

立法會
Legislative Council

LC Paper No. LS83/11-12

**Comments on the Proposed Amendment to the
Commencement Date of the Proposed Resolution
to be moved under section 54A of the
Interpretation and General Clauses Ordinance (Cap. 1)**

The Secretary for Constitutional and Mainland Affairs has written to the President on 15 June 2012, indicating that the Administration will propose amendments to the motion to be moved at the Council meeting of 20 June 2012 under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) (the proposed Resolution), which seeks to give effect from 1 July 2012 to the re-organisation of the Government Secretariat proposed by the Chief Executive-elect (the Re-organisation Proposal). The amendment seeks to transfer the statutory functions of the Secretary for Commerce and Economic Development under the Competition Ordinance (14 of 2012) to the Secretary for Commerce and Industries (**Annex I**). The Chief Secretary for Administration (CS) has also written to the President on 19 June 2012 indicating that further amendment to the proposed Resolution will be moved (**Annex II**) to amend its commencement date (the Amendment). This paper sets out the legal effect of the Amendment of CS to the proposed Resolution.

The Amendment

2. The Amendment seeks to, among other things, delete the specified effective date of transfer of statutory functions, i.e. 1 July 2012, and substitute it with "commencement date", which is defined along the following lines in the Amendment as –

- (a) if the Re-organisation Proposal is approved by the Finance Committee (FC) before 1 July 2012, 1 July 2012; or
- (b) if the Re-organisation Proposal is approved by FC on or after 1 July 2012, the 5th day after the day of approval.

3. CS has explained that the Administration needs to take the prudent step of moving the Amendment in order to ensure that even if the pace of deliberation of FC and that of the proposed Resolution at the Council are different, the Re-organisation Proposal can be implemented in an orderly manner.

Approval of FC

4. According to paragraph 2 of Enclosure 2 to FCR (2012-13)43 for FC, the proposed changes, including the creation of the new posts of Deputy CS and Deputy Financial Secretary, will only be effective from the date of transfer specified in the proposed Resolution.

Legal effect of the Amendment

5. In the situation as set out in paragraph 2(a) above, if the proposed Resolution is passed before 1 July 2012, the effective date of transfer of statutory functions is 1 July 2012. On the other hand, if the proposed Resolution is passed on or after 1 July 2012, the Amendment will still make 1 July 2012 the effective date of transfer.

6. In the situation as set out in paragraph 2(b) above, if FC approves the Re-organisation Proposal on, for example, 4 July 2012, no matter when the proposed Resolution is actually passed, the commencement date of the proposed Resolution will be the 5th day after the approval of FC, i.e. 9 July 2012.

7. Uncertainties may be created because until the proposed Resolution is passed, the existing public officers (former officers) specified in the proposed Resolution are required to perform their existing statutory functions for an uncertain period of time until the new public officers come into existence.

8. Further, if the proposed Resolution is passed at the Council meeting of 11 July 2012, the commencement date of the proposed Resolution will be related back to 9 July 2012 (or 1 July 2012 in the situation as set out in paragraph 2(a) above), i.e. when the former officers were still vested with and were performing their statutory functions. The legality of the acts done by the former officers during 9 to 11 July 2012 (or 1 to 11 July 2012) may be questionable because by the Amendment (if approved) and the operation of the proposed Resolution, the

performance of statutory functions during that period will be transferred to the new officers.

9. Under paragraph (2) of the proposed Resolution, anything lawfully done (or may be done/required to be done/in the process of being done) before 1 July 2012 (or the commencement date if the Amendment is approved) by the former officer is to be regarded, on and from that date, as done by or in relation to the new officer. However, paragraph (2) contains no provision to deal with the situation identified in paragraph 8 above, i.e. something done by a former officer lawfully at a time before the proposed Resolution is passed with the Amendment, but subsequently become something done at a time which is on or after the commencement date by operation of the Amendment.

10. The Legal Service Division is making enquiry with the Administration on the observation set out in paragraphs 8 and 9 above and will report further once the Administration's reply is available.

11. Members are invited to note the above information.

Encls.

Prepared by

Legal Service Division
Legislative Council Secretariat
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Interpretation and General Clauses Ordinance

and

**Rule 29(6) of the Rules of Procedure of the Legislative Council
of the Hong Kong Special Administrative Region**

Amending Motion

Resolved that the motion to be moved by the Secretary for Constitutional and Mainland Affairs under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) at the Legislative Council meeting of 20 June 2012 be amended—

- (a) in Schedule 1, Part 1, Division 1, by adding—
“18. Competition Ordinance Secretary for Commerce and
(14 of 2012) Industries”;
- (b) in Schedule 1, Part 2, Division 1, section 1(1)(q), by deleting “section 2(2)—” and substituting “section 2(2);”;
- (c) in Schedule 1, Part 2, Division 1, section 1(1), by adding—
“(r) Competition Ordinance (14 of 2012), sections 1(2) and 163(1)
and (2)—”.

Interpretation and General Clauses Ordinance

and

Rule 29(6) of the Rules of Procedure of the Legislative Council
of the Hong Kong Special Administrative Region

Amending Motion

Resolved that the motion to be moved by the Secretary for Constitutional and Mainland Affairs under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) at the Legislative Council meeting of 20 June 2012 be amended—

(a) by adding before paragraph (1)—

“(1A) in this Resolution—

commencement date (生效日期) means—

(a) if—

- (i) the recommendation of the Establishment Subcommittee of the Finance Committee of the Legislative Council set out in Enclosure 1 to the paper numbered FCR(2012-13)43; and
- (ii) the proposal set out in the paper numbered FCR(2012-13)44,

are approved by the Committee before 1 July 2012, 1 July 2012; or

(b) if—

(i) the recommendation specified in subparagraph (a)(i); and

(ii) the proposal specified in subparagraph (a)(ii),
are approved by the Committee on or after 1 July 2012,
the 5th day after the day on which the recommendation
and proposal are so approved;”;

(b) in paragraphs (1) and (2), by deleting “1 July 2012” (wherever appearing) and substituting “the commencement date”.