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Paper for the House Committee meeting on 8 May 2015

**Report of the Subcommittee on the Two Proposed Resolutions Relating
to the Establishment of the Innovation and Technology Bureau**

Purpose

This paper reports on the deliberations of the Subcommittee on the Two Proposed Resolutions Relating to the Establishment of the Innovation and Technology Bureau ("the Subcommittee").

Background

2. In preparation for the establishment of the Innovation and Technology Bureau ("ITB"), the Legislative Council ("LegCo") made and passed on 29 October 2014 a resolution under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) ("IGCO") to effect the transfer of statutory functions under the Electronic Transactions Ordinance (Cap. 553) ("ETO") from the Secretary for Commerce and Economic Development ("SCED") and Permanent Secretary for Commerce and Economic Development (Communications and Technology) to the Secretary for Innovation and Technology and Permanent Secretary for Innovation and Technology ("the original Resolution"). The original Resolution was published in the Gazette as Legal Notice No. 132 of 2014 on 31 October 2014.

3. The original Resolution commences on the 14th day after the day on which the Finance Committee ("FC") approves, under section 8 of the Public Finance Ordinance (Cap. 2) ("PFO"), the proposal to make changes to the Estimates of Expenditure 2014-2015 to provide for specified matters arising from the establishment of ITB ("the 2014-2015 funding proposal"); or the 14th day after the day on which the original Resolution is made and passed by LegCo under section 54A of IGCO, whichever is the later.

4. Since the 2014-2015 funding proposal could not be approved by FC in time for the relevant changes to be included into the Draft Estimates of Expenditure for 2015-2016 which was introduced into LegCo on 25 February 2015, the 2014-2015 funding proposal has been temporarily withdrawn. As such, another proposal to make changes to the Estimates of Expenditure for 2015-2016 to provide for matters arising from the establishment of ITB ("the 2015-2016 funding proposal") will need to be submitted later. Accordingly, the Administration takes the view that the original Resolution could not commence and considers it necessary to introduce amendments to the original Resolution to provide for new commencement arrangements for the proposed establishment of ITB.

5. For the above purpose, SCED gave notice on 24 February 2015 to move a motion in respect of a resolution to be made under section 54A of IGCO at the LegCo meeting of 18 March 2015 to amend the original Resolution ("the amending Resolution") by repealing the definition of "commencement date" under paragraph (1) of, and substituting a new definition of "commencement date" in, the original Resolution. It also adds a new definition of "amending Resolution" to the original Resolution. The intended legal effect is that the original Resolution will commence on the 14th day after the day on which FC approves, under section 8 of PFO, the 2015-2016 funding proposal; or the 14th day after the day on which the amending Resolution is made and passed by LegCo under section 54A of IGCO, whichever is the later.

6. Upon scrutiny of the legal and drafting aspects of the amending Resolution, the Legal Service Division ("LSD") of the LegCo Secretariat has raised concern with the Administration that the original Resolution may not be valid and subsist. The proposed amendment to the so-called "commencement clause"¹ may not have legal effect as the original Resolution which is sought to be amended has lapsed².

7. The Administration does not agree to LSD's view and considers that the original Resolution, similar to an un-commenced Ordinance, is valid and subsisting except that it has yet to come into operation, and thus is capable of being amended by the amending Resolution. Since the original Resolution has not yet come into operation, there is not yet any continuing effect and thus no issue of lapse³. Nevertheless, in order to avoid time being

¹ See paragraph 4 of the LegCo Brief (File Ref: CTB/B480-20-6-6/3/C) issued by the Commerce and Economic Development Bureau ("CEDB") on 24 February 2015.

² Details of LSD's view are set out in paragraph 5 of LC Paper No. LS57/14-15.

³ See paragraph 4 of the LegCo Brief (File Ref: CTB/B480-20-6-6/3/C) issued by CEDB on 31 March 2015. Copies of the correspondence between the Administration and LSD are available at : http://www.legco.gov.hk/yr14-15/english/hc/sub_leg/sc107/papers/sc107_ppr.htm

unnecessarily spent on an argument over a technical legal issue, and hence to expedite legislative process, the Administration has decided not to proceed further with the amending Resolution and subsequently introduced on 31 March 2015 the proposed resolution to repeal the original Resolution ("repeal Resolution") and the proposed resolution for the transfer of relevant statutory functions under ETO pursuant to the proposed establishment of ITB ("new Resolution").

The two proposed resolutions

8. The repeal Resolution repeals the original Resolution. The new Resolution is the same as the original Resolution, except that the commencement date is determined by making references to the 14th day after the day on which FC approves, under section 8 of PFO, the 2015-2016 funding proposal and the 14th day after the day on which the new Resolution is made and passed by LegCo under section 54A of IGCO, whichever is the later.

The Subcommittee

9. At the House Committee meeting on 10 April 2015, Members agreed that a subcommittee should be formed to examine the two proposed resolutions. At the request of the House Committee, SCED withdrew his notices of motion in respect of the two proposed resolutions pending the deliberation of the Subcommittee.

10. Under the chairmanship of Ir Dr Hon LO Wai-kwok, the Subcommittee held a meeting with the Administration on 20 April 2015. The membership list of the Subcommittee is in **Appendix**.

Deliberations of the Subcommittee

11. The majority of members of the Subcommittee express support for the repeal Resolution and the new Resolution and urge that ITB should be established as soon as possible to spearhead the development of innovation and technology in Hong Kong.

12. Some members object to the proposed establishment of ITB. These members also query the rationale for not transferring the telecommunications and broadcasting portfolios under CEDB to ITB. They are of the view that CEDB would have excess capacity and manpower surplus after the transfer

of the innovation and technology function to ITB.

13. According to the Administration, the proposed ITB will focus on the development of innovation and technology in Hong Kong, including the commercialization of research and development ("R&D") deliverables through further strengthening the co-ordination among the Government, industry, academia and R&D sectors. The Administration considers it undesirable to transfer the telecommunications and broadcasting portfolios to ITB as they are more related to regulatory and licensing matters. Nevertheless, the future ITB will review its operational requirements from time to time as in the cases of all bureaux and departments.

14. The Administration has also advised that the Communications and Technology Branch of CEDB will still have to tackle many mammoth tasks after the establishment of ITB, notably the review of the Telecommunications Ordinance (Cap. 106) and the Broadcasting Ordinance (Cap. 562).

15. In response to some members' enquiry whether the Administration will reconsider the proposed establishment of ITB in order to improve its chances of being passed by FC and LegCo, the Administration has advised that the existing proposal has in fact been thoroughly deliberated on various occasions in LegCo and its Panels, committees and subcommittees. The Administration considers the existing proposal an appropriate one and has no intention to amend it for the time being.

Recommendation

16. The Subcommittee raises no query about the legal and drafting aspects of the repeal Resolution and the new Resolution. The Subcommittee will not move any amendments to the two proposed resolutions.

Advice sought

17. Members are invited to note the deliberations of the Subcommittee.

**Subcommittee on the Two Proposed Resolutions Relating to the
Establishment of the Innovation and Technology Bureau**

Membership List

Chairman	Ir Dr Hon LO Wai-kwok, BBS, MH, JP
Members	Hon CHAN Kam-lam, SBS, JP
	Hon WONG Kwok-hing, BBS, MH
	Hon Andrew LEUNG Kwan-yuen, GBS, JP
	Hon WONG Ting-kwong, SBS, JP
	Hon Cyd HO Sau-lan, JP
	Hon IP Kwok-him, GBS, JP
	Hon Mrs Regina IP LAU Suk-yeet, GBS, JP
	Hon Alan LEONG Kah-kit, SC
	Hon LEUNG Kwok-hung
	Hon Albert CHAN Wai-yip
	Hon WONG Yuk-man
	Hon Claudia MO
	Hon NG Leung-sing, SBS, JP
	Hon Steven HO Chun-yin
	Hon Frankie YICK Chi-ming
	Hon Charles Peter MOK, JP
	Hon CHAN Chi-chuen
	Dr Hon Kenneth CHAN Ka-lok
	Hon SIN Chung-kai, SBS, JP
	Dr Hon Elizabeth QUAT, JP
	Hon TANG Ka-piu, JP
	Dr Hon CHIANG Lai-wan, JP
	Hon CHUNG Kwok-pan
	Hon Christopher CHUNG Shu-kun, BBS, MH, JP
	Hon Tony TSE Wai-chuen, BBS
	(Total : 26 members)
Clerk	Ms YUE Tin-po
Legal Adviser	Ms Wendy KAN