
CHAPTER 6

THE ACCOUNTABILITY SYSTEM AND ITS IMPLICATIONS

INTRODUCTION

6.1 This chapter describes, as best we can, the new accountability system introduced on 1 July 2002. We also try to discuss its implications on the three-tiered regulatory framework. We have, however, to admit that it has not been possible to conduct very meaningful or full research. Such an exercise will most likely fall completely outside our Terms of Reference however benevolently construed. We also acknowledge that neither of us claim to be political scientists or theorists on constitutional structures.

ACCOUNTABILITY SYSTEM

6.2 A new accountability system was introduced with effect from 1 July 2002, to tie in with the Chief Executive's second term of office. As the Administration explained, the objectives of the system are to: strengthen the accountability of principal officials; ensure that the Government can better respond to the needs of the community; enhance co-ordination in policy formulation; strengthen the cooperation between the Executive and the Legislature; ensure effective implementation of policies and provide quality services to the public⁴⁵. Under the accountability system, there are three Secretaries of Departments and 11 Directors of Bureau.

ROLE OF THE FINANCIAL SECRETARY

6.3 The Financial Secretary (FS) is one of the three Secretaries of Department. He assists the Chief Executive (CE) in supervising relevant policy bureaux and in ensuring harmonization in policy formulation and implementation in the financial, economic and employment areas. He also covers specific priority areas of the CE's policy agenda. The FS exercises

⁴⁵ See Legislative Council Paper "Accountability System for Principal Officials" presented by the Constitutional Affairs Bureau on 17 April 2002 and re-iterated in Items for Establishment Subcommittee of the Finance Committee EC(2002-03)2 also issued by the Constitutional Affairs Bureau for discussion on 6 June 2002.

statutory functions, for example, in respect of public finance and monetary affairs. He is responsible for the Government budget in accordance with the CE's policy area. Included in his job description are the duties to "explain Government policies to and answer questions from the Legislative Council, members of the public and the media".

6.4 In relation to the financial services sector, the FS has a wide range of statutory powers to appoint members to key boards, appoint inspectors, make rules, and approve budgets and business plans of regulators. At the same time, the FS has the duty to consult specified committees before exercising certain powers. Some of his statutory powers and duties are set out at **Annex 6.1**.

ROLE OF THE SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

6.5 The Secretary for Financial Services and the Treasury (the Secretary) is one of the eleven Directors of Bureau. Like the FS, the Secretary is not a civil servant. He is the head of the Financial Services and the Treasury Bureau (the Bureau), and is responsible for determining policy objectives and goals, how they are initiated, formulated and implemented and how effective they are in practice. His list of duties is wide. They include:-

- (a) gauging public opinion and responding to the needs of the community;
- (b) setting policy objectives and goals, and developing, formulating and shaping policies;
- (c) exercising the statutory functions vested in him by law; and
- (d) overseeing the delivery of services by the executive departments under his purview and ensuring the effective implementation and successful outcome of policies.

6.6 The Secretary has inherited some of the statutory powers previously vested in the Secretary for Financial Services. Such powers include permitting the disclosure of classified information by the SFC,

varying the amount of the special levy payable to the Futures and Unified Exchanges and appointment of members of the Securities and Futures Appeals Tribunal. In addition to his own statutory powers, the Secretary provides support and advice to the FS in exercising a range of statutory powers vested in the latter.

IMPLICATIONS OF THE ACCOUNTABILITY SYSTEM ON THE THREE-TIERED REGULATORY FRAMEWORK

6.7 There is nothing that we have been able to consult which indicates that the Administration intends to change the principles and practices of the existing regulatory regime as a result of the newly introduced accountability system. That notwithstanding, the emphasis on the accountability of principal officials may have heightened the public expectation about the role and responsibilities of the Government. Two points are noteworthy.

Statutory Powers and Functions of the FS and the Secretary

6.8 As a result of a recent amendment to the Interpretation and General Clauses Ordinance (Cap. 1) which took effect on 1 July 2002, the definition of “Financial Secretary” includes “Secretary for Financial Services and the Treasury” unless otherwise specified in the relevant legislation or unless there is contrary intention in law. Hitherto, the definition of the FS included “the Secretary for the Treasury”. The recent amendment to include the Secretary appears to have been a consequential amendment to the nomenclature under the new accountability system. Statutory powers and duties currently vested in the FS can, thus, unless a contrary intention has been expressed, or unless otherwise specified in the relevant legislation, be exercised by the Secretary.

6.9 We have sought clarification from the Secretary for Constitutional Affairs, who advised that:-

- (a) As a matter of general policy, it is intended that only those statutory powers and functions relating to public finance, for example, those powers and functions under the Public Finance Ordinance (Cap. 2) which were previously exercised by the Secretary for the Treasury should now be exercised by the Secretary for the Financial Services and Treasury. In taking

over the responsibility of the former Secretary for Financial Services, the Secretary has not been invited to exercise any of the statutory powers and functions of the FS in respect of the financial services policy area. In exercising the statutory powers and functions relating to public finance, the standing arrangement is that the Secretary is not required to report to or inform the FS unless the Secretary considers it appropriate to do so. That said, the Secretary is accountable to the FS in exercising such statutory powers and functions in the sense that the FS assists the CE in supervising the Bureau and the Secretary.

- (b) The Bureau is conducting a review of the relevant legislative provisions and expects to complete the review before the end of the year. The intention is to formalize the pre-existing arrangements for the exercise of these powers and functions between the FS and the Secretary under the new accountability system.

Responsibility over Executive Departments

6.10 As one of the Secretary's duty is to oversee the delivery of services by the executive departments under his purview and to ensure the effective implementation and successful outcome of policies, a question has been raised as to whether the SFC or the HKEx are executive departments under his purview, and whether the Secretary should be accountable for the effective implementation and successful outcome of their policies.

6.11 On this point, the Secretary for Constitutional Affairs advised that:-

- (a) Generally when the Government refers to "executive department" as it does in the context of the accountability system, it means Government departments for which a Director of Bureau has responsibility. It does not include statutory agencies within the purview of the Director of Bureau.
- (b) Specifically in the context of the Secretary, the term "executive department" is not intended to include the SFC and the HKEx.

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- (c) Directors of Bureau are accountable for matters falling within their policy portfolios and in extreme cases, they may have to step down for serious policy failures. They are responsible for all aspects of their portfolios. They are responsible for overseeing the work of the executive departments falling within the purview of their respective portfolios and the delivery of services by such executive departments. They are thus accountable for such executive departments. In the case of statutory agencies within the purview of the relevant Directors of Bureau, due regard would have to be given to the relevant statutory provisions. Such statutory agencies may be required under the statute under which they are established to act independently in certain aspects. In general, subject to the relevant legislative provision, statutory agencies enjoy a high degree of autonomy in their day-to-day operations, while the Government's policy objectives are determined by the relevant Directors of Bureau.

OBSERVATION

6.12 We agree that under the three-tiered structure, neither the SFC nor the HKEx can in any wise be considered executive departments under the purview of the Secretary. The departments contemplated are clearly those within the Government and not institutions outside the civil service, especially in the case of the SFC the rationale of which is to be independent of the Government. The HKEx is, of course, a publicly listed company governed by its own board of directors and other executives. This point will be discussed in greater detail in the context of the role of the FS and the Secretary in Chapter 12.