

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

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

Introduction

This paper seeks to explain why the Resolution under section 54A of Interpretation and General Clauses Ordinance (Cap. 1) is the appropriate legislative vehicle for effecting the necessary transfer of statutory functions arising from the implementation of the accountability system.

Background

2. At the House Committee meeting on 19 April 2002 and previous Subcommittee meetings, members asked the Administration to explain why the Resolution under section 54A of Cap. 1 is the proper and appropriate means to effect the implementation of the accountability system. This paper seeks to consolidate our responses on this matter given at previous meetings.

Reorganization of bureaux

3. The implementation of the accountability system will be accompanied by the reorganization of a number of policy bureaux. As explained in the paper on “The Constitutionality of the Accountability System”, this re-organization is consistent with the Basic Law, which does not specify the number, functions or names of policy bureaux. Neither does it require that the structure of the government should remain unchanged for 50 years.

4. Generally speaking, re-organization of government structure does not require legislation. It can be effected administratively. This is because the structure of the government is not provided for in either the

Basic Law or any local legislation. There is no provision in the Basic Law which requires that the government structure shall be prescribed by law. Similarly, the government structure is not set out in any local legislation. Previous re-organizations of government structure, both before and after Reunification, were achieved administratively.

Resolution under section 54A of Cap. 1

5. The Resolution under section 54A is not the legislation to provide for the re-organization of bureaux. The Resolution is consequential to the re-organization.

6. The re-organization of bureaux will involve a change in the public officers who are to exercise the relevant statutory functions. Legislative amendments are required to transfer relevant statutory power to the principal officials in charge of the relevant reorganized policy bureaux. A resolution under section 54A of Cap. 1 is the appropriate form of legislation to achieve this purpose.

7. Section 54A of Cap. 1 was enacted in 1975 and has been used on a number of occasions in the past to transfer statutory functions from a public officer to another public officer consequential to a re-organization of the government structure. The use of a resolution under section 54A of Cap. 1 for this purpose is therefore entirely consistent with past practice.

8. As a matter of legal policy, it is proper to achieve a legislative amendment by subsidiary legislation rather than primary legislation if this can be lawfully done. The use of the Resolution under section 54A of Cap. 1 in this particular case is fully in line with our established policy on legislation.

9. Members have also asked if the Resolution under section 54A is sufficient for the purpose of transferring statutory functions from the existing bureau secretaries to the principal officials under the accountability system. In this regard, it should be noted that section 54A provides for the transfer of statutory function from one public officer to another public officer. There is no doubt that principal officials under

the accountability system are within the meaning of “public officer” in Cap. 1. The relevant statutory powers are vested in certain public officers. The relevant legislation does not provide for the terms on which these public officers shall be employed. Nor does it provide whether the particular public officer is to be employed on civil service terms. Therefore, the fact that relevant principal officials will not be civil servants does not affect the legality or effectiveness of the Resolution under section 54A of Cap. 1.

Constitutional Affairs Bureau

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