

立法會
Legislative Council

LC Paper No. LS96/08-09

**Paper for the House Committee Meeting
on 26 June 2009**

**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 under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) at the Council meeting of 8 July 2009. The purpose of the proposed resolution is to effect the transfer of 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) to the Head of Create Hong Kong (CreateHK) with effect from 17 July 2009. Under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1), the Legislative Council 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.

2. Members may recall that the Secretary has given notice to move a similar motion (the original proposed resolution) for the above purpose at the Council meeting of 24 June 2009 and the Legal Service Division (LSD) made a report on the original proposed resolution to the House Committee meeting on 12 June 2009 (LC Paper No. LS81/08-09). In that report, we informed Members that LSD had asked the Administration to explain the legal basis for proposing paragraph (2)(d)(iv) and (v) in the original proposed resolution, which provide respectively that a right of appeal to CTEL and a right to have anything reviewed by CTEL shall be treated as being a right of appeal to the Head of CreateHK and a right to have that thing reviewed by the Head of CreateHK, given that no statutory right of appeal or review to CTEL regarding CTEL's decisions is provided under the Ordinance. Subsequent to the House Committee meeting on 12 June 2009, LSD has further written to the Administration asking whether the original proposed resolution would affect public interest. In LSD's further report on the original proposed resolution (LC Paper No. LS87/08-09) submitted to the House Committee meeting on 19 June 2009, we informed Members that -

- (a) in response to LSD's queries, the Administration had agreed to remove the two paragraphs in question from the original proposed resolution and would introduce the amendment by way of withdrawing the original

proposed resolution and re-submitting a revised resolution to the Legislative Council meeting of 8 July 2009; and

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

3. The proposed resolution to be moved by the Secretary at the Council meeting of 8 July 2009 has incorporated the amendment referred to in paragraph 2 above in that paragraph (2)(d)(iv) and (v) of the original proposed resolution have been removed.

4. According to the draft speech of the Secretary, the proposed resolution will not involve any amendments to the statutory functions (including powers and duties) provided for in the Ordinance. The legal effect of the resolution is to provide for the simple substitution of CTEL by the Head of CreateHK in respect of the functions exercisable by CTEL by virtue of the Ordinance with effect from 17 July 2009.

5. No difficulties have been observed in the legal or drafting aspects of the proposed resolution.

Prepared by

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