

For information on
22 March 2004

Legislative Council Panel on Economic Services

TRANSFER OF CERTAIN STATUTORY POWERS AND FUNCTIONS OF THE CHIEF SECRETARY FOR ADMINISTRATION AND THE FINANCIAL SECRETARY TO THE SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR

Purpose

This paper informs Members of the Administration's proposal to transfer the statutory powers and functions of the Chief Secretary for Administration (CS) and the Financial Secretary (FS) set out in **Annexes A and B** to the Secretary for Economic Development and Labour (SEDL).

Background

2. In discussing the Accountability System, the Administration undertook to conduct a review to examine whether the statutory powers and functions currently vested in the CS and the FS but which fall clearly within the policy portfolio of a Director of Bureau should be transferred to the latter to enable him or her to assume full responsibility and authority in managing his or her statutory functions and policy portfolios. Members were informed vide the Administration's "Twelve-month Report on Implementation of the Accountability System for Principal Officials" issued to the Legislative Council (LegCo) in July 2003 that it has completed the review and the respective Directors of Bureau will work out their implementation timetables and present proposals to the LegCo in due course.

3. The review was conducted by the Administration Wing of the CS' Office and the Financial Services and the Treasury Bureau (FSTB) in consultation with all Bureaux¹. The basic principle for consideration of

¹ The review does not affect the powers and functions vested in the Chief Executive (CE) or the Chief Executive-in-Council (CE-in-Council). In these cases, it remains the prerogative of the CE to delegate to the responsible principal officials his statutory powers and functions on a need basis.

transfer of a statutory power or function is that the power or function falls tidily within the Director of Bureau's policy portfolio and is essential for the Director of Bureau to perform his or her functions effectively. Under this basic principle, a set of general guidelines (at **Annex C**) governing the review has been developed to ensure a consistent and coherent approach among the Bureaux.

Statutory powers and functions to be transferred to SEDL

4. Insofar as the ordinances under the purview of the SEDL are concerned, the review has concluded that the statutory powers and functions currently vested in the CS and the FS, as summarized in **Annexes A and B** respectively, should be transferred to the SEDL².

5. Generally speaking, most of the powers and functions to be transferred relate to **procedural or administrative** matters involving the statutory organizations under the SEDL's purview, such as –

- (i) fixing or extending the deadline for submission of annual estimates, programme of activities, statement of accounts, the auditor's reports and annual reports by these organizations;
- (ii) approving the annual estimates and programme of activities of these organizations;
- (iii) tabling in the LegCo the statement of accounts, the auditor's reports and annual reports of these organizations; and
- (iv) approving the appointment of auditors by these organizations.

Others relate to the determination of remuneration rates for members of various appeal boards established under the Consumer Goods Safety Ordinance, the Toys and Children's Products Safety Ordinance, and the Electricity Ordinance, as well as the expenses allowed for a witness under the Hong Kong Civil Aviation (Investigation of Accidents) Regulations.

² All of the ordinances affected by the proposed transfer are under the purview of the Economic Development Branch of the Economic Development and Labour Bureau (EDLB). For ordinances under the purview of the Labour Branch of EDLB, no power or function is vested in the CS under these ordinances and all the powers and functions vested in FS under these ordinances relate to the control over the borrowing of moneys, investment of surplus funds and bank deposits of the statutory bodies established under the respective ordinances. These powers and functions are to be retained by the FS in accordance with the general guidelines at **Annex C**.

6. The proposed transfer also includes specific powers provided :
- (a) in four marine-related ordinances, namely, the powers to-
 - (i) consider an objection to a decision of the Director of Marine (D of M) under the Merchant Shipping (Pleasure Vessels) Regulations;
 - (ii) appoint members of the Seafarers' Appeals Board to hear appeals against the decision of the Superintendent of Mercantile Marine Office (a public officer appointed by the D of M) to remove a seafarer's name from the register of seafarers under the Merchant Shipping (Seafarers) Ordinance;
 - (iii) receive appeals against the decision of the D of M under the Shipping and Port Control Ordinance; and
 - (iv) certify membership of the committee of the Sailors Home and Missions to Seamen under the Sailors Home and Missions to Seamen Incorporation Ordinance.
 - (b) in the Travel Agents Ordinance (Cap. 218) intended to ensure the proper operation of the Travel Industry Compensation Fund (TICF) and the Travel Industry Council (TIC), viz
 - (i) specifying the percentage of outbound fare as levy payable by travel agents to the TICF and TIC by notice published in the Gazette and be consulted on the making of rules regarding ex-gratia payment from the TICF³;
 - (ii) giving directions to the Travel Industry Compensation Fund Management Board (TICFMB) relating to the performance of its functions or exercise of powers;

³ The Gazette notice on the levy and the rules regarding ex-gratia payment from the TICF are subsidiary legislation subject to approval by the Legislative Council.

- (iii) requiring the TICFMB to arrange for examinations as regards the economy, efficiency and effectiveness with which the TIC has used its resources; and
- (iv) amending the lists of approved organizations and association members in Schedule 1 to the Ordinance by notice published in the Gazette.

Implementation

7. Section 54A(1) of the Interpretation and General Clauses Ordinance (Cap. 1) provides that the LegCo may by resolution provide for the transfer to any public officer of any functions exercisable by virtue of any Ordinance by another officer. The SEDL intends to move a motion in the 2003-04 Legislative session under the aforesaid provision to seek the LegCo's approval to amend the respective sections of the ordinances listed in **Annexes A and B** to effect the proposed transfer. The Department of Justice is drafting the relevant resolution.

Advice Sought

8. Members are invited to note the proposed transfer of statutory powers and functions of the CS and the FS to the SEDL.

Economic Development and Labour Bureau
March 2004

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**Statutory functions of the Chief Secretary for Administration (CS)
to be transferred to the
Secretary for Economic Development and Labour (SEDL)**

Cap. No.	Title	Section No.	Summary of provision	Justification
281	Merchant Shipping Ordinance	118(1)	The Chief Executive (CE) may, if he thinks fit, exempt any vessel from any specified requirement contained in this Ordinance, provided that the CS shall in the month of January in each year lay before Legislative Council (LegCo) a special report stating the cases in which the CE has exercised his powers under this subsection during the preceding year, and the grounds upon which action has been taken in each case.	The requirement to submit reports of a factual nature to the LegCo is a function which falls within SEDL's policy responsibility.
302	Hong Kong Tourism Board Ordinance	19(2)	The CS shall, at the end of each financial year, lay a copy of report on the activities of the Hong Kong Tourism Board (HKTB) on the table of the LegCo.	The requirement to table an annual report on the HKTB's activities is a function which falls within SEDL's policy responsibility. The CS has delegated this power to SEDL. This power should be transferred to SEDL following the implementation of the Accountability System.
313	Shipping and Port Control Ordinance	66(1)	If any person is aggrieved by a direction, decision or act of the D of M, or any other person, performing or exercising any function, duty or power under this Ordinance (other than a decision of the Director under section 30(1)), he may appeal to the CE against the direction, decision or act by lodging the grounds of the appeal in writing with the CS.	The duty to receive appeal against decisions made by the D of M falls within SEDL's policy responsibility.

Cap. No.	Title	Section No.	Summary of provision	Justification
			<p>referred to in section 18(2)(a); and</p> <p>(ii) 2 shall be drawn from the members of the panel referred to in section 18(2)(b).</p>	
1042	Sailors Home and Missions to Seamen Incorporation Ordinance	3(2)	The certificate of the CS that any person was at the date of the certificate or had been at some previous specified date a member of the committee of the Sailors Home and Missions to Seamen shall for all purposes be conclusive evidence of that fact.	The power to issue the relevant certificate falls within SEDL's policy responsibility.

Economic Development and Labour Bureau
March 2004

**Statutory functions of the Financial Secretary (FS) to be transferred to
the Secretary for Economic Development and Labour (SEDL)**

Cap. No.	Title	Section No.	Summary of provision	Justification
216	Consumer Council Ordinance	S.15	The Consumer Council shall in each financial year adopt estimates of income and expenditure for the ensuing financial year and, before a date to be appointed by the FS , send them to the Chief Executive (CE) for his approval together with a programme of its proposed activities for the ensuing financial year.	The duty to appoint a date for the submission of annual estimates of income and expenditure falls within SEDL's policy responsibility. The CE has delegated the power to approve the estimates of income and expenditure of the Consumer Council to SEDL.
		S.16(1)	The Consumer Council shall keep proper accounts and proper records in relation thereto and shall within 3 months after the expiry of a financial year, or such further period as the FS may allow , prepare a statement of the accounts of the Council, which statement shall include an income and expenditure account and a balance sheet.	The power to determine when a statement of accounts is to be prepared falls within SEDL's policy responsibility. The FS has delegated this power to SEDL.
		S.16(3)	The Consumer Council shall obtain the prior approval of the FS to any appointment of an auditor proposed to be made under subsection (2).	The power to approve the appointment of an auditor falls within SEDL's policy responsibility.
		S.16(5)	The Consumer Council shall within 3 months after the receipt by it of the auditor's report in respect of its accounts for a financial year, or within such further period as the FS may allow , furnish – (a) a report on the affairs of the Council for that year; (b) a copy of its accounts therefor; and (c) the auditor's report on the account, to the CE who shall cause the same to	The power to determine when a report on affairs and accounts and the auditor's report on the accounts are submitted to the CE falls within SEDL's policy responsibility. The FS has delegated this power to SEDL. In addition, the CE has delegated the power to table the reports from the Consumer Council in LegCo to SEDL.

Cap. No.	Title	Section No.	Summary of provision	Justification
			be tabled in the Legislative Council.	
218	Travel Agents Ordinance	32G(2)	<p>The Travel Industry Compensation Fund Management Board (TICFMB) may, after consulting the FS, make rules –</p> <p>(a) specifying the circumstances in which –</p> <p>(i) an outbound traveller may apply for or be paid an ex gratia payment; or</p> <p>(ii) an application for or payment of an ex gratia payment may be made on behalf of an outbound traveller;</p> <p>(b) specifying the maximum amount or rate payable as an ex gratia payment in respect of an outbound traveller;</p> <p>(c) providing for the imposition of a financial penalty for the late payment or failure to make due payment of any levy payable under this Part; and</p> <p>(d) containing such other provisions as it considers necessary or expedient to make such rules effective.</p>	The powers/ function to be consulted regarding ex gratia payment falls within SEDL's policy responsibility.
		32H (2)(c)	<p>The Travel Industry Compensation Fund (TICF) levy shall be of an amount ascertained with reference to a percentage, which shall be a percentage –</p> <p>(i) of such outbound fare; and</p> <p>(ii) specified for the time being for the purposes of this section by the FS by notice published in Gazette.</p>	The power to specify levy to TICF falls within SEDL's policy responsibility.
		32I(1)	A travel agent shall be liable to pay to the Travel Industry Council (TIC), in respect of every outbound fare	The power to specify the levy to be paid to the Travel Industry Council

Cap. No.	Title	Section No.	Summary of provision	Justification
			<p>received by such travel agent, a levy, the amount of which shall be ascertained with reference to a percentage, which shall be a percentage –</p> <p>(a) of such outbound fare; and</p> <p>(b) specified for the time being for the purposes of this section by the FS by notice published in the Gazette.</p>	falls within SEDL's policy responsibility.
		S32K	<p>(1) In each financial year, the TIC shall forward to the FS estimates of its income and expenditure in respect of the financial year next following.</p> <p>(2) The estimates referred to in subsection (1) shall be forwarded before a date appointed by the FS.</p>	The duty to receive TIC's income and expenditure estimates and the power to specify the deadline for submission of the estimates falls within SEDL's policy responsibility. The FS has delegated such duty/power to SEDL.
		S.32L(5)	The FS may notify the TIC in writing that such reserves of the TIC as specified by him shall be excluded from the calculation of surplus.	The power to specify the reserves which shall be excluded from the calculation of surplus falls within SEDL's policy responsibility.
		S.32M (1), (3) and (5)	<p>The FS may require the TICFMB to arrange for such examinations as he specifies to be carried out as regards the economy, efficiency and effectiveness with which the TIC has used its resources.</p> <p>Where a requirement is made under subsection (1) above, the Board shall, with the approval of the FS, appoint an auditor to carry out the examinations required.</p> <p>The Board shall forward to the FS as soon as reasonably practicable after it is received, a copy of the auditor's report.</p>	Examinations as regards the economy, efficiency and effectiveness with which the TIC has used its resources, and the appointment of an auditor to carry out the examinations required etc. falls within SEDL's policy responsibility.

Cap. No.	Title	Section No.	Summary of provision	Justification
		S.32N (1) S.32N (2) 32N(4)	<p>The TIC shall ensure, as far as reasonably practicable, that in any financial year to which this section applies, a specified percentage of its recurrent expenditure is met out of its relevant income.</p> <p>The FS may specify in writing a percentage for the purposes of subsection (1).</p> <p>In subsection (1) –</p> <p>“relevant income” (有關收入) means income other than income derived from the Council levy;</p> <p>“specified” (指明) means specified for the time being by the FS under subsection (2).</p>	The power to specify a percentage of the recurrent expenditure of the TIC to be met out of its relevant income falls within SEDL’s policy responsibility.
		S.32O (1)	The FS may give directions to the TICFMB generally or in a particular case relating to the performance of its functions or exercise of its powers.	The power to give directions to the TICFMB falls within SEDL’s policy responsibility.
		S.32P(1) S.32P(2)	<p>The TICFMB shall keep proper accounts and records and shall, within 4 months of the expiry of each financial year or such longer period as the FS may allow, prepare in respect of that financial year, a statement of accounts of the Board which shall include an income and expenditure account and a balance sheet.</p> <p>A statement of accounts referred to in subsection (1) shall be audited by an auditor appointed by the Board with the approval of the FS, and the auditor shall prepare a report on the statement of accounts and send it to the Board.</p>	<p>The power to determine the time frame for preparation of the TICF’s annual accounts falls within SEDL’s policy responsibility.</p> <p>The power to approve an auditor appointed by the TICFMB falls within SEDL’s policy responsibility.</p>
		S.32Q	The TICFMB shall, within 2 months of the receipt by it of the auditor’s report in respect of its accounts for a particular financial year or such	The power to determine when the TICFMB submits the auditor’s report concerning its

Cap. No.	Title	Section No.	Summary of provision	Justification
			<p>longer period as the FS may allow, submit –</p> <p>(a) a report on the affairs of the Board;</p> <p>(b) a copy of its statement of accounts; and</p> <p>(c) a copy of the auditor’s report on the accounts,</p> <p>for that year to the FS.</p>	<p>accounts, a report on its affairs, and its statement of accounts falls within SEDL’s policy responsibility.</p>
		S.53	<p>The FS may by notice in the Gazette amend Schedule 1.</p>	<p>Schedule 1 is the lists of “approved organizations” and “association members”. The power to amend Schedule 1 falls within SEDL’s policy responsibility.</p>
302	Hong Kong Tourism Board Ordinance	<p>S.17B(1)</p> <p>S.17B(2)(b)</p> <p>S.17B(8)</p>	<p>Each financial year, before a date appointed by the FS, the Hong Kong Tourism Board (HKTB) shall forward to the FS, for the approval of the CE, a programme of its proposed activities and estimates of its income and expenditure for the next financial year.</p> <p>The HKTB shall set out in its estimates the source of all income and shall set out the distribution of expenditure under major heads, including capital expenditure exceeding such sum on any one item as the FS may approve;</p> <p>Until subsection (2) comes into operation, the HKTB shall set out in its estimates the source of all income and shall set out the distribution of expenditure under the major heads approved by the FS.</p>	<p>The duty to receive a programme of the HKTB’s proposed activities and estimates of its income and expenditure for the next financial year falls within SEDL’s policy responsibility.</p> <p>The power to approve capital expenditure of the HKTB falls within SEDL’s policy responsibility.</p> <p>The power to approve the distribution of expenditure of the HKTB under the major heads falls within SEDL’s policy responsibility.</p>
406	Electricity Ordinance	S.39(3)	<p>Each member of the disciplinary tribunal appointed by SEDL shall be remunerated at a rate that the FS may</p>	<p>The power to determine rates of remuneration of members of a disciplinary</p>

Cap. No.	Title	Section No.	Summary of provision	Justification
			determine.	tribunal can be exercised by SEDL with reference to guidelines issued by the Financial Services and the Treasury Bureau (FSTB).
		S.45(5)	Each member of the appeal board appointed by SEDL other than the public officer shall be remunerated at a rate that the FS may determine.	The power to determine rates of remuneration of members of an Appeal Board can be exercised by SEDL with reference to guidelines issued by FSTB.
424	Toys and Children's Products Safety Ordinance	S.16(3)	Each member of the appeal board appointed by SEDL shall be remunerated at a rate that the FS may determine.	The power to determine rates of remuneration of members of an Appeal Board can be exercised by SEDL with reference to guidelines issued by FSTB.
448B	Hong Kong Civil Aviation (Investigation of Accidents) Regulations	Reg.10(4)	Every person summoned by the Inspector as a witness in accordance with these regulations shall be allowed such expenses as the Director of Civil Aviation (D of CA) with the concurrence of the FS determines.	The power to approve expenses falls within SEDL's policy responsibility.
		Reg. 14(6)	Every person summoned by the board of review as a witness shall be allowed such expenses as the D of CA, with the concurrence of the FS , determines.	The power to approve expenses falls within SEDL's policy responsibility.
456	Consumer Goods Safety Ordinance	S.15(3)	Each member of the appeal board appointed by SEDL shall be remunerated at a rate that the FS may determine.	The power to determine rates of remuneration of members of an Appeal Board can be exercised by SEDL with reference to guidelines issued by FSTB.

General guidelines for the transfer of statutory powers and functions of the Chief Secretary (CS) and the Financial Secretary (FS)

Transfer of the CS' powers to Directors of Bureaux

As a general rule, all those statutory powers and functions that fall clearly within the policy purview and responsibility of a Director of Bureau should be considered for transfer to the latter. Examples include –

- (a) routine, procedural or administrative functions such as certification of non-official membership of Government boards and committees, tabling of annual reports of statutory authorities housekept by the Director of Bureau at the Legislative Council;
- (b) save for important boards or committees or in cases where a conflict of interest by the Director of Bureau may arise (see paragraph 2(d) below), appointment of members to panels or tribunals to hear and determine complaints relating to operational matters under the policy portfolio of a Director of Bureau; or
- (c) save for cases where a conflict of interest by the Director of Bureau may arise, power to determine appeals against the decisions of a Head of Department under the portfolio of a Director of Bureau, such as appeals against the decision of a Department Head to refuse to grant a permit to sell any commodity in a country park or to issue a licence in respect of a pleasure vessel.

Powers to remain with the CS

2. Statutory powers and functions of the following nature should continue to be vested in the office of the CS to facilitate effective cross-bureaux coordination or implementation, or reflect the appropriate level of representation within the Government on such matters –

- (a) functions that involve privileges and immunities or an international dimension such as consular matters or matters concerning international organisations;

- (b) functions that do not pertain to any specific Director of Bureau but reflect the Government's position as a whole such as matters concerning the Government's relationship with the Legislative Council;
- (c) functions that cut across the work of more than one Bureau or Department such as receiving reports on contravention of pollution control provisions by various Departments under the environment-related Ordinances; or
- (d) functions that should not be undertaken by the Director of Bureau himself/herself to avoid conflict of interest or to ensure impartiality of a Government decision, such as the determination of appeals against the decision of a Director of Bureau.

Powers vested in the FS

3. As a general rule, the FS would not transfer to Directors of Bureaux those statutory powers and functions that –

- (a) are central to the Government's annual budgets such as the preparation of the annual estimates of expenditure and revenue, and in-year changes to the estimates;
- (b) relate to Government incomes and assets;
- (c) may have significant impact on Government expenditure or revenue such as financial matters of major publicly-funded organizations;
- (d) should be exercised centrally so as to ensure necessary consistency such as write-off and surcharge, or to provide some central services such as investment of Government money and the Financial Secretary Incorporated; or
- (e) relate to the FS' portfolio on the monetary and financial systems as well as the Exchange Fund.

4. Statutory powers and functions that fall clearly outside the above parameters and are within the policy purview and responsibility of a Director of Bureau would be transferred to the latter. Examples include the remuneration of members of boards and committees, regulation of utilities and corporations, and payment of certain fees.

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Financial Services and Treasury Bureau
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