

立法會

Legislative Council

LC Paper No. LS87/07-08

Paper for the Bills Committee on the Independent Police Complaints Council Bill

At its meeting on 15 April 2008, whilst discussing the incorporation of the Independent Police Complaints Council in clause 3 of the Bill, a member expressed concern whether incorporation would affect the continuation of legal proceedings involving the existing Independent Police Complaints Council. The Administration referred members to clause 40, which provides :-

40. Continuance of things done by former Council

- (1) The enactment of this Ordinance does not affect the validity of anything done by, in relation to or on behalf of the former Council before the commencement date.*
- (2) Anything done before the commencement date by, in relation to or on behalf of the former Council pursuant to or in connection with its functions has effect as from that date as if done by, in relation to or on behalf of the Council.*
- (3) Anything that, immediately before the commencement date, is required to be done and is in the process of being done by, in relation to or on behalf of the former Council pursuant to or in connection with its functions may, as from that date, be continued by, in relation to or on behalf of the Council to the extent that it is consistent with this Ordinance.*

The member doubted whether the clause is specific enough in relation to legal proceedings, and the Legal Service Division was instructed to assist in finding out if there are drafting precedents on the same issue.

2. An example of an administratively appointed entity being incorporated under legislation is the Consumer Council Ordinance (Cap. 216). Section 21 (Transitional provisions) of the Ordinance deals with, inter alia, transfer of property, obligations and liabilities of “the Consumer Council existing at the enactment of this Ordinance”. Section 21(2) provides that :-

- (2) All obligations and liabilities of the said Consumer Council are as from the commencement of this Ordinance the obligations and liabilities of the Council in its corporate capacity.*

The full text of section 21 is attached in the Annex for members’ reference.

3. There are other drafting precedents on continuation of legal proceedings upon a change in entity. Members may note that these are not directly relevant as the circumstances were different, but they are illustrations on the drafting that could be adopted in different circumstances. One such example is the Hong Kong Tourist Association (Amendment) Ordinance 2001 (3 of 2001), which provides for, inter alia, the replacement of the Hong Kong Tourist Association and its board of management by a new body corporate. Section 38(6) of the Ordinance provides that :-

- (6) *The legal claims including present, future, actual and contingent claims by or against the old Board, including any accrued right of appeal, judicial and administrative proceedings instituted by or against the old Board that existed immediately before the appointed day do not abate by reason of the commencement of Part II. They may be continued or enforced by or against the new Board.*

As defined in the Ordinance, "old Board" means the Board of Management established by and named the Hong Kong Tourist Association Board by the repealed Hong Kong Tourist Association Ordinance, and "new Board" means the Hong Kong Tourism Board. Another example is the Housing Ordinance (Cap. 283), which provides for the establishment and functions of the Housing Authority. Section 38 (5) of the Ordinance provides that :-

- (5) *Any proceedings under the repealed Resettlement Ordinance (Cap 304 1971 Ed.) pending at the commencement of this Ordinance to which a competent authority was a party shall be construed as if the Authority was a party thereto in lieu of the competent authority.*

Conclusion

4. Looking at the precedents, it would appear that the choice of drafting of a provision on the continuation of legal proceedings is a matter of policy intent which would depend on the nature of activities which the transferring entity had undertaken before incorporation or transfer, whether there were legal proceedings it had been involved in, and the persons who had been or could be named as parties in the legal proceedings concerned.

Encls.

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消費者委員會條例(第 216 章)

21. 過渡性條文

- (1) 所有歸屬或屬於消費者委員會的財產，不論屬任何種類，亦不論是動產或不動產，凡於本條例生效日期時存在者，均無須進一步轉易而由該日期起歸屬或屬於具法團身分的委員會。
- (2) 由本條例生效日期起，上述消費者委員會的所有義務及法律責任，均為具法團身分的委員會所承擔的義務及法律責任。
- (3) 如有任何事情於本條例生效日期前已由上述消費者委員會展開或已在委員會的授權下展開，則該事情可由具法團身分的委員會繼續進行及完成。
- (4) 為施行本條例，於緊接本條例生效日期前出任上述消費者委員會主席、總幹事或委員的人士，除其委任條款另有規定外，由該生效日期起，均為委員會的主席、總幹事或委員(視屬何情況而定)。
- (5) 儘管第2條已載有“財政年度”的定義，介乎本條例生效日期與1978年3月31日之間的期間，須當作為一個財政年度。
- (6) 無須就根據本條而作出的任何財產轉讓繳付印花稅。

CONSUMER COUNCIL ORDINANCE (Cap. 216)

21. Transitional provisions

- (1) All property of whatever kind and whether movable or immovable vested in or belonging to the Consumer Council existing at the commencement of this Ordinance shall as from that date vest in or belong to that Council in its corporate capacity without any further assurance.
- (2) All obligations and liabilities of the said Consumer Council are as from the commencement of this Ordinance the obligations and liabilities of the Council in its corporate capacity.
- (3) Where anything has been commenced by or under the authority of the said Consumer Council before the commencement of this Ordinance such thing may be carried on and completed by the Council in its corporate capacity.
- (4) Every person who immediately before the commencement of this Ordinance holds an appointment as Chairman, Executive Director or a member of the said Consumer Council is, as from such commencement but subject to the terms of his appointment, the Chairman, Executive Director, or a member of the Council, as the case may be, for the purposes of this Ordinance.
- (5) Notwithstanding the definition of "financial year" in section 2 the period between the commencement of this Ordinance and 31 March 1978 shall be deemed to be a financial year.
- (6) No stamp duty shall be payable in respect of any transfer of property under this section.