

**President's ruling on the amendments proposed by
Hon Albert CHAN and Hon WONG Yuk-man
to the proposed resolution under section 54A of
the Interpretation and General Clauses Ordinance (Cap. 1)**

Hon Albert CHAN and Hon WONG Yuk-man have respectively given notices to move amendments to the proposed resolution to be moved by the Secretary for Constitutional and Mainland Affairs ("SCMA") at the Council meeting of 20 June 2012 under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) ("proposed resolution"). In considering whether the amendments proposed by the two Members are in order under the Rules of Procedure, I invited the Administration to comment on the amendments and the two Members to respond to the Administration's comments.

Proposed resolution under section 54A of Cap. 1 to be moved by SCMA

2. According to the Administration¹, the objective of the proposed resolution is to effect transfer of statutory functions from 1 July 2012 pursuant to the proposals to re-organise the Government Secretariat as announced by the Chief Executive-elect on 4 May 2012. The re-organisation proposals include the creation of two Deputy Secretary of Department ("DSoD") posts; the setting-up of a new Culture Bureau which will take over part of the functions of the Home Affairs Bureau; the re-structuring of the existing Commerce and Economic Development Bureau into two bureaux, namely, the Commerce and Industries Bureau and the Technology and Communications Bureau; as well as the re-structuring of the existing Development Bureau and the Transport and Housing Bureau into a Housing, Planning and Lands Bureau and a Transport and Works Bureau.

3. Section 54A(1) of Cap. 1 provides that "[t]he 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 proposed resolution provides that with effect from 1 July

¹ Draft speech to be delivered by SCMA in moving the proposed resolution under section 54A of Cap. 1 at the Council meeting of 20 June 2012 issued to Members vide LC Paper No. CB(3)735/11-12 dated 10 May 2012.

2012, the functions currently exercisable by a public officer by virtue of the ordinances set out in the proposed resolution will be transferred to another public officer following the re-organisation of the Government Secretariat. According to the Administration², after the resolution is passed, the Chief Executive in Council will make an order³ to include the post titles of the two DSoDs and reflect the changes to the post titles of the various public officers as proposed by the Chief Executive-elect.

Amendments proposed by Hon Albert CHAN

Object of the amendments

4. Hon Albert CHAN has given notice to move 167 amendments to the proposed resolution which may be grouped as follows:

- (a) amendments (59 in total) to provide different dates for the proposed resolution to take effect;
- (b) amendments (50 in total) to change the names of certain bureaux and Directors of Bureau;
- (c) amendments (55 in total) to change certain proposed transfers of statutory functions; and
- (d) amendments (three in total) to delete certain proposed new bureaux or to retain certain existing bureaux.

The Administration's views

5. The Administration submits that the 59 amendments proposed by Hon Albert CHAN which seek to provide different dates for the resolution to take effect (paragraph 4(a) above) can be regarded as frivolous and unnecessary.

6. The Administration also submits that three of Mr CHAN's amendments which seek to reverse the order of words in the name of the bureaux and the title of Directors of Bureau, for example, replacing the term "Technology and Communications" with "Communications and

² Same as footnote 1.

³ The order will come into effect on 1 July 2012.

Technology”, as well as replacing the name “Secretary for Housing, Planning and Lands” with “Secretary for Housing, Lands and Planning” can be regarded as frivolous, trivial and *de Minimus* as the reversal of the order in a name does not affect the substance or achieve any particular purpose.

7. The Administration has not provided any comment on the remainder of Mr CHAN’s amendments.

Hon Albert CHAN’s response

8. Hon Albert CHAN does not agree that his amendments to change the effective date of the proposed resolution are frivolous and unnecessary. He contends that his amendments are to allow Members to choose the most appropriate date for the re-organisation to take effect. As for his amendments which seek to reverse the order of policy areas in the name of certain bureaux and the title of Directors of Bureau, Mr CHAN submits that the order of the policy areas reflects the importance he attaches to them.

My opinion

9. Regarding Mr CHAN’s 59 amendments, each of which is seeking to change respectively the effective date of the proposed resolutions to the first day of the 59 months that follow July 2012, it is not the first time that he proposes amendments in such a manner. Mr CHAN explains that his amendments are to allow Members to choose the most appropriate date for the proposed resolution to take effect. My view is that even if each of these amendments taken individually may serve a particular purpose, it is obvious that when the 59 amendments are taken together, they can be regarded as frivolous and may have the effect of prolonging Council proceedings more than is necessary for providing a fair choice for Members. I have serious reservation, as on a similar occasion recently, on whether such a series of amendments should be allowed to proceed without being subjected to any restrictions at all. However, unless and until clear rules are provided in our Rules of Procedure to apply the restriction against a frivolous or meaningless amendment under Rule 57(4)(d) also to a series of amendments to motions, I have no option but to allow these 59 amendments to proceed in accordance with past rulings.

10. As regards Mr CHAN's other amendments set out in paragraph 4(b) to (d) above, I note that such amendments were allowed by my predecessor to past resolutions made under section 54A of Cap. 1. As no new grounds have been put forward to me for a different interpretation of the relevant rules, I think it is fair to allow Mr CHAN's amendments to be moved. I rule that the rest of Mr CHAN's amendments are also admissible.

Amendments proposed by Hon WONG Yuk-man

Object of the amendments

11. Hon WONG Yuk-man has given notice to move a total of 129 amendments to the proposed resolution, which fall under three main groups. The first group of amendments (25 in total) seeks to provide that the resolution shall cease to have effect on a certain date. They are in effect sunset clauses.

12. The second group of amendments (81 in total) seeks to provide that the resolution shall cease to have effect under the following circumstances:

- (a) if, within one month from the date of its passage in Council, less than a certain percentage of the permanent residents of the Hong Kong Special Administrative Region ("HKSAR") who have attained the age of majority support the resolution in writing;
- (b) if any of the public officers affected by the resolution fails, within one month from the date of its passage in Council, to receive the support in writing of not less than a certain percentage of the civil servants of the bureaux affected by the resolution;
- (c) if any of the public officers affected by the resolution fails, within a certain number of hours before taking office, to make a declaration that he or she is not affiliated to any political entity;
- (d) if any of the public officers affected by the resolution fails, within one month from the date of its passage in Council, to

receive the support in writing of not less than a certain percentage of the electors of the geographical constituency of HKSAR;

- (e) if any of the public officers affected by the resolution fails, within a certain number of hours before taking office, to make a declaration in LegCo that he or she is not affiliated to any political entity outside HKSAR; and
- (f) if any of the public officers affected by the resolution fails, within 24 hours after taking office, to make a declaration of his or her affiliations to any political entity, of which members have participated in any election held by the Registration and Electoral Office within two years of the date of the passage of the resolution in Council.

13. The third group of amendments (23 in total) seeks to provide that:

- (a) upon the passage of the resolution in Council and the taking of office by the public officers affected by the resolution, the bureaux affected by the resolution shall not recruit any public officer within a certain period; and
- (b) the sum to be paid to all the public officers affected by the resolution as wages in any financial year shall not exceed a certain percentage of the total expenditure of the Annual Budget of the Government of HKSAR in that financial year.

The Administration's comments

14. The Administration submits that the first group of amendments proposed by Hon WONG Yuk-man (paragraph 11 above) can be regarded as frivolous and unnecessary as all the amendments relate to different combinations of effective dates for the resolution to cease effect, and that most of the second and third groups of amendments (paragraphs 12 and 13 above) will make the resolution unintelligible as the conditions attached to the effective date of the resolution are unclear and the fulfilment of which is incapable of being accurately determined.

15. The Administration also points out that there is a discrepancy between the Chinese and English texts of an amendment proposed by Mr WONG.

Hon WONG Yuk-man's response

16. Hon WONG Yuk-man submits that the object of his first group of amendments is to enable the public to rectify the situation when the adverse consequences of the re-organisation surface; hence his amendments are not frivolous and unnecessary.

17. Regarding his second and third groups of amendments, Hon WONG Yuk-man argues that although the terms used in his amendments cannot be found in existing legislation, it does not mean that they are unintelligible and unclear. He submits that the amendments aim to enhance the transparency of the Government and increase public participation.

My opinion

18. Counsel to the Legislature advises me that, unlike legislation which has an ongoing effect such as imposing a continuing duty, the proposed resolution is a one-off transfer of statutory functions. Once the proposed resolution takes effect after it is passed by the Council without amendment to its effective date of 1 July 2012, the transfer of the statutory functions concerned takes effect on that date. The transfer cannot be undone unless, for example, another resolution is made under section 54A of Cap. 1 to reverse the transfer. It is clear from Counsel's advice that the first and second groups of amendments proposed by Hon WONG Yuk-man, as set out in paragraphs 11 and 12(a) to (f) above, cannot achieve their intended effect and are therefore meaningless. In my opinion, these amendments are out of order under Rule 30(3)(c) of the Rules of Procedure.

19. As regards the third group of amendments set out in paragraph 13 above, Counsel points out that the amendments cannot be regarded, under section 54A(2) of Cap. 1, as incidental, consequential and supplemental provisions which may be necessary or expedient for the purpose of giving full effect to the proposed resolution. Counsel advises me that the amendments are ultra vires section 54A of Cap. 1. Given Counsel's advice, the amendments are in my opinion out of order under Rule 30(3)(c) of the Rules of Procedure.

My ruling

20. I rule that:

- (a) all the 167 amendments proposed by Hon Albert CHAN are admissible; and
- (b) all the 129 amendments proposed by Hon WONG Yuk-man are not admissible, and the notice of the amendments shall be returned to Hon WONG Yuk-man.

(Jasper TSANG Yok-sing)
President
Legislative Council

18 June 2012