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4 June 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 28 May 2014.

Paragraphs (3)(d)(i), (3)(d)(vi) and (3)(e) of the proposed Resolution 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. To ensure a smooth transition, such a reference is to be construed as including or substituted by the new officer or bureau on the commencement date of the proposed Resolution. These paragraphs are generic savings and transitional provisions relating to the transfer of functions under the proposed Resolution, which may cover a related agreement, document or arrangement that is made, entered into or prepared by, or contains a reference to the former officer or bureau.

Paragraph (3)(d)(ii) of the proposed Resolution 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. This kind of transitional provision is of relevance as we cannot rule out the possibility that legal proceedings in relation to the Electronic Transactions Ordinance (Cap. 553) (the Ordinance) may be instituted anytime before the proposed Resolution takes effect.

For paragraph (3)(d)(iv) of the proposed Resolution, section 28 of the Ordinance is relevant. Under section 28 of the Ordinance, a certification authority aggrieved by a relevant decision of the Government Chief Information Officer may appeal to the Secretary for Commerce and Economic Development (SCED). Paragraph (3)(d)(iv) of the proposed Resolution 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. the Secretary for Innovation and Technology.

As we have reiterated, the saving and transitional provisions contained in the proposed Resolution aim to ensure a smooth transfer of functions in relation to the Ordinance, and hence, there is a need to **provide for the relevant contingencies**. Paragraph (3) of the proposed Resolution provides the necessary **legal certainty** to the transfer of functions and **put it beyond doubt** that the administration of the Ordinance will not be affected by the transfer of functions.

Please let us know if you need any further information.



(Ivanhoe Chang)
for Secretary for Commerce and Economic Development