agenda, and in harmonizing the work, which straddles across different departments. In overall terms, governance will be improved; decision-making will be quickened; responses to the demands of the community and the needs of the public will be more direct. In accordance with the provisions of the Basic Law, the Executive Council may continue to include other community leaders and Members of the Legislative Council.

Thirdly, the remuneration of Principal Officials under the Accountability System is comparable to the packages currently applicable.

Fourthly, various Policy Bureaux will be combined to facilitate better deployment of resources and closer coordination of policy portfolios. Through this re-organization, the original sixteen Policy Bureaux will be revised to eleven. Including the three Secretaries of Departments, following the restructuring, there will be fourteen Principal Officials covered by the Accountability System. There are the Chief Secretary for Administration, Financial Secretary, Secretary for Justice, Secretary for Home Affairs, Secretary for Constitutional Affairs, Secretary for Housing, Planning and Lands, Secretary for Education, Secretary for the Environment, Health and Welfare, Secretary for Transport and Works, Secretary for Economic Development, Secretary for Commerce, Industry and Manpower, Secretary for Financial Affairs & the Treasury, Secretary for Security and Secretary for the Civil Service.

Fifthly, the terms and conditions of service of civil servants who presently fill the positions of Directors of Bureaux will remain unchanged. These positions will be re-titled Permanent Secretaries. Under the Accountability System, they will act as the interface between Directors of Bureaux and the civil service. Under the Direction of Bureaux, the Permanent Secretaries will be responsible for formulating and implementing policies, listening to the views of the public and the Legislative Council, explaining policies to these respective groups, responding to questions raised and gaining support from different quarters for Government policies.

In the process of formulating our proposals for the Accountability System, we realize that various concerns have been raised among certain quarters of the community – namely, that under the Accountability System power might be concentrated in the Chief Executive; that as there are Principal Officials and Permanent Secretaries under the Accountability System, this will result in unnecessary duplication; that the Accountability System will affect the stability, permanence, professionalism, political neutrality and the uncorrupt nature of the civil service. Let me take the opportunity to address these concerns.

Firstly, in implementing the Accountability System, will power be concentrated in the hands of the Chief Executive? We all know that the Basic Law has clear provisions governing the powers of the Chief Executive. The Basic Law provides that the Chief Executive is the head of the HKSAR Government. He leads the Government and the civil service. According to the Basic Law, the powers of the officials of the HKSAR Government originate from the Chief Executive. It is for the Chief Executive to determine how he should delegate his authority according to his policy agenda. As the Basic Law already conferred all necessary powers on the Chief Executive, there is no need for these powers to be strengthened by the new system; nor should such a question arise. In fact, in implementing the Accountability System, the Chief Executive will be devolving further his authority, not only to the three Secretaries of Departments, but also to the eleven Directors of Bureaux, so that in assuming responsibility for their respective portfolios, they will have the necessary authority to formulate, coordinate and implement policies.

In implementing the system, changes have to be made for each official under the Accountability System to be responsible for his policy portfolio. According to the design of the Accountability System, Directors of Bureaux are ultimately responsible to the Chief Executive. However, the Chief Executive will continue to rely on the Chief Secretary and Financial Secretary to oversee and coordinate the work of the respective policy bureaux and to coordinate work which straddles different policy bureaux. The two Secretaries of Departments will also coordinate the work in respect of important policy agendas and priorities determined by the Chief Executive and Executive Council. For example, in the last year or so, the Chief Secretary has covered Guangdong/Hong Kong cooperation and major infrastructure coordination. The Financial Secretary has covered discussions with the Mainland concerning the “Closer Economic Partnership Arrangement”. These modus operandi will not be changed following the introduction of the Accountability System. Furthermore, the role of the Executive Council will be enhanced. The Chief Secretary for Administration will chair various Executive Council Sub-committees. These Executive Council Sub-committees will replace the policy groups under the Chief Secretary’s Committee. Likewise, the Financial Secretary will chair relevant Executive Council Sub-committees.

As for the inter-relationship between the respective Policy Bureaux, this concerns primarily better use of resources and closer coordination between related policy portfolios. Some of the policy bureaux will be combined. For example, Housing, Planning and Lands will be amalgamated; Transport and Works will be placed under one roof. In putting forth this re-organization, we have reflected carefully on what would constitute the optimum organization. We cannot have, and do not have, a pre-set number of policy bureaux. We have to base our assessment on practical need and our cumulative experience in running the Government. The proposals we have put forth represent the most appropriate package.

To complement the introduction of the Accountability System, and to facilitate strengthening of the coordination role of the Executive Council in the decision-making process, the Executive Council Secretariat will be transferred to the Chief Executive’s

Office. The position of Information Coordinator will be re-titled as Director of the Chief Executive's Office. The Director will oversee the running of the Executive Council Secretariat and continue to perform the duties of the Information Coordinator.

In future, the Central Policy Unit will strengthen its capabilities in respect of conducting surveys on public opinion and long-term policy researches. This will ensure that in determining long-term policies, the HKSAR Government will have a broad base of support in the community.

All of these adjustments are directed to one single purpose i.e. to enable Principal Officials under the Accountability System to have a clear understanding of their respective responsibility, to strengthen solidarity, to enhance internal working relationship and to smoothen cooperation. The team will be able to set, coordinate and implement policies more effectively to meet the needs of the community and our expectations. They will also be able to meet proactively the challenges facing Hong Kong. I would also like to emphasize that the checks and balances designed for the HKSAR, including those in respect of the Chief Executive and the Executive Authorities, will not be diminished following the introduction of the Accountability System. The Legislative Council will continue to play the same important role in holding the Government accountable.

In introducing the Accountability System, one of the fundamental aims is to enable Principal Officials to be responsive to the calls of the community in assuming personal responsibility for the success or failure of their policies. This is to be done on the basis of maintaining the stability and continuity of the Civil Service. There are increasing calls for senior civil servants to be held accountable for policy failures, including calls for some of them to step down. However, due to the permanence of the current system and the established appointment and removal systems, the current civil service system is not compatible with these demands. Furthermore, following the return of Hong Kong to the motherland, and with the elected Chief Executive, a fully elected legislature, the increasingly progressive and aggressive media, Government operation and policy formulation are subject to increasing public scrutiny and pressure. In addition to expectation for Principal Officials to undertake their statutory duties, they have to cover political work within the community. However, the traditional roles which civil servants are expected to play under the current system run into conflict with the demands of the times.

If we adopt an approach of introducing the Accountability System within the civil service structure, we may achieve the ends of "accountability". But in the process, we may lose the permanent, professional and politically neutral civil service which has been established through years of experience and efforts. Thus, in these circumstances, it is appropriate for us to establish on top of the current civil service system a new Principal Officials Accountability System complemented by a suitable set of terms of employment.

Officials under the new Accountability System will not be civil servants. They will no longer be constrained by the civil service structure, and will be motivated by common

perspectives, shared policy goals and a collective mission. The Accountability System will provide them with the environment to strengthen the communication and liaison with the public in implementing policies. They will have more latitude in strengthening their relationship with the Legislative Council and the media, so that they will be able to gain broader public support and assistance for their initiatives.

As I mentioned just now, in introducing the Accountability System, we must ensure the continuity and the stability of the civil service structure. Not only do we have to achieve this, but through the introduction of the Accountability System, we must preserve and enhance the distinctive qualities of the civil service system i.e. permanence, professionalism, political neutrality, and an uncorrupt administration. These are the qualities which I, and the Principal Officials under the Accountability System in future, would wish to preserve. I also believe that the community takes the same view. We wish to preserve these qualities, because they are essential to the good governance of the HKSAR. With the Accountability System, it will be possible for civil servants to focus on their important role of implementing policies and putting forth proposals, in the face of increasing political pressures and the need to be involved in more political work. Furthermore, we have emphasized the importance of retaining the D8 rank of Permanent Secretary as part of the civil service system. We have taken this view in order to preserve the integrity of the civil service system, to guarantee that we will continue to attract the best and the brightest to the civil service career, and to ensure that our community will benefit from having such talent to provide public service of the highest quality. In order to highlight the importance which we place on the civil service, we have determined that the Secretary for the Civil Service should be selected from among senior civil servants. This will guarantee that this Principal Official will have a full understanding and appreciation of the civil service structure and system. As the Secretary for the Civil Service will be a member of the Executive Council, he will be able to represent the expectations and interests of the Civil Service in the process of policy-making at the highest level of the Government. At the same time, he can also convey the considerations taken into account in respect of major decisions to civil service colleagues. This will facilitate full and effective implementation of policies adopted.

There has been quite a lot of attention on the financial implications of introducing the Accountability System. The HKSAR Government intends to make the introduction of the Accountability System cost-neutral within one year through internal redeployment of savings. Furthermore, the remuneration of the Second Term Chief Executive will remain basically at the present level, and will be adjusted necessarily according to the current mechanism. It will not be increased due to the introduction of the Accountability System. I suggest that the remuneration package for the Third Term Chief Executive should be considered by an independent committee.

I believe that by introducing the Accountability System in responding to public demands, the HKSAR Government will bring about a new style of governance. There will be two prominent changes. Firstly, because officials under the Accountability System will have to assume responsibility, they will place importance on public opinion; they will make further efforts to gauge public sentiments; they will be proactive in facing the public, and

in gaining the trust and support from the public through delivering results. By so doing, the HKSAR Government will become more open, will be more prepared to listen to the voices of the people, will be more ready and able to respond to public demands in a timely fashion, and will build a government which has stronger public support.

Secondly, through the establishment of the top echelon of the HKSAR Government under the Accountability System, our objectives will be more clearly defined and our directions more firmly set. In pushing forward our policy initiatives, we will be deploying our resources more effectively; we will be more sensitive in setting priorities; the working relationship between the Executive and the Legislature will be strengthened. Accordingly, we will all be able to serve the public more efficiently and more responsibly.

APPENDIX II: New Structure of the Policy Bureaus under the POAS

Former Structure	Proposal Structure	Final Structure	Principal Official
Civil Service Bureau	Civil Service Bureau	Civil Service Bureau	Secretary for the Civil Service (Joseph Wong)
Trade, Industry and Commerce Bureau Information Technology and Broadcasting Bureau	Commerce, Industry and Manpower Bureau	Commerce, Industry and Technology Bureau	Secretary for Commerce, Industry and Technology (Henry Tang)*
Constitutional Affairs Bureau	Constitutional Affairs Bureau	Constitutional Affairs Bureau	Secretary for Constitutional Affairs (Stephen Lam)
	Economic Development Bureau	Economic Development and Labor Bureau	Secretary for Economic Development and Labor (Stephen Ip)
Education and Manpower Bureau	Education Bureau	Education and Manpower Bureau	Secretary for Education and Manpower (Arthur Li)*
Transport Bureau Environment and Food Bureau	Transport and Works Bureau	Environmental, Transport and Works Bureau	Secretary for Environment, Transport and Works (Sarah Liao) *
Works Bureau Health and Welfare Bureau	Environment, Health and Welfare Bureau	Health and Welfare Bureau	Secretary for Health and Welfare (E K Yeoh)
Financial Services Bureau	Financial Services Bureau and The	Financial Service Bureau and The	Secretary for Financial Services and

Finance Bureau	Treasury	Treasury	The Treasury (Frederick Ma) *
Home Affairs Bureau	Home Affairs Bureau	Home Affairs Bureau	Secretary for Home Affairs (Patrick Ho) *
Housing Bureau Planning and Lands Bureau	Housing, Planning and Lands Bureau	Housing, Planning and Lands Bureau	Secretary for Housing, Planning and Lands (Michael Suen)
Security Bureau	Security Bureau	Security Bureau	Secretary for Security (Regina Ip)

* Denotes recruitment from the private sector

Other Members of the Executive Council

The Chief Executive – Tung Chee-hwa

The Chief Secretary – Donald Tsang

The Financial Secretary – Antony Leung

The Secretary for Justice – Elsie Leung

Leung Chun-ying – Chairman of DTZ Debenham Tie Leung Global

James Tien – Legislator and Chairman, Liberal Party

Tang Yok-sing – Legislator and Chairman, Democratic Alliance for the Betterment of
Hong Kong

Cheng Yiu-tong – Legislator and President of the Hong Kong Federation of Trade
Unions

Andrew Liao – Senior Counsel.