

立法會
Legislative Council

LC Paper No. LS58/13-14

**Paper for the House Committee Meeting
on 23 May 2014**

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

The Secretary for Commerce and Economic Development (the Secretary) has given notice to move a motion (the proposed resolution) at the Legislative Council (LegCo) meeting of 18 June 2014 to effect a transfer of statutory functions under the Electronic Transactions Ordinance (Cap. 553) (the Ordinance) pursuant to the proposed establishment of a new Innovation and Technology Bureau (ITB).

2. The motion will be moved under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1). The section 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 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. "Public Officer", according to section 3 of Cap. 1, means any person holding an office of emolument under the Government, whether such office be permanent or temporary. And according to section 54A(4) of Cap. 1, "functions" includes powers and duties. A motion moved under section 54A of Cap. 1 only deals with existing statutory functions of a public officer.

3. According to paragraph 3 of the LegCo Brief (File Ref.: CTB/B/1-145/(14)/C) issued by the Commerce and Economic Development Bureau (CEDB) on 20 May 2014, under the proposal, the existing CEDB will be restructured into two bureaux, namely the CEDB and the new ITB. The new ITB will take over the policy responsibilities relevant to the Innovation and Technology Commission and the Office of the Government Chief Information Officer from the existing Communications and Technology Branch of CEDB. Legislative amendments are required to give legal effect to the transfer of statutory functions.

4. The proposed resolution provides that the statutory functions currently exercisable by the Secretary for Commerce and Economic Development (SCED) and Permanent Secretary for Commerce and Economic Development (Communications and Technology) (PSCT) under the Ordinance be transferred to the new Secretary for Innovation and Technology (S for IT) and Permanent Secretary for Innovation and Technology (PSIT) respectively. According to the draft speech of SCED, the proposed resolution will not involve any substantive amendments to the relevant statutory functions. The legal effect of the draft resolution is to provide for the simple substitution of the current title of the public officers (i.e. SCED and PSCT respectively) by the new title of the public officers in whom policy responsibility for the provisions in question will be vested after the establishment of ITB (i.e. S for IT and PSIT respectively).

5. The proposed resolution will commence on the 14th day after the date on which the Finance Committee (FC) of LegCo approves the financial proposal relating to the establishment of the ITB. If the proposed resolution is made and passed by LegCo after the date on which FC approves the financial proposal, the proposed resolution will commence on the 14th day after the proposed resolution is made and passed.

6. As advised by the Clerk to the Panel on Information Technology and Broadcasting, at the Panel meeting on 14 April 2014, the Administration briefed members on the proposal to establish ITB. While the majority of Panel members supported in principle the establishment of the proposed ITB to sustain the development of innovation and technology of Hong Kong in the long run, some members objected to the proposal and opined that the Administration should consider other alternatives such as internal redeployment, or creating a new Permanent Secretary post under the Commerce and Economic Development Bureau to oversee the technology portfolio. The Panel further held a special meeting on 3 May 2014 to receive views from members of the public on the proposal to establish ITB. Most of the deputations/individuals attending the meeting expressed support for the Administration's proposal. The Panel also passed two motions urging the Government to establish the ITB as soon as possible.

7. Further, as advised by the Clerk to the Panel on Commerce and Industry, the Panel on Commerce and Industry was consulted on the proposed establishment of ITB and related arrangements at its meeting held on 15 April 2014. While the majority of Panel members supported in principle the establishment of ITB to steer the development of innovation and technology of Hong Kong in the long run, some Panel members were of the view that portfolios relating to creative industries, intellectual property, communications and broadcasting should also be under the purview of the new ITB. The Panel passed a motion supporting the expeditious establishment of ITB.

8. We have made enquiries with the Administration about the following. It is noted that it is not clear whether the matters mentioned in paragraph 3 of the proposed resolution are confined to the Ordinance e.g. paragraph (3)(d)(ii) and (3)(d)(iii). If the matters mentioned in paragraph 3 of the proposed resolution are confined to the Ordinance, the legal basis for proposing paragraph (3) is not clear, in particular as it appears that there is no right of appeal against the decisions of SCED or PSCT nor to have such decisions reviewed under the Ordinance (paragraph (3)(d)(iii) of the proposed resolution), and there is no right to have anything reviewed by SCED or PSCT under the Ordinance (paragraph (3)(d)(v) of the proposed resolution). We are still awaiting the Administration's reply. A further report will be submitted, if necessary.

Prepared by

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