

立法會
Legislative Council

LC Paper No. LS81/08-09

**Paper for the House Committee Meeting
on 12 June 2009**

**Legal Service Division Report on
Proposed Resolution under section 54A of the
Interpretation and General Clauses Ordinance (Cap. 1)**

The Acting Secretary for Commerce and Economic Development (the Secretary) has given notice to move a motion at the Council meeting of 24 June 2009 to effect a transfer, with effect from 26 June 2009, of statutory functions pursuant to the establishment of Create Hong Kong (CreateHK), a dedicated office set up to drive the development of creative industries.

2. The motion will be moved under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1). The section provides that the 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 resolution may also contain such incidental, consequential and supplemental provisions as may be necessary or expedient for the purpose of giving full effect to the resolution.

3. According to the draft speech of the Secretary, having obtained the approval from the Finance Committee of the Legislative Council on 22 May 2009, CreateHK was established on 1 June 2009 through the integration of resources scattered around different Government departments. CreateHK will enable the Government to respond to the industries' demands more effectively and better serve the different sectors through provision of a one-stop service.

4. Establishment of CreateHK included, among others, the redeployment of the Special Effects Licensing Unit (the Unit) from the Office of the Television and Entertainment Licensing Authority to CreateHK. The Unit is responsible for regulating the use of special effects materials used in the production of entertainment special effects in films, television programmes and theatrical performances under the Entertainment Special Effects Ordinance (Cap. 560) (the Ordinance). The Commissioner for Television and Entertainment Licensing (CTEL) is the Entertainment Special Effects Licensing Authority as stipulated in section 3 of the Ordinance.

5. With the establishment of CreateHK and redeployment of the Unit to CreateHK, it is necessary to transfer the statutory functions of CTEL under the

Ordinance to the Head of CreateHK. Legislative amendments are required to give legal effect to the transfer.

6. The proposed resolution provides that the statutory functions currently exercised by CTEL by virtue of the Ordinance be transferred to the Head of CreateHK. According to the draft speech of the Secretary, the resolution will not involve any amendments to the statutory functions (including powers and duties) provided for in the Ordinance. The legal effect of the draft resolution is to provide for the simple substitution of CTEL by the Head of CreateHK in respect of the functions exercisable by CTEL by virtue of the Ordinance with effect from 26 June 2009.

7. At the meeting of the Panel on Information Technology and Broadcasting on 9 February 2009, the Administration briefed members on the proposed preliminary strategy for developing the creative economy in Hong Kong, including the setting up of a dedicated office, namely CreateHK, under the Communications and Technology Branch of the Commerce and Economic Development Bureau, and the creation of a new Head of CreateHK at Directorate 3 level, to be offset by the deletion of an existing Assistant Government Chief Information Officer post in the Office of the Government Chief Information Officer. The Administration also briefed members at the Panel meeting on 9 March 2009 on the proposal to set up a \$300 million CreateSmart Initiative, and to centralize the management of various existing funding resources relating to creative industries under CreateHK. Members supported in principle the Administration's proposals. The relevant establishment/funding proposals were approved by the Finance Committee on 22 May 2009.

8. It is noted that under section 33(1) of the Ordinance, a person who is aggrieved by a decision of CTEL may appeal against the decision to an Appeal Board established under section 37 of the Ordinance. It does not appear that a statutory right of appeal or review to CTEL regarding the decision of CTEL has been provided under the Ordinance. In these circumstances, the Legal Service Division has asked the Administration to explain the legal basis for proposing paragraph (2)(d)(iv) and (v) (to treat a right of appeal to CTEL and a right to have anything reviewed by CTEL as being a right of appeal to the Head of CreateHK and a right to have that thing reviewed by the Head of CreateHK) in the proposed resolution. A further report will be submitted if necessary.

Prepared by

TSO Chi-yuen, Timothy
Assistant Legal Adviser
Legislative Council Secretariat
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