

立法會

Legislative Council

LC Paper No. LS 39/00-01

**Paper for the House Committee Meeting
of the Legislative Council
on 5 January 2001**

**Legal Service Division Report on
Hong Kong Science and Technology Parks Corporation Bill**

Object(s) of the Bill

To —

- (a) establish a body corporate known as the "Hong Kong Science and Technology Parks Corporation" ("the Corporation");
- (b) repeal the Hong Kong Industrial Estates Corporation Ordinance (Cap. 209) and the Hong Kong Industrial Technology Centre Corporation Ordinance (Cap. 431); and
- (c) dissolve the Hong Kong Industrial Estates Corporation (HKIEC), the Hong Kong Industrial Technology Centre Corporation (HKITCC) and the Provisional Hong Kong Science Park Company Limited (PHKSPCL) and to vest their rights, obligations, assets and liabilities in the Corporation.

LegCo Brief Reference

- 2. ITCCR 2/17/1610/00 issued by the Commerce and Industry Bureau on 6 December 2000.

Date of First Reading

- 3. 20 December 2000.

Comments

4. According to the LegCo Brief, the Bill follows the recommendation of the Commission on Innovation and Technology that HKIEC, HKITCC and PHKSPCL (collectively "the Relevant Organizations") be merged. The Corporation is set up to take over the duties and powers of the Relevant Organizations in establishing or developing premises in support of technology-based companies and activities, facilitating research and development and application of technologies in industry, and supporting the development, transfer and use of new or advanced technologies in Hong Kong.

5. The authorized capital of the Corporation is equal to the value of the net assets in respect of all assets and liabilities of the Relevant Organizations vested in the Corporation, subject to any increase by the Financial Secretary ("the Secretary"). The Corporation shall divide the authorized capital into shares of such denomination and number for issue to the Government as the Secretary shall determine. The Corporation is required to conduct its business according to prudent commercial principles.

6. The Corporation will be governed by the Board of Directors which consists of :

- (a) the Chairman, to be appointed by the Chief Executive; and
- (b) 8 to 16 members (such number to be determined by the Financial Secretary), to be appointed by the Secretary.

7. The Bill does not specify the number of public officers that may be appointed. At a Board meeting, not less than one-third of the members of the Board for the time being shall form a quorum, and all questions shall be decided by a majority of votes of the members present. Clause 10 provides for the disclosure of interest and the prohibition against voting, but permits a person to take part in the discussion if certain conditions are met.

8. The Board may appoint employees and, subject to the prior approval of the Secretary, a person to be the Chief Executive Officer on such terms and conditions of service as it determines. Clause 1 of Schedule 3 to the Bill provides for the continuance of employment of staff of the Relevant Organizations by the Corporation on the same terms and conditions without any break or interruption. The Administration has confirmed that the benefits currently enjoyed by these staff form part and partial of the terms and conditions of employment covered by this Clause.

9. The person who holds the offices of the Chief Executive or the Chief Executive Officer (as the case may be) of the Relevant Organizations will become the Chief Executive Officer of the Corporation until the Board makes the appointment in accordance with Clause 14. According to the Administration, the Chief Executive of

HKIEC has been appointed as the interim common Chief Executive Officer of the Relevant Organizations since June 2000. Arrangement for staff sharing was also implemented on 1 December 2000 and the employment of 12 redundant staff was terminated on or before that date.

10. The Administration intends to seek the approval of the Finance Committee to grant to the Corporation the residual amount of the \$268 million capital commitment for the PHKSPCL after the auditors' reports of the accounts of the Relevant Organizations as at the date of their dissolution are available.

Public Consultation

11. According to the LegCo Brief, the Boards of Director of the Relevant Organizations have been consulted. They support the merger and are content with the Bill.

Consultation with the LegCo Panel

12. The Administration has briefed the LegCo Panel on Trade and Industry on the progress of the merger and the major provisions of the Bill. An extract of the minutes of the meeting on 13 November 2000 is at Annex A.

Conclusion

13. The Legal Service Division is discussing certain drafting points with the Administration. A copy of the correspondence exchanged is at Annex B. A further report will be issued when we receive the draft Committee Stage amendments from the Administration.

Encl.

Prepared by

Wong Sze-man, Bernice
Assistant Legal Adviser
Legislative Council Secretariat
3 January 2001

EXTRACT

立法會
Legislative Council

LC Paper No. CB(1)353/00-01
(These minutes have been seen
by the Administration)

Ref : CB1/PL/TI/1

Panel on Trade and Industry

Minutes of meeting
held on Monday, 13 November 2000, at 4:30 pm
in Conference Room A of the Legislative Council Building

V The Hong Kong Science and Technology Parks Corporation Bill
(LC Paper No. CB(1)151/00-01(03))

22. C/IT advised that the Hong Kong Science and Technology Parks Corporation Bill (the Bill) was drafted in response to the recommendation of the Chief Executive's Commission on Innovation and Technology that the Hong Kong Industrial Estates Corporation, the Hong Kong Industrial Technology Centre Corporation and the Provisional Hong Kong Science Park Company Limited should be merged. Major provisions of the Bill had been agreed on by the Boards of Directors of the three organizations concerned. The Government intended to introduce the Bill to LegCo in December 2000.

23. Mr CHEUNG Man-kwong was concerned whether the merging of the three organizations would lead to redundancies. In response, C/IT anticipated that about 12 staff members, who were mostly senior staff while the rest were temporary staff, would be laid off due to the merger. As a proper redundancy package would be offered to the staff concerned, a smooth merging process was expected and staff unrest would not be resulted. Regarding Mr HUI Cheung-ching's enquiry on the savings achieved after the merger, C/IT advised that according to conservative estimates, the annual savings would amount to about \$18 million.

24. Mr CHAN Kam-lam held the view that confusion might arise if the three organizations still used their own names after the merger. He suggested that this should only be regarded as an interim arrangement at the early stage of the merger; in the longer run, the organizations should abandon their original names and use the new name of the merged body instead. Moreover, he pointed out that the Chinese name of the merged body (“香港科技基建有限公司”) was not consistent with its English name, “Hong Kong Science and Technology Parks Corporation”. He advised that the Administration should look for a more appropriate name. Mr SIN-Chung-kai shared his views regarding the name of the merged body.

25. C/IT explained that after the merger, the three organizations would only use their original names for the purpose of labelling their services which would become part of the services provided by the Hong Kong Science and Technology Parks Corporation. The spirit of the merger was to place the three types of related services under the management of a single Board of Directors and an executive team. In future, the merged body would provide a one-stop service to the industry and offer a comprehensive range of services. Such an arrangement would only provide convenient services to the industry rather than giving rise to confusion. As to the Chinese name of the merged body, it had been agreed on by the three organizations. However, a more appropriate name could be explored, having taken members’ views into consideration. Regarding Mr SIN Chung-kai’s enquiry on the location of the future headquarters of the merged body, C/IT advised that it would be decided by the Board of Directors of the merged body.

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Legislative Council Secretariat
28 December 2000

LS/B/16/00-01

2869 9204

2877 5029

Innovation and Technology Commission
14/F, Ocean Centre
5 Canton Road
Kowloon

20 December 2000

BY FAX

Fax No. : 2992 0763

Total no. of page(s) : 3

(Attn : Ms Manda Chan, Senior Manager (Merger))

Dear Manda,

Hong Kong Science and Technology Parks Corporation Bill

I am scrutinizing the above Bill with a view to advising Members on the legal and drafting aspects. I shall be grateful if you would clarify the following :

Preamble

Clause 3 **Establishment of Corporation**

1. Paragraph (a) of the Preamble and clause 3(1) of the Bill specify the name of the Hong Kong Science and Technology Parks Corporation (the Corporation) in both languages in each of the Chinese and English texts. This seems to be redundant since section 10B of the Interpretation and General Clauses Ordinance (Cap. 1) provides that both Chinese and English texts of an Ordinance are equally authentic. Is there any particular reason for doing so?

Clause 2 **Interpretation**

2. The Provisional Hong Kong Science Park Company Limited (PHKSPCL) is defined as a company incorporated and registered under the Companies Ordinance (Cap. 32). I would appreciate it if you could let me have a copy of its Memorandum and Articles of Association as soon as possible so that any queries in relation to PHKSPCL can be raised without delay.

Clause 4 **Establishment of Board of Directors**

3. Please confirm that the notice to amend Schedule 2 under clause 4(4) is subsidiary legislation.

Clause 10 **Disclosure of interest**

4. Please clarify the policy intent of clause 10(2)(a)(iii). Can a member of the Board or a committee who has disclosed his interest vote in relation to the matter if he is permitted by the person presiding or by a majority of the other members present (as the case may be)?

Clause 17 **Capital of Corporation**

5. Clause 17(1) provides that the authorized capital of the Corporation is equal to the value of the net assets in respect of all assets and liabilities vested in the Corporation on the appointed day. When does the Administration intend to seek the approval of the Finance Committee to the transfer to the Corporation of the residual amount of \$268 million which has previously been approved to meet the recurrent expenses of PHKSPCL?

Clause 27 **Premises set out in Schedule 1**

6. Please clarify whether the notice to amend Schedule 1 under clause 27(2) is subsidiary legislation.

Clause 29 **Power to take possession and dispose of property**

7. May I suggest improving the English text by replacing "which has been leased land" with "which used to be leased land". Would it reflect the policy more accurately if "immediately" is added in front of "after the tenant has left"?

Clause 33 **Bylaws**

8. Are the bylaws subsidiary legislation subject to the approval of the Legislative Council, similar to the bylaws of the Hong Kong Industrial Estates Corporation (HKIEC)? Has the Administration considered imposing a limit in prescribing the consequence of contravening these bylaws? Under section 37 of the Hong Kong Industrial Estates Corporation Ordinance (Cap. 209), any bylaws of the HKIEC may provide that a contravention shall be an offence and may prescribe penalties not exceeding a fine of \$5,000 and imprisonment for 6 months.

9. What is the legal effect of applying the various provisions of the Public Health and Municipal Service Ordinance (Cap. 132) in the bylaws made under clause 33(2)?

Clause 37 Vesting of rights, obligations, assets and liabilities

10. Is it intended that the fund established under section 6(3)(a) of Cap. 431 be vested in the Corporation as one of the funds established under clause 8(2)(n)? If so, please consider whether there is any need for an express provision to give effect to such transfer without first having obtained the approval of the Financial Secretary.

11. Please confirm that HKIEC, HKITCC and PHKSPCL do not have any intellectual properties.

12. Would the Administration consider expressly providing for the delivery of books and documents relating to HKIEC, HKITCC and PHKSPCL to the Corporation? You may refer to Part VIII of the Urban Renewal Authority Ordinance (63 of 2000) for similar transitional provision.

Schedule 3 Transitional and Savings

13. What are the benefits presently enjoyed by the employees of HKIEC, HKITCC and PHKSPCL? Would the Administration consider expressly providing for continuance of these benefits including the contribution of mandatory provident funds in section 1 of Schedule 3?

14. At the meeting of the LegCo Panel on Trade and Industry on 13 November 2000, the Administration informed Members that the employment of about 12 persons would be terminated as a result of the dissolution of HKIEC, HKITCC and PHKSPCL. Please clarify whether these 12 persons have ceased to be employed when the staff sharing arrangements took effect on 1 December 2000, or whether their employment would be terminated any time before the appointed day, or after the appointed day in accordance with section 1(2) of Schedule 3.

Yours sincerely,

(Bernice Wong)
Assistant Legal Adviser

c.c. LA

Department of Justice
(Attn : Mr Sunny Chan, SGC)
(Fax : 2845 2215)

By Fax & By Post

Tel: 2737 2249

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29 December 2000

Ms Bernice Wong
Assistant Legal Adviser
Legislative Council Secretariat
Legal Service Division
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Bernice,

Hong Kong Science and Technology Parks Corporation Bill

We refer to your letter of 20 December 2000 on the above Bill. Our replies to the questions you have raised are set out as below please.

Preamble & clause 3 – Establishment of Corporation

We agree that it is legally in order to state only the English or the Chinese name of the Corporation in the Bill of the same language. However, in relation to a company registered under the Companies Ordinance (Cap 32), it is possible that it has only one name in either the English or the Chinese language. We therefore consider it appropriate to make clear in the long title (where the Corporation is first mentioned) and in clause 3 (by which the Corporation is to be established) that the Corporation has both English and Chinese names. As it is not legally unacceptable, we prefer retaining the existing provisions.

Clause 4 – Establishment of Board of Directors

A notice to amend Schedule 2 under clause 4(4) is subsidiary legislation and must be laid on the table of the Legislative Council in accordance with section 34 of the Interpretation and General Clauses Ordinance (Cap 1).

Clause 10 – Disclosure of interest

The policy intent of clause 10(2)(a)(iii) is that any Board/committee member having an interest in any matter to be considered by the Board/committees is not allowed to vote, even if he/she is not required to withdraw from the meeting while the matter is being discussed. The reason is that since voting influences decisions of the Board/committees, a member having an interest should not be given voting power so as to avoid prejudicial considerations and possible criticisms. Clause 10(2)(a)(iii) only permits the relevant member to take part in the **discussion or consideration** on the matter concerned under clause 10(2)(a)(ii), but does **not** give him/her voting power over the matter.

Clause 17 – Capital of Corporation

Our intention is to seek the approval of the Finance Committee to grant to the Corporation the residual amount of the \$268 million capital commitment for the PHKSPCL after the auditors' reports of the accounts of the HKIEC, the HKITCC and the PHKSPCL as at the date of their dissolution are available. As such, the submission to the Finance Committee will most likely be made after the Bill is enacted. In any event, the residual amount of the capital commitment for the PHKSPCL does not form part of the PHKSPCL's assets. Hence, the granting of the amount to the Corporation should be a separate matter not related to clause 17(1).

Clause 27 – Premises set out in Schedule 1

A notice to amend Schedule 1 under clause 27(2) is subsidiary legislation and must be laid on the table of the Legislative Council in accordance with section 34 of the Interpretation and General Clauses Ordinance (Cap 1).

Clause 29(1)(a) – Power to take possession and dispose of property

We have no objection to replacing “which has been leased land” with “which used to be leased land” in clause 29(1)(a). However, we are concerned that as there is no definition of how “immediate” is “immediate”, your suggestion to add “immediately” before “after the tenant has left” in the clause may render the Corporation unable to take possession of any property

which is found not so “immediately” after the relevant tenant has left. We are therefore inclined that the provision should remain as presently drafted, such that the Corporation could decide whether to deal with the property in accordance with clause 29(1)(a) or (c), depending on the nature/value of the property and the timing when such property is found.

Clause 33 – Bylaws

The bylaws to be made by the Corporation are subsidiary legislation subject to negative vetting by the Legislative Council. As the bylaws would be made for the purposes of the day-to-day operation and management of the Corporation’s premises, we consider that negative vetting will suffice.

As regards penalty for contravention of the bylaws, section 28(1)(e) of Cap 1 already stipulates that subsidiary legislation may provide that a contravention or breach of the subsidiary legislation is an offence punishable on summary conviction by a fine not exceeding \$5,000 or imprisonment not exceeding 6 months. As such, we consider it unnecessary to make the same provision in the Bill.

For the legal effect of applying the various provisions of the Public Health and Municipal Services Ordinance (Cap 132) in the bylaws, the Corporation may under clause 33(2) provide in the bylaws that hawking is an offence within the meaning of section 83 of Cap 132 and hence make provisions to enable the relevant authorities to exercise their powers under sections 86, 86A, 86C and 86D of Cap 132. Nevertheless, we cannot be specific at this stage on the exact legal effect of these provisions in the bylaws, as it will depend on the individual clauses to be drawn up by the Corporation.

Clause 37 – Vesting of rights, obligations, assets and liabilities

For the HKITCC’s existing funds established under section 6(3)(a) of the HKITCC Ordinance (Cap 431), our intention is that the Board of the Corporation should be allowed to take a fresh look at whether they should be retained and if so, to seek the Financial Secretary’s approval under clause 8(2)(n) as if such funds are newly established by the Corporation. Hence, we do not intend to make transitional provision on the continued availability of the existing funds.

Regarding intellectual property, only the HKITCC has registered the trade marks of “Techlink” (which is a database produced by the HKITCC for business matching) and “Techworld” (which is an annual event organised by the HKITCC for business matching and technology transfer), and is applying for the registration of the trade mark of “Tech Centre”. In this connection, we consider that intellectual property possessed by the three organisations forms part of their assets to be vested in the Corporation by virtue of clause 37(1).

We have no objection to your suggestion of adding a provision like section 37(4) of the Urban Renewal Authority Ordinance to the effect that all books, papers, documents etc relating to the HKIEC, the HKITCC and the PHKSPCL shall be delivered to the Corporation.

Schedule 3 – Transitional and Savings

The benefits currently enjoyed by the staff of the three organisations vary among the organisations and among ranks of staff within the organisations. They include housing allowance, passage/travelling allowance, children education allowance, provident fund, employees' compensation insurance, medical/hospitalisation insurance, life insurance, and death and disablement insurance. These benefits form part and partial of the terms and conditions of employment covered by clause 1 of Schedule 3, and hence no express provision for their continuance is required.

For staff redundancy, you may wish to know the Boards of the HKIEC, the HKITCC and the PHKSPCL have agreed that, prior to the establishment of the merged body, existing staff of the three organisations should be pooled together to form a common executive team for more flexible and effective use of staff resources. This staff sharing arrangement was implemented on 1 December 2000. As a result, a total of 12 staff were made redundant and their employment was properly terminated on/before 1 December 2000.

I hope the above has addressed your questions. If you need any further information or clarification, please contact me.

Yours sincerely,

(Ms Manda Chan)
for Commissioner for Innovation and Technology

c.c. Department of Justice (Attn : Mr Sunny Chan)