

立法會
Legislative Council

LC Paper No. LS87/08-09

**Paper for the House Committee Meeting
on 19 June 2009**

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

Members may recall that the Legal Service Division made a report to the House Committee on 12 June 2009 on a proposed resolution to be moved by the Secretary for Commerce and Economic Development under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) at the Council meeting of 24 June 2009. The proposed resolution provides that the statutory functions currently exercised by the Commissioner for Television and Entertainment Licensing (CTEL) by virtue of the Entertainment Special Effects Ordinance (Cap. 560) (the Ordinance) be transferred to the Head of Create Hong Kong (CreateHK) with effect from 26 June 2009.

2. At the House Committee meeting, we informed members that 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. Thus, we had asked the Administration to explain the legal basis for proposing paragraph (2)(d)(iv) and (v) (i.e. 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, and the Administration's reply had yet to be received.

3. At the House Committee meeting, a member asked whether the proposed resolution would affect public interest. The Legal Service Division has also relayed that question to the Administration.

4. We have received the Administration's replies on the above issues. Copies of the correspondence are annexed for members' reference. The gist of the replies is as follows:-

- (a) The Administration confirmed that there is no provision under the Ordinance that provides for the right of appeal to CTEL and the right to have anything reviewed by CTEL. The Administration intends to remove the two paragraphs in question (i.e. paragraph (2)(d)(iv) and (v)) from the proposed resolution. Procedurally the amendment would have to be

effected by withdrawing the proposed resolution and re-submitting a new resolution to be moved at the Council meeting of 8 July 2009.

- (b) In respect of whether the proposed resolution would affect public interest, the Administration replied that the proposed resolution would not involve any amendments to the statutory functions (including powers and duties) provided for in the Ordinance. As the resolution would only provide for the simple substitution of CTEL by the Head of CreateHK, this would not affect any public interest such as the issues of the exercising of statutory powers, the supervision mechanism and the balance of powers in respect of the Ordinance.

5. A report on the revised resolution to be moved at the Council meeting of 8 July 2009 will be submitted at a subsequent House Committee meeting.

Encls

Prepared by

TSO Chi-yuen, Timothy
Assistant Legal Adviser
Legislative Council Secretariat
18 June 2009

LS/R/16/08-09



立法會秘書處 法律事務部
LEGISLATIVE COUNCIL SECRETARIAT
LEGAL SERVICE DIVISION

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Fax No.: 2511 1458

9 June 2009

Ms. Ida Lee
Prin AS for Commerce & Econ Dev
(Communications & Technology)B
Commerce and Economic Development Bureau
2/F Murray Building
Garden Road, Central
Hong Kong

Dear Ms. Lee,

**Proposed Resolution under section 54A of the
Interpretation and General Clauses Ordinance (Cap. 1)**

I am scrutinizing the legal and drafting aspects of the subject resolution.

It is noted that under section 33(1) of the Entertainment Special Effects Ordinance (Cap. 560), a person who is aggrieved by a decision of the Authority (i.e. the Commissioner for Television and Entertainment Licensing) may appeal against the decision to an Appeal Board (not to the Commissioner). In these circumstances, please explain why it is necessary to include paragraph (2)(d)(iv) and (v) in the proposed resolution.

To enable the House Committee to decide how to proceed with the proposed resolution at the meeting on 12 June 2009, I would appreciate if you could let me have the said information (in both Chinese and English and with soft copy to Miss Joey LEE at jmylee@legco.gov.hk) by noon on 10 June 2009.

Yours sincerely,

(Timothy TSO)
Assistant Legal Adviser

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11 June 2009

Mr Timothy TSO
Assistant Legal Adviser
Legislative Council Secretariat
Legal Service Division
Legislative Council Building
8 Jackson Road, Central
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(Fax No: 2877 5029)

Dear Mr TSO,

**Proposed Resolution under section 54A of the
Interpretation and General Clauses Ordinance (Cap.1)**

Thank you for your letter dated 9 June 2009.

We note your comment that the right of appeal stipulated in section 33(1) of the Entertainment Special Effects Ordinance (Cap.560) (the Ordinance) refers to the right of appeal to an Appeal Board, but not to the Commissioner for Television and Entertainment Licensing (CTEL). Please note that paragraph (2)(d)(iv) and (v) of the proposed resolution is not intended to deal with the right of appeal under section 33(1) of the Ordinance, and would not affect the right of appeal as enshrined in section 33(1) of the Ordinance.

It is also noted that similar provisions are made in the resolution passed on 14 June 2007 to effect the transfer of statutory functions from 1 July 2007 pursuant to the re-organisation of policy bureaux of the Government Secretariat. Paragraph 2(d)(iv) and (v) of the proposed resolution is made with reference to those provisions included in the resolution passed in 2007 and aims to provide a comprehensive coverage to ensure the smooth transfer of the statutory functions from the CTCL to the Head of Create Hong Kong for administering the Ordinance.

If you have further questions, please feel free to contact me.



(Ms Ida LEE)
for Secretary for Commerce and
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12 June 2009

Ms. Ida Lee
Prin AS for Commerce & Econ Dev
(Communications & Technology)B
Commerce and Economic Development Bureau
2/F Murray Building
Garden Road, Central
Hong Kong

Dear Ms. Lee,

**Proposed Resolution under section 54A of the
Interpretation and General Clauses Ordinance (Cap. 1)**

Thank you for your letter dated 11 June 2009.

As I mentioned in my letter dated 9 June 2009, under section 33(1) of the Entertainment Special Effects Ordinance (Cap. 560) (the Ordinance), a person who is aggrieved by a decision of the Commissioner for Television and Entertainment Licensing (CTEL) may appeal against the decision to an Appeal Board appointed under section 37 of the Ordinance. It does not appear that a statutory right of appeal or review to CTETL regarding the decision of CTETL has been provided under the Ordinance. It is thus doubtful whether it is necessary and within the scope of section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) to provide for treating a right of appeal to CTETL and a right to have anything reviewed by CTETL as being a right of appeal to the Head of CreateHK and a right to have that thing reviewed by the Head of CreateHK if such right does not in fact exist under the Ordinance.

In these circumstances, please:-

- (a) confirm whether there is any statutory right of appeal or review to CTETL under the Ordinance; and

- (b) if the answer is negative, explain the legal basis for proposing paragraph (2)(d)(iv) and (v) (i.e. 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.

I would appreciate if you could let me have the said information (in both Chinese and English and with soft copy to Miss Joey LEE at jmylee@legco.gov.hk) by 15 June 2009.

Yours sincerely,

(Timothy TSO)
Assistant Legal Adviser

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17 June 2009

Mr Timothy TSO
Assistant Legal Adviser
Legislative Council Secretariat
Legal Service Division
Legislative Council Building
8 Jackson Road, Central
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(Fax No: 2877 5029)

Dear Mr TSO,

**Proposed Resolution under section 54A of the
Interpretation and General Clauses Ordinance (Cap.1)**

Thank you for your letter dated 12 June 2009. Our reply to your questions is set out below:

- (a) Under the Entertainment Special Effects Ordinance (Cap.560) (the Ordinance), there is no provisions that provides for the right of appeal to Commissioner for Television and Entertainment Licensing (CTEL) and the right to have anything reviewed by CTEL.
- (b) As pointed out in our letter dated 11 June 2009, paragraph 2(d)(iv) and (v) of the proposed resolution is

made with reference to similar provisions included in the resolution passed in 2007 and aims to provide a comprehensive coverage to ensure the smooth transfer of the statutory functions from the CTEL to the Head of Create Hong Kong for administering the Ordinance. However, taking into account the fact that there is no statutory right of appeal to CTEL nor any statutory right to have anything reviewed by CTEL as confirmed in paragraph (a) above, as well as your point on the necessity to have paragraphs 2(d)(iv) and (v) included in the proposed resolution, we now intend to amend the resolution by removing the two paragraphs in question from the proposed resolution. We will introduce the amendment by way of withdrawing the proposed resolution, and re-submitting a revised resolution to LegCo. We will aim to move the related motion at the LegCo meeting on 8 July. Subject to LegCo's approval, the resolution will be gazetted and come into effect on 17 July.

I hope the above has addressed your concerns. Please feel free to contact me if you have further questions on the matter.



(Ms Ida LEE)

for Secretary for Commerce and
Economic Development

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15 June 2009

Ms. Ida Lee
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Commerce and Economic Development Bureau
2/F Murray Building
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Hong Kong

Dear Ms. Lee,

**Proposed Resolution under section 54A of the
Interpretation and General Clauses Ordinance (Cap. 1)**

At the meeting of the House Committee held on 12 June 2009, a Member asked whether public interest would be affected by the proposed resolution (e.g. the issues of the exercising of statutory powers, the supervision mechanism and the balance of powers). It would be helpful if you could provide information to address the Member's concerns.

I would appreciate if you could let me have the said information (in both Chinese and English and with soft copy to Miss Joey LEE at jmylee@legco.gov.hk) by 16 June 2009.

Yours sincerely,

(Timothy TSO)
Assistant Legal Adviser

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17 June 2009

Mr Timothy TSO
Assistant Legal Adviser
Legislative Council Secretariat
Legal Service Division
Legislative Council Building
8 Jackson Road, Central
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(Fax No: 2877 5029)

Dear Mr TSO,

**Proposed Resolution under section 54A of the
Interpretation and General Clauses Ordinance (Cap.1)**

Thank you for your letter dated 15 June 2009. As regards the member's enquiry on the proposed resolution, our reply is set out below.

Having obtained the approval from the Finance Committee of the Legislative Council on 22 May 2009, we established Create Hong Kong (CreateHK) on 1 June 2009 through the integration of resources scattered around different Government departments. CreateHK enables us to respond to the industries' demands more effectively and better serve the different sectors through provision of a one-stop service.

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, which reports to the Secretary General of the Film Development Council (SG/FDC) (who reports to the Commissioner for Television and Entertainment Licensing (CTEL) before the establishment of CreateHK), 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) (ESEO). CTEL is the Special Effects Licensing Authority as stipulated in Section 3 of the ESEO.

With the establishment of CreateHK, the entire Special Effects Licensing Unit and SG/FDC have been redeployed to CreateHK. With this arrangement, it is necessary to transfer the statutory functions currently exercised by CTEL under the ESEO to the Head of CreateHK. The proposed resolution is introduced to serve this particular purpose. It will not involve any amendments to the statutory functions (including powers and duties) provided for in the Entertainment Special Effects Ordinance. As the resolution will only provide for the simple substitution of CTEL by the Head of CreateHK, this will not affect any public interest such as the issues of exercising statutory powers, the supervision mechanism and the balance of powers in respect of the ESEO.

If you have further questions, please feel free to contact me.



(Ms Ida LEE)

for Secretary for Commerce and
Economic Development