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Paper for the House Committee meeting on 20 June 2014

**Report of the Subcommittee to Study
the Proposed Legislative Amendments Relating to
the Establishment of a New Innovation and Technology Bureau**

Purpose

This paper reports on the deliberations of the Subcommittee to Study the Proposed Legislative Amendments Relating to the Establishment of a New Innovation and Technology Bureau ("the Subcommittee").

Background

2. The Chief Executive announced in the 2014 Policy Address to re-initiate the setting up of a new Innovation and Technology Bureau ("ITB") to provide dedicated high level leadership on the development of innovation and technology. The new ITB will be led by the future Secretary for Innovation and Technology ("S for IT") and responsible for formulating policies and promoting the development of innovation and technology as well as information technology (hereafter as innovation and technology) in Hong Kong, and coordinating relevant efforts within the Government. The new bureau will take up the policy responsibilities in innovation and technology from the existing Commerce and Economic Development Bureau ("CEDB"). The two government departments that are responsible for innovation and technology matters, namely the Innovation and Technology Commission ("ITC") and the Office of the Government Chief Information Officer ("OGCIO"), will report to the new ITB upon its establishment.

The proposed resolution

3. In accordance with section 54A of the Interpretation and General Clauses Ordinance (Cap.1), the Legislative Council ("LegCo") may by resolution provide for the transfer of statutory functions vested in one public

officer to another public officer. Such a resolution may contain such incidental, consequential and supplemental provisions as may be necessary or expedient for the purpose of giving full effect to the resolution. On 20 May 2014, the Secretary for Commerce and Economic Development ("SCED") gave notice of his intention to move a proposed resolution under section 54A of Cap.1 at the Council meeting of 18 June 2014 to effect the transfer of the statutory functions under the Electronic Transactions Ordinance (Cap. 553) ("the Ordinance") pursuant to the establishment of the ITB. The proposed resolution aims to transfer the related statutory functions under the Ordinance from SCED and Permanent Secretary for Commerce and Economic Development (Communications and Technology) ("PSCED(CT)") to S for IT and Permanent Secretary for Innovation and Technology ("PSIT").

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

The Subcommittee

5. 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 the ITB. Under the chairmanship of Ir Dr Hon LO Wai-kwok, the Subcommittee has held two meetings with the Administration to examine the proposed resolution. The membership list of the Subcommittee is in **Appendix I**.

6. At the request of the Subcommittee, SCED has withdrawn his notice for moving the proposed resolution at the Council meeting of 18 June 2014, pending the deliberation of the Subcommittee.

Deliberations of the Subcommittee

7. While the majority of members of the Subcommittee support in principle the proposed establishment of the ITB to sustain the development of innovation and technology of Hong Kong in the long run, some other members object to the Administration's proposal. In the course of deliberation, members have raised concerns about alternatives to the establishment of the ITB, the proposed structure and functions of the ITB, the commencement date and the legal and drafting aspects of the proposed resolution.

Alternatives to the establishment of the Innovation and Technology Bureau

8. Some members opine that the Administration should consider other alternatives to the establishment of the ITB, such as creating a new branch to be headed by a new Permanent Secretary to oversee the technology portfolio under SCED, or creating a new political team consisting only of the Policy Secretary, Under Secretary and Political Assistant to work with a redeployed civil service team headed by PSCED(CT) from CEDB.

9. The Administration has advised that as all the existing 21 permanent directorate officers at D2 and above in the Communications and Technology Branch of CEDB, ITC and OGCIO are already fully engaged in their respective portfolios, it is operationally not feasible for any of them to be redeployed to take up the new policy responsibilities of the ITB. The Administration considers that the normal set up of a bureau should consist of the political team and the civil service team specializing in their respective spheres of responsibilities. Nevertheless, the future ITB will review its operational requirements from time to time as in the cases of all bureaux and departments.

Proposed structure and functions of the Innovation and Technology Bureau

10. The Subcommittee notes that the portfolios relating to the creative industries, including the film portfolio, will not be transferred to the proposed ITB. Some members have enquired how the creative industries will be supported with the establishment of the ITB. Some other members query the rationale for not transferring the telecommunications and broadcasting portfolios under the CEDB to the ITB. They have also expressed concern about the possible overlapping of functions of the ITB with the existing CEDB.

11. 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. The ITB will work closely with the CEDB and the various responsible departments, including ITC and OGCIO, to provide focused support to the creative industries. The Administration considers it undesirable to transfer the telecommunications and broadcasting portfolios to the ITB as they are more related to regulatory and licensing matters. Nevertheless, the Administration does not rule out the possibility of re-organizing the functions of the future ITB in light of new developments.

12. In response to members' enquiry about the work of the proposed ITB on coordination with tertiary institutions to foster the development of R&D,

the Administration has advised that the ITB will be in a better position to strengthen the linkages among stakeholders, including the Government, the industry, academic and research sectors, and creating greater synergy among ITC and OGCIO, the R&D Centres and other organizations/agencies under the future S for IT, through alignment or collaboration in R&D directions or programmes, exchange of information and experience, as well as promotional activities both locally and overseas.

13. Some members are concerned that Hong Kong's gross expenditure on R&D as a ratio of Gross Domestic Product at around 0.7% remains low by international standard. They urge the Administration to increase the investment in R&D after the establishment of the ITB.

14. The Administration has advised that with a more focused purview, the ITB will be best placed to explore more possible measures to encourage R&D investment with the industry, the Trade Development Council and other bureaux, including the CEDB.

Policy responsibilities of the Secretary for Innovation and Technology

15. Some members opine that it will be unfair for S for IT who will be responsible for the development of innovation and technology to be entitled to the same remuneration as other Policy Secretaries, such as SCED and the Secretary for Housing and Transport who have to shoulder much heavier policy responsibilities.

16. The Administration has advised that the objective of the establishment of the ITB is to recognize the importance of innovation and technology to Hong Kong's development, and to provide dedicated high level leadership in the development of innovation and technology. The workload of S for IT should not be seen only from the number of policy aspects for which the ITB is responsible. As the number of stakeholders involved in the innovation and technology industry is substantial, it will not be an easy task for S for IT to achieve the balance of interests among stakeholders. S for IT also plays a leading role in undertaking this mammoth task to promote the commercialization of R&D deliverables.

Commencement date

17. The Subcommittee has enquired about the rationale for fixing the commencement date of the proposed resolution on the 14th day after the date on which FC approves the financial and staffing proposal relating to the establishment of the ITB, or on the 14th day after the date on which the proposed resolution is made and passed by the Council, whichever date is later. In this connection, some members have enquired whether the

Administration would consider extending the 14th day deadline to allow sufficient time for the preparation work, including the transfer of functions, for the establishment of the ITB and the appointment of a suitable and qualified candidate for the post of S for IT.

18. The Administration has explained that as the process of obtaining the approval of FC for the financial proposal and the legislative process for the proposed resolution are separate proceedings in parallel and the dates of their completion are uncertain, the commencement date of the proposed resolution is therefore set on a day after both processes have been completed. The Administration considers that setting the commencement date as the 14th day after the date on which the Administration obtains the approval of FC, or the 14th day after the passage of the proposed resolution, whichever is the later, is appropriate. This has taken into account the time required for the preparation work relating to the establishment of the ITB, including the deployment of supporting staff and appointment of the Principal Official. The Administration is confident that, with its best endeavours, it will complete in good time all preparation for the new ITB to commence operation.

Proposed resolution

19. The Subcommittee notes that paragraph (1) of the proposed resolution relates to the commencement date while paragraph (2) relates to the transfer of statutory functions currently exercisable by SCED and PSCED(CT) under the Ordinance to the proposed S for IT and PSIT respectively. Paragraph (3) provides the necessary legal certainty to the transfer of the statutory functions under the Ordinance. Paragraphs (3)(a), (b) and (c) are general transitional arrangements for an act done, or one that may be done and is in the process of being done, or is required to be done and is the process of being done, pursuant to or in connection with the functions transferred under the proposed resolution.

20. The Subcommittee also notes that paragraphs (3)(d)(i), (3)(d)(vi) and 3(e) deal with any document, agreement, arrangement or form that refers to the former officer or bureau involved in the transfer of functions under the proposed resolution. Paragraph (3)(d)(ii) provides that in the unforeseeable circumstances that there are legal proceedings relating to the transfer of functions under the proposed resolution in which a former officer is a party, and that the proceedings are subsisting immediately before the commencement date of the proposed resolution, the new officer is, on and from that date, to substitute for the former officer as that party. Paragraph (3)(d)(iv) provides that any right of appeal to SCED that is subsisting immediately before the commencement date of the proposed resolution is, on

and from that date, treated as being a right of appeal to the new officer, i.e. S for IT.

21. Having considered the legal adviser's concern that certain rights proposed in paragraphs (3)(d)(iii) and (v) to be transferred in fact do not exist under the Ordinance, the Administration has agreed to remove these paragraphs from the proposed resolution. Taking into account the suggestions of the Subcommittee, the Administration has also agreed to amend the sub-paragraphs in paragraph (3) to spell out clearly that matters mentioned are confined to those relating to the transfer of statutory functions under the Ordinance pursuant to the proposed establishment of the ITB. Copies of the revised version of the proposed resolution and its mark-up version are in **Appendices II** and **III**.

Recommendation

22. The Subcommittee raises no objection to the proposed resolution and will not move any amendment to the revised version of the proposed resolution to be moved by SCED at the Council meeting of 2 July 2014.

Advice sought

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

Council Business Division 4
Legislative Council Secretariat
19 June 2014

**Subcommittee to Study the Proposed Legislative Amendments Relating
to the Establishment of a New Innovation and Technology Bureau**

Membership List

Chairman	Ir Dr Hon LO Wai-kwok, BBS, MH, JP
Members	Hon WONG Kwok-hing, BBS, MH
	Hon Andrew LEUNG Kwan-yuen, GBS, JP
	Hon WONG Ting-kwong, SBS, JP
	Hon Alan LEONG Kah-kit, SC
	Hon LEUNG Kwok-hung
	Hon Albert CHAN Wai-yip
	Hon WONG Yuk-man
	Hon Claudia MO
	Hon YIU Si-wing
	Hon MA Fung-kwok, SBS, JP
	Hon Charles Peter MOK
	Hon CHAN Chi-chuen
	Hon SIN Chung-kai, SBS, JP
	Dr Hon Elizabeth QUAT, JP
	Hon CHUNG Kwok-pan
	Hon Christopher CHUNG Shu-kun, BBS, MH, JP
	Hon Tony TSE Wai-chuen

(Total : 18 members)

Clerk	Ms YUE Tin-po
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Legal Adviser	Miss Winnie LO
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Interpretation and General Clauses Ordinance

Resolution

(Under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1))

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

[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

Interpretation and General Clauses Ordinance

Resolution

(Under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1))

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, ~~in so far as necessary for the purpose or in consequence of the transfer of function under this Resolution from the former officer to the new officer,~~ 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—~~
 - ~~(A) right of appeal against a decision of a former officer; or~~
 - ~~(B) right to have the decision reviewed,~~
~~that is subsisting immediately before the commencement date may, on and from that date, be exercised as if the decision were a decision of the new officer;~~
- ~~(iviii)~~ 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;
- ~~(v) any right to have anything reviewed by a former officer that is subsisting immediately before the commencement date is, on and from that date, treated as being a right to have that thing reviewed by the new officer;~~
- ~~(viiv)~~ 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;
- (c) 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

[para. (3)(c)]

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