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23 May 2014

Miss Winnie Lo  
Assistant Legal Advisor  
Legal Service Division  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road, Central  
Hong Kong

Dear Miss Lo,

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

Thank you for your letter dated 22 May 2014.

As explained in our letter of 22 May 2014, section 54A(2) of the Interpretation and General Clauses Ordinance (Cap. 1) is the legal basis for paragraph (3) of the proposed Resolution. That section provides that 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. Therefore, paragraph (3) of the proposed Resolution does not stand on its own which must be read in conjunction with the subject matter of the proposed Resolution as contained in paragraph (2), i.e. the transfer of statutory functions of the Secretary for Commerce and Economic Development (SCED) and the Permanent Secretary for Commerce and

Economic Development (Communications and Technology) (PSCT) under the Electronic Transactions Ordinance (Cap. 553) (the Ordinance) to the new Secretary and Permanent Secretary of the new Innovation and Technology Bureau.


The general principles of interpretation provided under section 19 of Cap. 1 is also relevant. The provision states that "an Ordinance shall be deemed to be remedial and shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of object of the Ordinance according to its true intent, meaning and spirit". We should read paragraph (3) of the proposed Resolution in the context of the whole proposed Resolution and gives an interpretation which accord with this general principle.

The lead in sentence of paragraph (3) of the proposed Resolution states "in addition to and without derogating from section 23 of Cap. 1". Section 23 of Cap. 1 provides for the effect of repeal generally. The repeal here is the repeal of "SCED" and "PSCT" provided under paragraphs (2)(a) and (b) of the proposed Resolution. Paragraph (3) of the proposed Resolution intends to, in addition to and without derogating the general provision on the effect of repeal under section 23 Cap. 1, preserve or "save" matters arising from that repeal. Paragraphs (3)(a), (b) and (c) preserve the act done or 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 transfer of statutory functions. Paragraphs 3(d) and (e) are specific matters which must be read together with the whole Resolution, in particular paragraphs 3(a), (b) and (c), which defines their scope.

In summary, paragraph (3) of the proposed Resolution, which are the savings and transitional provisions relating to the transfer of the statutory functions in paragraph (2) of the proposed Resolution, must be interpreted in a way that is consistent with the said transfer of functions and cannot go outside the ambit as permitted by section 54A(2) of Cap. 1. It also follows that **the matters provided in paragraph (3) of the proposed Resolution are made pursuant to or in connection with the transfer of statutory functions under the Ordinance, and hence, are related to the Ordinance.**

Paragraph (3) of the proposed Resolution aims to provide a comprehensive coverage to ensure the smooth transfer of the statutory functions under the Ordinance. However, taking into account your views on paragraphs (3)(d)(iii) and (v) of the proposed Resolution, we are prepared to remove them from the proposed Resolution to alleviate your concern on the matter. We will make the amendment by moving an amendment to the motion relating to the proposed Resolution.

Please let us know if you need any further information.



P.P.

( Ivanhoe Chang )

for Secretary for Commerce and Economic Development