

LEGISLATIVE COUNCIL BRIEF

**IMPLEMENTATION OF FURTHER DEVELOPMENT OF THE
POLITICAL APPOINTMENT SYSTEM**

INTRODUCTION

At the meeting of the Executive Council on 16 October 2007, the Council ADVISED and the Chief Executive ORDERED that the Report on Further Development of the Political Appointment System (“the Report”) at the **Annex** be issued to set out the following proposals after taking into account the views received from the public -

- (a) that one position of Under Secretary at the rank of Deputy Director of Bureau and one position of Political Assistant to Director of Bureau be created in each policy bureau (except the Civil Service Bureau (“CSB”)) (paragraph 4 refers);
- (b) that the main duties and responsibilities of the Deputy Directors of Bureau and Political Assistants to Directors of Bureau should be refined with a view to achieving a clearer delineation with the civil service (paragraph 5 refers);
- (c) that an Appointment Committee chaired by the Chief Executive (“CE”) and comprising the Secretaries of Department, the relevant Director of Bureau(s) and the Director of the CE’s Office (“DCEO”) should be set up to consider nominations and appointments of potential candidates to fill the new political positions (paragraph 7 refers);
- (d) that Deputy Directors of Bureau and Political Assistants to Directors of Bureau should be appointed and removed by the CE on the advice of the Appointment Committee (paragraph 8 refers);

- (e) that, in respect of remuneration package :
- (i) the level of remuneration for Deputy Directors of Bureau should be pitched at a range equivalent to 65% to 75% of the remuneration package for a Director of Bureau; and
 - (ii) the level of remuneration for Political Assistants to Directors of Bureau should be pitched at a range equivalent to 35% to 55% of the remuneration package for a Director of Bureau (paragraph 11 refers);
- (f) that one position each of Political Assistant to Chief Secretary for Administration and Political Assistant to Financial Secretary, both at the rank of Political Assistant to Director of Bureau, should be created; and that they should be subject to the same appointment, remuneration and other arrangements as Political Assistants to Directors of Bureau (paragraphs 16 and 17 refer);
- (g) that the “Code for Principal Officials under the Accountability System” should be adapted as the “Code for Officials under the Political Appointment System” and applied to all political appointees (paragraph 18 refers);
- (h) that persons filling the new positions, if selected from the body of serving civil servants, should leave the civil service before taking up political appointments (i.e. no “revolving door” arrangement) (paragraph 20 refers);
- (i) that all the positions of Administrative Assistant and Press Secretary in the private offices of the Principal Officials¹ should be filled by civil servants on posting (paragraph 22 refers); and
- (j) that given the unique role of the Secretary for the Civil Service (“SCS”), he should continue to retain his civil service status and not be obligated to resign or retire from the civil service before taking up the position, and that he may return to the civil service at his original rank after leaving the office of the SCS, if he has not yet reached the retirement age specified for civil servants (paragraph 23 refers).

¹ In this brief and the Report, unless otherwise specified, “Principal Officials” means Principal Officials under the Political Appointment System, i.e. the Secretaries of Department and the Directors of Bureau.

JUSTIFICATIONS

2. In July 2006, we issued the consultation document on the further development of the Political Appointment System proposing that two additional layers of political appointment positions be created, namely Deputy Directors of Bureau and Assistants to Directors of Bureau. The consultation period ended in November 2006.

Creation of new positions

3. Many respondents are supportive of the direction set out in the consultation document. More specifically, they share the need for further development of the Political Appointment System by creating two additional layers of political appointees, on the grounds that this will -

- (a) pave the way for further democratic development and facilitate the grooming of all-round talents in public affairs;
- (b) enable the Government to have a wider spectrum of expertise for better governance; and
- (c) enhance the political capacity of the governing team in the pursuit of people-based and effective governance.

Those holding different views generally refer to the adequacy of support from the civil service, the extra cost the proposals will incur, the absence of universal suffrage, and / or the adverse implications the proposal may bring to the civil service. We have set out the different arguments and our response in Chapter 3 of the Report.

4. In the light of the views received, we recommend proceeding with the proposal in the consultation document that one position of Deputy Director of Bureau² and one position of Political Assistant to Director of Bureau (“Political Assistant”)³ should be provided for each policy bureau, except the CSB (for reasons set out in paragraph 24 below).

2 “Deputy Director of Bureau” (副局長) is the rank title. The position title in English will be “Under Secretary”. Both the rank and position titles in Chinese will be “副局長”.

3 The title of “Political Assistant to Director of Bureau” (局長政治助理) will be used, instead of the previous title of “Assistant to Director of Bureau” (“局長助理”) so as to highlight the political nature of the work of occupants of these political positions, and to better differentiate their role from that of the existing Administrative Assistants to Directors of Bureau (“局長政務助理”).

Responsibilities of the new political appointees

5. There are many views which emphasise the importance of a clear delineation of roles and responsibilities between the political appointees and the civil service. We have refined the job description for the Deputy Directors of Bureau to underline the fact that they are expected to assist the Directors of Bureau in handling a full range of political responsibilities (including the handling of LegCo business). We have also strengthened the job description for the Political Assistants to make it clear that they will take up various aspects of political liaison work. The recommended job descriptions for the two new layers of political positions are set out in paragraphs 4.14 and 4.16 of the Report respectively.

Appointment mechanism

6. These politically appointed officials form part of the political team. The mechanism for their appointment should enable the CE, the Secretaries of Department and the relevant Director(s) of Bureau to take part in the deliberation and decision-making process. This is to ensure that an appointee does not only possess the right calibre and qualities required, but can also work well with the Principal Official whom he is to serve.

7. We recommend that the CE should chair an Appointment Committee to consider nominations and appointments of potential candidates to fill the new political positions, and assess and consider the suitability of these candidates for the positions at the two additional layers. The Appointment Committee will also give advice on the remuneration package recommended for individual appointees (see paragraph 14 below). The Appointment Committee will comprise the Secretaries of Department, the relevant Director(s) of Bureau, and the DCEO.

Appointment authority

8. The consultation document originally proposed that Deputy Directors of Bureau should be appointed and removed by the CE on the recommendation of the relevant Director of Bureau, whereas Political Assistants should be appointed and removed by the relevant Director of Bureau with the consent of the CE. Now that an Appointment Committee is proposed to be set up to consider nominations and

appointments of potential candidates to fill the new political positions, we recommend that all Deputy Directors of Bureau and Political Assistants should be appointed and removed by the CE on the advice of the Appointment Committee.

9. The term of appointment of the Deputy Directors of Bureau and Political Assistants, as stated in their employment contracts, will not exceed the term of office of the incumbent CE⁴.

10. The Deputy Directors of Bureau will be accountable to the CE through their respective Principal Officials. Like Principal Officials, they are political appointees and are expected to shoulder political responsibility for the success or failure of matters falling within their respective portfolios.

Remuneration package

11. The remuneration packages for political appointees are not linked to that of the civil service. The consultation document proposed to pitch the remuneration for the positions of Deputy Directors of Bureau and Political Assistants within a range equivalent to 65% to 75% and 35% to 50% respectively of the remuneration package for a Director of Bureau⁵. The above remuneration packages set out in the consultation document were broadly equivalent to the remuneration of a D4 to D6 civil servant on agreement terms with all allowances and end-of-contract gratuity encashed, and that of a senior professional to D2 civil servant on agreement terms with all allowances and end-of-contract gratuity encashed, respectively. According to the latest calculations, it is appropriate to pitch the remuneration for the positions of Political Assistants within a range equivalent to 35% to 55% of the remuneration package for a Director of Bureau.

4 Under Article 46 of the Basic Law, the term of office of the CE of the HKSAR shall be five years.

5 In accordance with the employment package approved by the Finance Committee of the Legislative Council in June 2002, the cash remuneration for each Director of Bureau is \$311,900 per month subject to adjustment according to the 2002 civil service pay cut (-4.42%) i.e. \$298,115 per month. In January 2003, pursuant to the then CE's announcement in the Policy Address, all Directors of Bureau voluntarily accepted a 10% reduction of their remuneration from April 2003 to share the hard times with the community. The 10% cut no longer applies for the new term of government from 1 July 2007. Accordingly, the approved cash remuneration for Director of Bureau is \$298,115 per month. This latter figure is adopted as the basis for calculating the remuneration for Deputy Directors of Bureau and Political Assistants.

12. Upon joining the Government, the Deputy Directors of Bureau and Political Assistants may be offered remuneration at the following points:

Deputy Directors of Bureau

- | | | | |
|--------------------------|-----|---|---|
| <input type="checkbox"/> | 65% | } | of the remuneration package for a
Director of Bureau |
| <input type="checkbox"/> | 70% | | |
| <input type="checkbox"/> | 75% | | |

Political Assistants

- | | | | |
|--------------------------|-----|---|---|
| <input type="checkbox"/> | 35% | } | of the remuneration package for a
Director of Bureau |
| <input type="checkbox"/> | 40% | | |
| <input type="checkbox"/> | 45% | | |
| <input type="checkbox"/> | 50% | | |
| <input type="checkbox"/> | 55% | | |

13. We need to ensure that public money is well spent, whilst offering a competitive remuneration package which can reflect the level of responsibility for these positions. We consider that the proposed ranges of remuneration are about right, and it is appropriate to set the remuneration at the respective ranges, so that the Government may offer remuneration commensurate with the experience of the candidates concerned.

14. The remuneration for individual appointees will be determined by the CE on the advice of the Appointment Committee, having regard to the recommendation of the Principal Official to whom these appointees will report. In the middle of each term of government, the remuneration for the Deputy Directors of Bureau and Political Assistants will be reviewed (“mid-term review”) and may be adjusted within the above-mentioned ranges⁶. The Appointment Committee will conduct the review and may recommend a revision to the CE for approval.

15. In addition to cash remuneration, the Deputy Directors of Bureau and Political Assistants should also be eligible for annual leave of 22 days per annum (subject to a maximum accumulation limit of 22 days), medical and dental benefits and Mandatory Provident Fund contribution by the Government, on the same basis as those provided to Principal Officials.

⁶ For the Deputy Directors of Bureau and Political Assistants serving the third term HKSAR Government, the mid-term review will take place around December 2009.

Private offices of the Secretaries of Department

16. We have indicated in the consultation document that we will take a view on the provision of additional support for the three Secretaries of Department. We recognise that there is a practical need to provide additional support for the Chief Secretary for Administration (“CS”) and the Financial Secretary (“FS”) for carrying out work with political content, and consider it appropriate to create one position each of Political Assistant to CS and Political Assistant to FS, at the rank of Political Assistant to Director of Bureau, to strengthen the support to them. However, we do not propose to create any political position under the Secretary for Justice, for whom the reinforcement of professional support would be more appropriate, given the nature of his portfolio.

17. The job description for the Political Assistants to CS / FS is set out in paragraph 6.04 of the Report. It has been drawn up based on the job description for Political Assistants to Directors of Bureau, with necessary modifications. The same appointment, remuneration and other arrangements as Political Assistants to Directors of Bureau, as set out in paragraphs 6 to 15 above, should apply to the Political Assistants to CS/FS.

Code for political appointees

18. Many views received are in support of subjecting the two new tiers of political appointees to a set of rules to prevent conflict of interests while in service and for a limited duration thereafter. In the light of the above, we recommend maintaining our proposal -

- (a) that the application of the Code should be extended to cover all politically appointed officials, including those at the rank of Deputy Director of Bureau and Political Assistant; and
- (b) that the “Code for Principal Officials under the Accountability System” should be adapted as the “Code for Officials under the Political Appointment System”, to reflect the broader coverage of officials governed by the Code after the expansion of the Political Appointment System.

The revised Code is at the Annex to the Report. Within one year after stepping down from office, politically appointed officials are required to seek the advice of the “Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials” before

commencing any employment, becoming a director or a partner in any business or profession or starting any business or profession on his own account or with others.

19. As stated in the consultation document and the Report, the Deputy Directors of Bureau and Political Assistants should abide by the provisions in the Prevention of Bribery Ordinance (Cap.201) and the Official Secrets Ordinance (Cap.521) applicable to “prescribed officer” and “public servant” respectively. Integrity checking and medical examination on prospective candidates will be conducted before they are nominated for appointment.

Arrangement for appointees who are ex-civil servants

20. We continue to take the view that there should be no “revolving door” arrangement, in order to ensure that we maintain an apolitical and professional civil service. Otherwise, the distinction between political appointees and civil servants may become blurred over the years, and this would affect the real or perceived political neutrality of the civil service in the longer run.

21. Since no “revolving door” arrangement will be provided, it would mean that persons filling the new positions, if selected from the body of serving civil servants, should leave the civil service before taking up political appointments⁷. The same arrangements for Principal Officials in respect of their pension relating to their civil service career will apply.

Administrative Assistant and Press Secretary posts

22. Upon further consideration, we recommend the current Administrative Assistant and Press Secretary posts in the private offices of the Principal Officials should both be filled by civil servants on posting. This has been our proposal in the consultation document for the Administrative Assistant posts, but we now recommend the same for the Press Secretary posts because, similar to the Administrative Assistants, the Press Secretaries will also need to have good knowledge about the Government operations and machinery for effective delivery of their work.

⁷ In other words, a political appointee who is an ex-civil servant would not be permitted to return to his former civil service rank and position automatically upon completion or termination of his political appointment. Should he wish to serve in the civil service again, he would have to go through an open and competitive recruitment process in the usual way.

Position of the Secretary for the Civil Service

23. Since the implementation of the Political Appointment System, the arrangement that the SCS should be drawn from the serving body of civil servants with a “revolving door” has been generally well accepted by civil servants and the wider public as necessary in view of the unique position of the SCS in comparison with other Directors of Bureau. The arrangement helps maintain a form of linkage between the holder of the SCS position and the civil service. We recommend that, given the unique role of the SCS, the above arrangement should be maintained⁸.

24. Unlike the other Directors of Bureau, during the temporary absence of the SCS, the Permanent Secretary for the Civil Service will exercise the powers and perform the duties of the SCS. This reflects the unique arrangement for the position of the SCS, having regard to the nature of his work. In view of this and the fact that the bulk of the work of the CSB relates to the management of the civil service, we do not consider it necessary for the CSB to have a Deputy Director of Bureau and a Political Assistant to assist the SCS as in the case for other Directors of Bureau.

WAY FORWARD

Approval from Legislative Council for creation of positions

25. Following the publication of the report, we will make arrangements to brief the LegCo Panel on Constitutional Affairs at the earliest opportunity. We will seek the approval of the LegCo Finance Committee for the creation of the proposed positions of Deputy Directors of Bureau and Political Assistants. If necessary, these positions will be filled in phases. It is important that these new positions be filled by individuals of the right calibre. The new positions will not be created at the expense of the civil service establishment.

⁸ In other words, he should continue to retain his civil service status and not be obligated to resign or retire from the civil service before taking up the SCS position; he may return to the civil service at his original rank after leaving the office of the SCS if he has not yet reached the retirement age specified for civil servants.

Requirements for legislative amendments

26. Section 62(1) of the Interpretation and General Clauses Ordinance (Cap. 1) provides, inter alia, that where any Ordinance confers a statutory power or obligation on the CE⁹, the exercise of such power or the performance of such duty may be signified under the hand of any public officer specified in Schedule 6. Section 62(3) provides that the CE in Council may, by order published in the Gazette, amend Schedule 6. With the creation of the new positions, we propose to amend the list of public officers specified in Schedule 6 to Cap. 1 to include the Under Secretaries in the various bureaux. We will seek the approval of CE in Council to make the Order as a consequential legislative amendment, after the proposed positions have been approved.

IMPLICATIONS OF THE PROPOSAL

27. Financial implications: The proposal will entail creation of 24 additional political positions, comprising 11 positions at the rank of Deputy Director of Bureau and 13 at the rank of Political Assistant. The full year additional financial implications will range from \$50 million to \$65 million per annum. This includes the costs for the civil service complement providing support to the officials concerned¹⁰. The exact amount will depend on the number of political positions filled and the actual remuneration offered to individual political appointees within the range proposed.

28. Civil service implications: It is possible that some serving civil servants may be selected and agree to join the political tier as Deputy Directors of Bureau or Political Assistants.

29. Basic Law and other implications: The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no economic, productivity, environmental or sustainability implications.

9 Such powers and duties may include, for example, the making of any subsidiary legislation or appointment, issuing of any direction and order, authorising any thing or matter to be done, granting any exemption, remitting any fee or penalty, exercising any other power or performing any other duty.

10 To provide support to the new tiers of politically appointed officials, each Deputy Director of Bureau will be supported by a Senior Personal Secretary. Departmental transport for Deputy Directors of Bureau, and secretarial support for Political Assistants, will be provided from within resources currently available to relevant policy bureaux / offices.

PUBLIC CONSULTATION

30. We conducted a four-month consultation between July and November 2006, during which we received over 200 public submissions. We briefed the LegCo Panel on Constitutional Affairs and members of district focus groups on the proposals, and listened to their views. We also exchanged views with members of the Committee on Governance and Political Development of the Commission on Strategic Development, and attended seminars and dedicated sessions on the subject organised by different bodies. The key views received are set out in Chapter 3 of the Report, and have been taken into account when we map out the recommendation on the way forward.

PUBLICITY

31. A press conference will be arranged upon the publication of the Report. A press release will be issued and a spokesman will be made available to answer enquiries. Copies of the Report will be made available to the public through the District Offices and the website. Posters will be displayed to remind the public of the availability of the Report.

ENQUIRIES

32. For enquiries about the brief, please contact Mr Gary POON, Principal Assistant Secretary (Constitutional and Mainland Affairs), at 2810 2852.

Constitutional and Mainland Affairs Bureau
October 2007