

**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 Information Technology and Broadcasting
to Secretary for Commerce, Industry and Technology**

Introduction

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

Background

2. In the light of the discussions at this Subcommittee and views expressed by members of the public, the Administration has decided to adjust the portfolios of the policy bureaux. The draft Resolution which was issued to Legislative Council on 17 April 2002 therefore needs to be revised. This paper seeks to explain the provisions of the revised Resolution in respect of the transfer of statutory functions from the Secretary for Information Technology and Broadcasting to the Secretary for Commerce, Industry and Technology.

The Resolution

3. 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 Technology will be responsible for matters relating to commerce, industry, information technology and broadcasting. The relevant statutory functions currently vested in the Secretary for Commerce and Industry and the Secretary for

Information Technology and Broadcasting will be transferred to the Secretary for Commerce, Industry and Technology.

4. Paragraph 2(a) of the revised Resolution provides that statutory functions currently exercisable by the Secretary for Information Technology and Broadcasting by virtue of the ordinances specified in column 2 of Schedule 2 to the Resolution be transferred to the Secretary for Commerce, Industry and Technology. To give full effect to the Resolution, incidental, consequential and supplemental amendments, as appropriate, are introduced. Such amendments are provided for in paragraph 2(b) and Schedule 2 of the revised Resolution. Most of the amendments are to replace references to “Secretary for Information Technology and Broadcasting” in the relevant ordinances with references to “Secretary for Commerce, Industry and Technology”. Paragraph 2 and Schedule 2 of the revised Resolution are attached at Annexes A and B respectively.

5. The opportunity is also taken to improve the definition clauses of one of the relevant ordinances. In the Film Censorship Ordinance, the definition of “Secretary” is only provided for in the English text. A corresponding definition would be added to the Chinese text.

6. A summary of the major statutory functions of the Secretary for Information Technology and Broadcasting under existing legislation and the textual amendments to the relevant ordinances is attached as Annex C.

Advice Sought

7. Members are invited to consider paragraph 2 and Schedule 2 of the revised Resolution.

(2) with effect from 1 July 2002 -

(a) the functions exercisable by the Secretary for Information Technology and Broadcasting by virtue of the Ordinances specified in column 2 of Schedule 2 be transferred to the Secretary for Commerce, Industry and Technology;

(b) for the purpose of giving full effect to subparagraph (a) -

(i) the provisions specified in Schedule 2 (other than items 2(b) and 3) be amended by repealing "Secretary for Information Technology and Broadcasting" wherever it appears and substituting "Secretary for Commerce, Industry and Technology";

(ii) the Film Censorship Ordinance (Cap. 392) be amended -

(A) in section 2(1), by repealing the definition of "Secretary" and substituting -

"Secretary" (局長) means
the Secretary for
Commerce, Industry
and Technology;";

(B) in the provisions specified in item 2(b) of Schedule 2, by repealing "資訊科技及廣播局局長"

wherever it appears and

substituting "局長";

- (iii) the Film Censorship Regulations (Cap. 392 sub. leg.) be amended, in the provisions specified in item 3 of Schedule 2, by repealing "資訊科技及廣播局局長" wherever it appears and substituting "局長";

SCHEDULE 2 [para. (2)(a) & (b)]

AMENDMENTS RELATING TO TRANSFER OF FUNCTIONS OF SECRETARY
FOR INFORMATION TECHNOLOGY AND BROADCASTING TO
SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY

Item	Ordinance	Provision
1.	Telecommunications Ordinance (Cap. 106)	Section 32U.
2.	Film Censorship Ordinance (Cap. 392)	(a) Section 29(1). (b) Sections 16(2)(a), 17(1)(b), (2) and (2)(b) and (c)(i)(A), (4) and (8), 18(1)(b), (2)(b), (3) and (3)(b) and (c)(i)(A), (5) and (9), 19(1)(ii), (2), (2A), (2B), (3) and (3)(b), (4) and (4)(b), (6) and (10), 29(1)(i) and 30.
3.	Film Censorship Regulations (Cap. 392 sub. leg.)	Regulations 8 and 8(b) and 9 and Schedule 5 (Part II).
4.	Office of the Telecommunications Authority Trading Fund (Cap. 430 sub. leg.)	Schedule 1 (item 1(p)).
5.	Electronic Transactions Ordinance (Cap. 553)	Section 2(1)(the definition of "Secretary").
6.	Entertainment Special Effects Ordinance (Cap. 560)	Section 2 (the definition of "Secretary").

7. Broadcasting Ordinance (Cap. 562) Schedule 1 (Part 2, section 15(6)(b)(ii) and Part 3, section 29(6)(b)(ii)).
8. Telecommunication (Amendment) Ordinance 2000 (36 of 2000) Section 1(3).

**Statutory functions presently exercisable by Secretary for Information Technology and Broadcasting (SITB)
to be transferred to Secretary for Commerce, Industry and Technology (SCIT)**

The Resolution	Cap	Description	Textual Amendments Provided for in the Resolution
Item 1 of Schedule 2	106 Telecommunication Ordinance	<p>This ordinance provides for the licensing and control of telecommunications, telecommunications services and telecommunications apparatus and equipment.</p> <p>Major functions to be transferred from SITB to SCIT¹ are:</p> <ul style="list-style-type: none"> • power to make rules relating to appeals • power to issue order to the Telecommunications Authority • power to make regulations • power to amend the schedule to the ordinance 	<ul style="list-style-type: none"> • Provisions containing references to “Secretary for Information Technology and Broadcasting/資訊科技及廣播局局長” and “the Secretary/局長” are reproduced at Appendix 1. • Provisions requiring amendments have been marked-up. The amendments are as follows: <ul style="list-style-type: none"> - <u>English text</u> The relevant provision is amended by repealing “Secretary for Information Technology and Broadcasting” and substituting “Secretary for Commerce, Industry and Technology”. - <u>Chinese text</u> The relevant provision is amended by repealing “資訊科技及廣播局局長” and substituting “工商及科技局局長”.

¹ Pursuant to section 2 of Cap. 106, the Chief Executive has appointed Secretary for Information Technology and Broadcasting as the Secretary for the purpose of the administration of this ordinance. As a result of the reorganization of policy bureaux, the Chief Executive will appoint Secretary for Economic Development as the Secretary for the purposes of administering this ordinance with effect from 1 July 2002.

The Resolution	Cap	Description	Textual Amendments Provided for in the Resolution
Item 2 of Schedule 2	392 Film Censorship Ordinance	<p>The Ordinance provides for the establishment of a Film Censorship Authority, a panel of censors and a panel of advisers, and for regulating and imposing restrictions on the exhibition of films and on the publication of films of certain descriptions; for the approval and classification of films; for the establishment of a Board of Review; and for the creation of offences.</p> <p>Major functions to be transferred from SITB to SCIT are:</p> <ul style="list-style-type: none"> • power and functions relating to appeals against the decision of the Film Censorship Authority or censor • power to publish guidelines for censors • power to make regulations • duty to serve as the ex-officio member of the Board of Review 	<ul style="list-style-type: none"> • Provisions containing references to “Secretary for Information Technology and Broadcasting/資訊科技及廣播局局長” and “the Secretary/局長” are reproduced at Appendix 2. • Provisions requiring amendments have been marked-up. The amendments are as follows: <ul style="list-style-type: none"> - <u>English text</u> <ul style="list-style-type: none"> (a) The definition of “Secretary” in section 2(1) is repealed and substituted by “ “Secretary” (局長) means the Secretary for Commerce, Industry and Technology”. (b) Section 29(1) is amended by repealing “Secretary for Information Technology and Broadcasting” and substituting “Secretary for Commerce, Industry and Technology”. - <u>Chinese text</u> <ul style="list-style-type: none"> (a) ““局長” (Secretary)指工商及科技局局長”is added to section 2(1). (b) Section 29(1) is amended by repealing “資訊科技及廣播局局長” and substituting “工商及科技局局長”. (c) Other relevant provisions are amended by repealing “資訊科技及廣播局局長” and substituting “局長”.

The Resolution	Cap	Description	Textual Amendments Provided for in the Resolution
Item 3 of Schedule 2	392A Film Censorship Regulations	<p>These regulations provide for submission of request for reviewing decision of the Film Censorship Authority or censor.</p> <p>Major function to be transferred from SITB to SCIT is:</p> <ul style="list-style-type: none"> • functions relating to request for reviewing decision of the Film Censorship Authority or censor 	<ul style="list-style-type: none"> • Provisions containing references to “Secretary for Information Technology and Broadcasting/資訊科技及廣播局局長” and “the Secretary/局長” are reproduced at Appendix 3. • Provisions requiring amendments have been marked-up. The amendments are as follows: <ul style="list-style-type: none"> - <u>Chinese text</u> The relevant provisions are amended by repealing “資訊科技及廣播局局長” and substituting “局長”.

The Resolution	Cap	Description	Textual Amendments Provided for in the Resolution
Item 4 of Schedule 2	430D Office of the Telecommunications Authority Trading Fund	<p>This regulation provides for the establishment of the Office of the Telecommunications Authority Trading Fund.</p> <p>Major function to be transferred from SITB to SCIT is:</p> <ul style="list-style-type: none"> • power to give direction to the Office of Telecommunications Authority Trading Fund on general telecommunications policy matters 	<ul style="list-style-type: none"> • Provisions containing references to “Secretary for Information Technology and Broadcasting/資訊科技及廣播局局長” and “the Secretary/局長” are reproduced at Appendix 4. • Provisions requiring amendments have been marked-up. The amendments are as follows: <ul style="list-style-type: none"> - <u>English text</u> The relevant provision is amended by repealing “Secretary for Information Technology and Broadcasting” and substituting “Secretary for Commerce, Industry and Technology”. - <u>Chinese text</u> The relevant provision is amended by repealing “資訊科技及廣播局局長” and substituting “工商及科技局局長”.

The Resolution	Cap	Description	Textual Amendments Provided for in the Resolution
Item 5 of Schedule 2	553 Electronic Transactions Ordinance	<p>This ordinance facilitates the use of electronic transactions for commercial and other purposes, provides for matters arising from and related to such use, enables the Postmaster General to provide the services of a certification authority, and provides for connected purposes.</p> <p>Major functions to be transferred from SITB to SCIT are:</p> <ul style="list-style-type: none"> • power to exclude an ordinance from the application of sections 5,6,7 or 8 of the ordinance • power and functions relating to appeals against the decisions of the Director of Information and Technology Services • power to make regulations • power to amend Schedules 	<ul style="list-style-type: none"> • Provisions containing references to “Secretary for Information Technology and Broadcasting/資訊科技及廣播局局長” and “the Secretary/局長” are reproduced at Appendix 5. • Provisions requiring amendment have been marked-up. The amendments are as follows: <ul style="list-style-type: none"> - <u>English text</u> The relevant provision is amended by repealing “Secretary for Information Technology and Broadcasting” and substituting ‘Secretary for Commerce, Industry and Technology’. - <u>Chinese text</u> The relevant provision is amended by repealing “資訊科技及廣播局局長” and substituting “工商及科技局局長”.

The Resolution	Cap	Description	Textual Amendments Provided for in the Resolution
Item 6 of Schedule 2	560 Entertainment Special Effects Ordinance	<p>This ordinance provides for the regulation of the supply, use, conveyance and storage of special effects materials for and incidental to the production of special effects in entertainment programmes.</p> <p>Major functions to be transferred from SITB to SCIT are:</p> <ul style="list-style-type: none"> • power to approve regulations made by the Entertainment Special Effects Licensing Authority • power and functions relating to appointment of the Appeal board panel • power and functions relating to appeals against the decisions of the Entertainment Special Effects Licensing Authority • power to amend schedules 	<ul style="list-style-type: none"> • Provisions containing references to “Secretary for Information Technology and Broadcasting/資訊科技及廣播局局長” and “the Secretary/局長” are reproduced at Appendix 6. • Provisions requiring amendment have been marked-up. The amendments are as follows: <ul style="list-style-type: none"> - <u>English text</u> The relevant provision is amended by repealing “Secretary for Information Technology and Broadcasting” and substituting “Secretary for Commerce, Industry and Technology”. - <u>Chinese text</u> The relevant provision is amended by repealing “資訊科技及廣播局局長” and substituting “工商及科技局局長”.

The Resolution	Cap	Description	Textual Amendments Provided for in the Resolution
Item 7 of Schedule 2	562 Broadcasting Ordinance	<p>This ordinance is to license companies to provide broadcasting services, to regulate the provision of broadcasting services by licensees, and to provide for matters incidental thereto or connected therewith.</p> <p>Major function to be transferred from SITB to SCIT is:</p> <ul style="list-style-type: none"> • power to receive confidential information from licensees 	<ul style="list-style-type: none"> • Provisions containing references to “Secretary for Information Technology and Broadcasting/資訊科技及廣播局局長” and “the Secretary/局長” are reproduced at Appendix 7. • Provisions requiring amendment have been marked-up. The amendments are as follows: <ul style="list-style-type: none"> - <u>English text</u> The relevant provisions are amended by repealing “Secretary for Information Technology and Broadcasting” and substituting “Secretary for Commerce, Industry and Technology”. - <u>Chinese text</u> The relevant provisions are amended by repealing “資訊科技及廣播局局長” and substituting “工商及科技局局長”.

The Resolution	Cap	Description	Textual Amendments Provided for in the Resolution
Item 8 of Schedule 2	36 of 2000 Telecommunication (Amendment) Ordinance	<p>This ordinance amends the Telecommunication Ordinance (Cap. 106).</p> <p>Major function to be transferred from SITB to SCIT is:</p> <ul style="list-style-type: none"> • power to appointment a commencement date for selected sections of the ordinance 	<ul style="list-style-type: none"> • Provisions containing references to “Secretary for Information Technology and Broadcasting/資訊科技及廣播局局長” and “the Secretary/局長” are reproduced at Appendix 8. • Provisions requiring amendment have been marked-up. The amendments are as follows: <ul style="list-style-type: none"> - <u>English text</u> The relevant provision is amended by repealing “Secretary for Information Technology and Broadcasting” and substituting “Secretary for Commerce, Industry and Technology”. - <u>Chinese text</u> The relevant provision is amended by repealing “資訊科技及廣播局局長” and substituting “工商及科技局局長”.

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