

立法會
Legislative Council

LC Paper No. LS44/14-15

**Paper for the House Committee Meeting
on 27 February 2015**

**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 has given notice to move a motion (the Proposed Resolution) under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) at the Legislative Council (LegCo) meeting of 18 March 2015 to amend the resolution (at **Annex I**) made and passed by LegCo under the same section on 29 October 2014 and published in the Gazette as Legal Notice No. 132 of 2014 (the Original Resolution).

2. The Original Resolution was made to effect the transfer of statutory functions under the Electronic Transactions Ordinance (Cap. 553) for the proposed establishment of the Innovation and Technology Bureau (ITB). The Original Resolution commences on the 14th day after the day on which the Finance Committee of LegCo (FC) approves, under section 8 of the Public Finance Ordinance (Cap. 2), the proposal to make changes to the Estimates of Expenditure 2014-15 to provide for specified matters arising from the establishment of ITB (the 2014-15 funding proposal); or the 14th day after the day on which the Original Resolution is made and passed by LegCo under section 54A of Cap. 1, whichever is the later.

3. According to paragraph 2 of the LegCo Brief (File Ref: CTB/B480-20-6-6/3/C) issued by the Commerce and Economic Development Bureau on 24 February 2015, the 2014-15 funding proposal could not be approved by FC in time for the relevant changes to be included into the Draft Estimates of Expenditure for 2015-16 for introduction into LegCo on 25 February 2015. Accordingly, the Administration considers that the Original Resolution could not commence without first making new commencement arrangements for the proposed establishment of ITB.

4. The Proposed Resolution revises the definition of "commencement date" in, and adds a new definition of "amending Resolution" to, the Original Resolution to provide that the Original Resolution will commence on the 14th

day after the day on which FC approves, under section 8 of Cap. 2, the proposal to make changes to **the Estimates of Expenditure 2015-16** to provide for the specified matters arising from the establishment of ITB; or the 14th day after the day on which the Proposed Resolution is made and passed by LegCo under section 54A of Cap. 1, whichever is the later.

5. As advised by the Clerk to the Panel on Information Technology and Broadcasting (ITB Panel), the ITB Panel and the Panel on Commerce and Industry (C&I Panel) were briefed on the proposal to establish ITB respectively on 14 and 15 April 2014 and a special meeting of the ITB Panel was held on 3 May 2014 with deputations giving their views on the proposed establishment of the new Bureau. Most of the deputations supported the proposal and both Panels passed motions to support the establishment of the new Bureau as soon as possible. At the House Committee meeting on 23 May 2014, members agreed to form a subcommittee to study the proposed legislative amendments relating to the establishment of ITB (the Subcommittee). The Subcommittee held two meetings with the Administration to examine the proposed legislative amendments. While the majority of members of the Subcommittee supported in principle the proposed establishment of the new Bureau to sustain the development of innovation and technology of Hong Kong in the long run, some other members objected to the Administration's proposal. The Subcommittee raised no objection to the proposed legislative amendments. As to the Proposed Resolution, both the ITB Panel and the C&I Panel have not been consulted on the Proposed Resolution.

6. We have made an enquiry with the Administration regarding the legal basis upon which the Original Resolution is still valid and subsists, despite the fact that it could not commence for reason explained in paragraph 3 above, and thus capable of being amended by the Proposed Resolution. A further report will be made, if necessary.

Encl.

Prepared by

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Legislative Council Secretariat
26 February 2015

L.N. 132 of 2014

Interpretation and General Clauses Ordinance

Resolution of the Legislative Council

Resolution made and passed by the Legislative Council under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) on 29 October 2014.

Resolved that—

(1) in this Resolution—

commencement date (生效日期)—

- (a) subject to subparagraph (b), means the 14th day after the day on which the Finance Committee of the Legislative Council (*the Committee*) approves, under section 8 of the Public Finance Ordinance (Cap. 2), the proposal to make changes to the Estimates of Expenditure 2014–15 to provide for the following matters arising from the establishment of the Innovation and Technology Bureau—
 - (i) the creation of a new head of expenditure and new subheads in that head of expenditure;
 - (ii) supplementary provision in those subheads;
 - (iii) variations in the establishment of posts; or
- (b) if this Resolution is made and passed by the Legislative Council under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) after the day on which the Committee approves the proposal mentioned in subparagraph (a), means the 14th day after the day on which this Resolution is made and passed;

(2) with effect from the commencement date—

- (a) the functions exercisable by the Secretary for Commerce and Economic Development under the Electronic Transactions Ordinance (Cap. 553) be transferred to the Secretary for Innovation and Technology, and to give full effect to the transfer, the definition of *Secretary* in section 2(1) of that Ordinance be amended by repealing “Secretary for Commerce and Economic Development” and substituting “Secretary for Innovation and Technology”;
 - (b) the functions exercisable by the Permanent Secretary for Commerce and Economic Development (Communications and Technology) under the Electronic Transactions Ordinance (Cap. 553) be transferred to the Permanent Secretary for Innovation and Technology, and to give full effect to the transfer, the definition of *Permanent Secretary* in section 2(1) of that Ordinance be amended by repealing “Permanent Secretary for Commerce and Economic Development (Communications and Technology)” and substituting “Permanent Secretary for Innovation and Technology”; and
- (3) in addition to and without derogating from section 23 of the Interpretation and General Clauses Ordinance (Cap. 1)—
- (a) anything lawfully done before the commencement date by or in relation to a public officer from whom any function is transferred under this Resolution (*former officer*) pursuant to or in connection with that function is, on and from that date, to be regarded, in so far as necessary for the purpose or in consequence of that transfer, as done by or in relation to, as the case may be, the public officer to whom that function is transferred (*new officer*);

- (b) anything that, immediately before the commencement date, may be done and is in the process of being done by or in relation to a former officer pursuant to or in connection with any function transferred under this Resolution may, on and from that date, be continued by or in relation to, as the case may be, the new officer;
- (c) anything that, immediately before the commencement date, is required to be done and is in the process of being done by or in relation to a former officer pursuant to or in connection with any function transferred under this Resolution is, on and from that date, to be continued by or in relation to, as the case may be, the new officer;
- (d) without limiting subparagraphs (a), (b) and (c), and in so far as necessary for the purpose or in consequence of the transfer of functions under this Resolution—
- (i) any document, agreement or arrangement creating or giving rise to legal rights or obligations that—
- (A) refers to a former officer, or was prepared, made or entered into by a former officer on behalf of the Government; and
- (B) is in force immediately before, or is to come into force on or after, the commencement date,
- is, on and from that date, to be construed as if the references to the former officer included references to the new officer;
- (ii) in any legal proceedings—
- (A) in which a former officer is a party; and
- (B) that are subsisting immediately before the commencement date,

- the new officer is, on and from that date, to substitute for the former officer as that party;
- (iii) any right of appeal to a former officer that is subsisting immediately before the commencement date is, on and from that date, treated as being a right of appeal to the new officer;
- (iv) any form that is specified or prescribed before the commencement date for use in connection with any function of a former officer that is transferred under this Resolution may, on and from that date, be used despite the fact that it contains references to the former officer, and those references are to be construed as references to the new officer;
- (e) without limiting subparagraphs (a), (b) and (c), and in so far as necessary for the purpose or in consequence of the transfer of functions under this Resolution, any document, agreement or arrangement that—
- (i) contains any reference to a public officer or a policy bureau (*former officer or bureau*) specified in column 1 of the Schedule;
- (ii) was prepared, made or entered into by any public officer on behalf of the Government;
- (iii) does not create or give rise to any legal right or obligation; and
- (iv) is in force immediately before, or is to come into force on or after, the commencement date,
- is, on and from that date, to have effect as if the reference is substituted by a reference to the public officer or policy bureau specified opposite to the former officer or bureau in column 2 of the Schedule in so far as the substitution is necessary for or conducive to the attainment of the purposes of the document, agreement or arrangement.

Schedule

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Schedule

[para. (3)(e)]

**Substitution of References to Public Officer and Policy
Bureau**

Secretary for Commerce
and Economic Development

Secretary for Innovation and Technology

Commerce and Economic
Development Bureau

Innovation and Technology Bureau

Kenneth CHEN Wei-on
Clerk to the Legislative Council

29 October 2014