

**Subcommittee to Study the Proposed
Accountability System for Principal Officials and Related issues**

**Resolution under Section 54A of the
Interpretation and General Clauses Ordinance**

Transfer of Statutory Functions

Introduction

This paper sets out the legislative amendments to be introduced to effect the necessary transfer of statutory functions arising from the reorganization of certain bureaux.

Background

2. The implementation of the accountability system will be accompanied by the reorganization of a number of policy bureaux. The reorganization will involve a change in the public officers who are to exercise the relevant statutory functions. Legislative amendments are required to transfer relevant statutory functions to the bureau secretaries who will take charge of the relevant re-organized policy bureaux following the introduction of the accountability system.

The Resolution

3. Pursuant to section 54A¹ of the Interpretation and General Clauses Ordinance (Cap. 1), the Legislative Council may by resolution provide for the transfer of statutory functions vested in one public officer to another public officer.

Transfer of statutory functions

4. The Resolution provides that, with effect from 1 July 2002,

¹ Section 54A(1) of Cap. 1 provides that,
“The Legislative Council may by resolution provide for the transfer to any public officer of any functions exercisable by virtue of any Ordinance by another public officer.”

the functions currently exercisable by each relevant bureau secretary by virtue of the ordinances specified in the relevant Schedule to the Resolution be transferred to the relevant bureau secretary who will take charge of the relevant policy responsibilities following the reorganization of policy bureaux. The statutory functions (including powers and duties) to be transferred include the following: -

- (a) power to amend schedules to the ordinances and make regulations, orders, rules, technical memoranda and codes of practice etc.;
- (b) power to appoint the commencement date for ordinances or regulations;
- (c) power to nominate persons for appointment, or to appoint members, to boards, committees and panels set up for purposes such as handling appeals and conducting disciplinary investigations;
- (d) power to issue licences and orders and to approve applications;
- (e) power, functions and duties relating to the handling of appeals, objections and claims for compensation;
- (f) power, functions and duties relating to the preparation, approval and publication of forms, plans and schemes;
- (g) power, functions and duties relating to the monitoring of the operation of statutory and public bodies as well as the administration of such bodies;
- (h) power to enter and inspect, or to authorize public officers to enter and inspect, places for the purposes of carrying out duties under the ordinances; and
- (i) power to determine rates of remuneration, payments, fees and charges.

Textual amendments

5. To give full effect to the Resolution, incidental, consequential and supplemental amendments, as appropriate, to the relevant Ordinances are also provided for in the Resolution. Generally speaking, textual amendments to the relevant Ordinances can be categorized into the following: -

- (a) deleting references to the present bureau secretaries in the relevant provisions and substituting references to the relevant bureau secretaries of the reorganized bureaux in both the English and Chinese texts (example at Annex A);
- (b) for ordinances where a definition of “Secretary” appears in only in the English text, a corresponding definition will be added to the Chinese text (example at Annex B);
- (c) for ordinances referred to in (b), the full title of the relevant bureau secretary (i.e. XXXX 局長) in the Chinese text will be deleted and substituted by references to “局長” (example at Annex C). In these cases, the provisions specified in the Schedule in relation to the relevant ordinance refer to those in the Chinese text only.

6. There are two other types of textual amendments which warrant attention. First, in ordinances where “Secretary” is defined as the relevant bureau secretary, the full title of the relevant bureau secretary may still appear in certain provisions of the ordinances as a matter of drafting convention. Most of such provisions relate to the power of the bureau secretary to appoint a commencement date for an ordinance or a regulation, or the power to amend a schedule to an ordinance. For these provisions, the full title of the relevant bureau secretaries will be replaced by the full title of the bureau secretaries of the reorganized bureaux.

7. Second, references to bureau secretaries which are historical in nature (i.e. the relevant functions had already been exercised by the relevant bureau secretaries) need not be amended and have therefore not been included in the Resolution. An exception is historical reference

found in ordinances where the definition of “Secretary” is provided for. For these provisions, we will replace the reference to “Secretary” with the reference to the existing full title of the relevant bureau secretary so as to avoid any confusion on the meaning of “Secretary” in the historical references in these ordinances.

The present draft Resolution

8. The present draft of the Resolution seeks to cover all legislation enacted on or before 12 April 2002. The draft will need to be amended in case any provision that requires amendment is found to be missing, or where any legislation which is enacted after 12 April 2002 contains references to existing bureau secretaries that should be amended under this exercise. We will deal with these amendments before the Resolution is formally introduced into the Legislative Council.

Advice Sought

9. Members are invited to study the draft Resolution and to report their findings to the House Committee as soon as practicable.

Constitutional Affairs Bureau
May 2002

如想參閱此文件，請到立法會圖書館查詢。

If you wish to read this document, please make enquiry at Legco Library.

**Subcommittee to Study the Proposed
Accountability System for Principal Officials and Related Issues**

**Resolution Under Section 54A of the
Interpretation and General Clauses Ordinance (Cap. 1)**

**Transfer of Statutory Functions
from Secretary for Commerce and Industry
to Secretary for Commerce, Industry and Manpower**

Introduction

This paper sets out the transfer of statutory functions currently exercisable by the Secretary for Commerce and Industry to the Secretary for Commerce, Industry and Manpower with effect from 1 July 2002.

The Resolution

2. The introduction of the accountability system will be accompanied by the reorganization of a number of policy bureaux. As a result, the Secretary for Commerce, Industry and Manpower will be responsible for matters relating to commerce, industry and manpower. The relevant statutory functions currently vested in the Secretary for Education and Manpower and the Secretary for Commerce and Industry will be transferred to the Secretary for Commerce, Industry and Manpower.

3. Paragraph 1(a) of the draft Resolution provides that statutory functions currently exercisable by the Secretary for Commerce and Industry by virtue of the ordinances specified in column 2 of Schedule 1 to the Resolution be transferred to the Secretary for Commerce, Industry and Manpower. To give full effect to the Resolution, incidental, consequential and supplemental amendments, as appropriate, are introduced. Such amendments are provided for in paragraph 1(b) and

Schedule 1 of the draft Resolution. Most of the amendments are to replace references to “Secretary for Commerce and Industry” in the relevant ordinances with references to “Secretary for Commerce, Industry and Manpower”. Paragraph 1 and Schedule 1 of the draft Resolution are attached at Annexes A and B respectively.

4. A summary of the major statutory functions of the Secretary for Commerce and Industry under existing legislation and the textual amendments to the relevant ordinances are attached as Annex C.

Advice Sought

5. Members are invited to consider paragraph 1 and Schedule 1 of the draft Resolution.

Constitutional Affairs Bureau
May 2002

**Statutory functions presently exercisable by Secretary for Commerce and Industry (SCI)
to be transferred to Secretary for Commerce, Industry and Manpower (SCIM)**

The Resolution	Cap	Description	Textual Amendments Provided for in the Resolution
Item 1 of Schedule 1	60 Import and Export Ordinance	<p>This ordinance provides for the regulation and control of the import and export of articles into or from Hong Kong, and the handling and carriage of articles within Hong Kong.</p> <p>Major function to be transferred from SCI to SCIM is:</p> <ul style="list-style-type: none"> • power to amend Schedule 2 and 3 	<ul style="list-style-type: none"> • Provisions containing references to “Secretary for Commerce and Industry/工商局局长” and/or “the Secretary/局长” are reproduced at Appendix 1. • Provisions requiring amendments have been marked-up. The amendments are as follows: <ul style="list-style-type: none"> - English text The relevant provision is amended by repealing “Secretary for Commerce and Industry” and substituting “Secretary for Commerce, Industry and Manpower”. - Chinese text The relevant provision is amended by repealing “工商局局长” and substituting “工商及人力资源局局长”.

The Resolution	Cap	Description	Textual Amendments Provided for in the Resolution
Item 2 of Schedule 1	109 Dutiable Commodities Ordinance	<p>This ordinance amends the law relating to the taxation and control of liquors, tobacco, hydrocarbon oil, methyl alcohol and other substances; and provides for the licensing of certain dealings in liquors.</p> <p>Major function to be transferred from SCI to SCIM is:</p> <ul style="list-style-type: none"> • power to amend Schedule 1A and 1B 	<ul style="list-style-type: none"> • Provisions containing references to “Secretary for Commerce and Industry/工商局局长” and/or “the Secretary/局长” are reproduced at Appendix 2. • Provisions requiring amendments have been marked-up. The amendments are as follows: <ul style="list-style-type: none"> - English text The relevant provision is amended by repealing “Secretary for Commerce and Industry” and substituting “Secretary for Commerce, Industry and Manpower”. - Chinese text The relevant provision is amended by repealing “工商局局长” and substituting “工商及人力资源局局长”.
Item 3 of Schedule 1	440 Bills of Lading and Analogous Shipping Documents Ordinance	<p>This ordinance replaces the Bills of Lading Ordinance with new provisions with respect to bills of lading and certain other shipping documents.</p> <p>Major functions to be transferred from SCI to SCIM are:</p> <ul style="list-style-type: none"> • power to make provision, by way of regulation, for the application of the Ordinance to cases involving transactions effected by a telecommunications system or any other information technology • to determine modifications to be made, by way of regulation, in connection with the application of the Ordinance 	<ul style="list-style-type: none"> • Provisions containing references to “Secretary for Commerce and Industry/工商局局长” and/or “the Secretary/局长” are reproduced at Appendix 3. • Provisions requiring amendments have been marked-up. The amendments are as follows: <ul style="list-style-type: none"> - English text The relevant provisions are amended by repealing “Secretary for Commerce and Industry” and substituting “Secretary for Commerce, Industry and Manpower”.

The Resolution	Cap	Description	Textual Amendments Provided for in the Resolution
			<p>- Chinese text</p> <p>The relevant provisions are amended by repealing “工商局局长” and substituting “工商及人力资源局局长”.</p>
Item 4 of Schedule 1	528 Copyright Ordinance	<p>This ordinance restates the law of copyright, with amendments; makes provision as to the rights of performers and others in performances; makes provision about devices designed to circumvent copy-protection of works, rights management information and the fraudulent reception of transmissions.</p> <p>Major functions to be transferred from SCI to SCIM are:</p> <ul style="list-style-type: none"> • power to prescribe conditions and to specify libraries or archives • power to prescribe conditions and designate bodies for song recording • power to designate bodies for provision of sub-titled copies of broadcast or cable programme • power to designate broadcast or cable programme for recording for archival purposes • power to prescribe Copyright Registers by way of regulation • power to prescribe fees for the application for registration and for renewal of registration and to provide for the better carrying into effect of this registration system • power to determine remuneration and allowances for members of the Copyright Tribunal • power to designate bodies for protection and enforcement of copyright in a certain country, territory or area 	<ul style="list-style-type: none"> • Provisions containing references to “Secretary for Commerce and Industry/工商局局长” and/or “the Secretary/局长” are reproduced at Appendix 4. • Provisions requiring amendments have been marked-up. The amendments are as follows: <ul style="list-style-type: none"> - English text The relevant provisions are amended by repealing “Secretary for Commerce and Industry” and substituting “Secretary for Commerce, Industry and Manpower”. - Chinese text The relevant provisions are amended by repealing “工商局局长” and substituting “工商及人力资源局局长”.

The Resolution	Cap	Description	Textual Amendments Provided for in the Resolution
Item 5 of Schedule 1	544 Prevention of Copyright Piracy Ordinance	<p>This ordinance makes further provision for the prevention of copyright piracy.</p> <p>Major functions to be transferred from SCI to SCIM are:</p> <ul style="list-style-type: none"> • power to make regulations • power to amend Schedule 1 and 2 	<ul style="list-style-type: none"> • Provisions containing references to “Secretary for Commerce and Industry/工商局局长” and/or “the Secretary/局长” are reproduced at Appendix 5. • Provisions requiring amendments have been marked-up. The amendments are as follows: <ul style="list-style-type: none"> - English text The relevant provisions are amended by repealing “Secretary for Commerce and Industry” and substituting “Secretary for Commerce, Industry and Manpower”. - Chinese text The relevant provisions are amended by repealing “工商局局长” and substituting “工商及人力资源局局长”.

The Resolution	Cap	Description	Textual Amendments Provided for in the Resolution
Item 6 of Schedule 1	559 Trade Marks Ordinance	<p>This ordinance makes new provision in respect of the registration of trade marks and provides for connected matters.</p> <p>Major function to be transferred from SCI to SCIM is:</p> <ul style="list-style-type: none"> • power to appoint a day on which this Ordinance will come into operation 	<ul style="list-style-type: none"> • Provisions containing references to “Secretary for Commerce and Industry/工商局局长” and/or “the Secretary/局长” are reproduced at Appendix 6. • Provisions requiring amendments have been marked-up. The amendments are as follows: <ul style="list-style-type: none"> - English text The relevant provision is amended by repealing “Secretary for Commerce and Industry” and substituting “Secretary for Commerce, Industry and Manpower”. - Chinese text The relevant provision is amended by repealing “工商局局长” and substituting “工商及人力资源局局长”.

The Resolution	Cap	Description	Textual Amendments Provided for in the Resolution
Item 7 of Schedule 1	568 Copyright (Suspension of Amendments) Ordinance 2001	<p>This ordinance provides for the suspension of the operation of certain amendments to the Copyright Ordinance effected by the Intellectual Property (Miscellaneous Amendments) Ordinance 2000.</p> <p>Major function to be transferred from SCI to SCIM is:</p> <ul style="list-style-type: none"> • power to amend the date (31 July 2002 at present) on which section 2 of this Ordinance, relating to suspension of amendments, shall cease to have effect 	<ul style="list-style-type: none"> • Provisions containing references to “Secretary for Commerce and Industry/工商局局长” and/or “the Secretary/局长” are reproduced at Appendix 7. • Provisions requiring amendments have been marked-up. The amendments are as follows: <ul style="list-style-type: none"> - English text The relevant provision is amended by repealing “Secretary for Commerce and Industry” and substituting “Secretary for Commerce, Industry and Manpower”. - Chinese text The relevant provision is amended by repealing “工商局局长” and substituting “工商及人力资源局局长”.

The Resolution	Cap	Description	Textual Amendments Provided for in the Resolution
Item 8 of Schedule 1	1114 Hong Kong Trade Development Council Ordinance	<p>This ordinance provides for the establishment of the Hong Kong Trade Development Council, defines its powers and functions and provides for matters connected therewith or incidental thereto.</p> <p>Major function to be transferred from SCI to SCIM is:</p> <ul style="list-style-type: none"> • function to serve as an ex-official member of the Council 	<ul style="list-style-type: none"> • Provisions containing references to “Secretary for Commerce and Industry/工商局局长” and/or “the Secretary/局长” are reproduced at Appendix 8. • Provisions requiring amendments have been marked-up. The amendments are as follows: <ul style="list-style-type: none"> - English text The relevant provision is amended by repealing “Secretary for Commerce and Industry” and substituting “Secretary for Commerce, Industry and Manpower”. - Chinese text The relevant provision is amended by repealing “工商局局长” and substituting “工商及人力资源局局长”.

The Resolution	Cap	Description	Textual Amendments Provided for in the Resolution
Item 9 of Schedule 1	2 of 2001 Intellectual Property (Miscellaneous Amendments) Ordinance 2001	<p>This ordinance amends the Patents Ordinance and the Registered Designs Ordinance.</p> <p>Major function to be transferred from SCI to SCIM is:</p> <ul style="list-style-type: none"> • power to appoint a day on which this ordinance will come into operation 	<ul style="list-style-type: none"> • Provisions containing references to “Secretary for Commerce and Industry/工商局局长” and/or “the Secretary/局长” are reproduced at Appendix 9. • Provisions requiring amendments have been marked-up. The amendments are as follows: <ul style="list-style-type: none"> - English text The relevant provision is amended by repealing “Secretary for Commerce and Industry” and substituting “Secretary for Commerce, Industry and Manpower”. - Chinese text The relevant provision is amended by repealing “工商局局长” and substituting “工商及人力资源局局长”.