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Legislative Council

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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 20 May 2015

**Two proposed resolutions under section 54A of the
Interpretation and General Clauses Ordinance (Cap. 1)**

The Secretary for Commerce and Economic Development will move, at the Council meeting of 20 May 2015, two proposed resolutions under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) in relation to the establishment of the Innovation and Technology Bureau. The two proposed resolutions (**Appendices 1 and 2**) are attached for Members' consideration. The President has directed that they be printed in the terms in which they were handed in on the Agenda of the Council.

2. The speeches, in both Chinese and English, which the Secretary will deliver when moving the two proposed resolutions are in **Appendices 3 and 4** respectively.

(Odelia LEUNG)
for Clerk to the Legislative Council

Encl.

Interpretation and General Clauses Ordinance

Resolution

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

Resolved that the Resolution made and passed by the Legislative Council on 29 October 2014 and published in the Gazette as Legal Notice No. 132 of 2014 be repealed.

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 2015–16 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

[DRAFT]
[TRANSLATION]

Legislative Council Sitting of 20 May 2015
Resolution to be made under the
Interpretation and General Clauses Ordinance

Speech of the
Secretary for Commerce and Economic Development

President,

I move that the first resolution to be made under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1), as set out on the Agenda, be passed.

2. In preparation for the establishment of the Innovation and Technology Bureau (ITB), the Legislative Council (LegCo) passed the original Resolution to effect the transfer of statutory functions under the Electronic Transactions Ordinance (Cap. 553) from the Secretary for Commerce and Economic Development and Permanent Secretary for Commerce and Economic Development (Communications and Technology) to the Secretary for Innovation and Technology and Permanent Secretary for Innovation and Technology on 29 October 2014. The commencement provision of the original Resolution provides that the original Resolution will commence on the 14th day after the day on which the Finance Committee (FC) approves the funding proposal to make changes to the Estimates of Expenditure for 2014-15 for the establishment of the ITB, or the 14th day after the day on which the original Resolution is made and passed, whichever is the later.

3. Since the relevant funding proposal could not be approved by the FC in time for the relevant changes to be included into the Draft Estimates of Expenditure for 2015-16 which was introduced into the LegCo on 25 February, the funding proposal has been temporarily withdrawn. It follows that the original Resolution could not commence. Another funding proposal to make changes to the Estimates of Expenditure for 2015-16 will be submitted to the FC after the passage of

the Appropriation Bill 2015.

4. On 24 February, we proposed to the LegCo an Amending Resolution to amend the commencement provision of the original Resolution, such that the original Resolution will commence on the 14th day after the day on which the FC approves the funding proposal to be submitted in the next financial year, or the 14th day after the day on which the Amending Resolution is made and passed, whichever is the later.

5. During the scrutiny process, the Legal Service Division (LSD) of the LegCo considered that the original Resolution may have lapsed and questioned whether it is capable of being amended by the Amending Resolution.

6. We do not agree to the LSD's views, and consider that the original Resolution is valid and subsisting except that it has yet to come into operation, and thus is capable of being amended by the Amending Resolution. Since the original Resolution has not yet come into operation, there is not yet any continuing effect and thus no issue of lapse. Nonetheless, in view of the LSD's concerns as regards the legal status of the original Resolution, we have decided not to proceed with the Amending Resolution further, and would introduce a resolution to repeal the original Resolution as well as a fresh resolution for the transfer of relevant statutory functions. We would reiterate that this appropriate solely seeks to avoid time being unnecessarily spent on arguing over a technical legal issue, that is, hence to expedite the legislative process; and that this does not prejudice our position and should not be regarded as a precedent. The Administration will continue to adopt the same approach to amend commencement provisions in future similar cases such that the un-commenced legislation concerned could be brought into operation.

7. Subsequently, the House Committee of the LegCo decided at its meeting on 10 April to form a Subcommittee to scrutinise the two draft resolutions. The Subcommittee held a meeting on 20 April, and completed the scrutiny of the two resolutions. I thank the Subcommittee for their work.

8. I now move that the first resolution to repeal the original Resolution be passed, and appeal to Members for supporting the resolution.

9. Thank you, President.

[DRAFT]
[TRANSLATION]

Legislative Council Sitting of 20 May 2015
Resolution to be made under the
Interpretation and General Clauses Ordinance

Speech of the
Secretary for Commerce and Economic Development

President,

I move that the second resolution to be made under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1), as set out on the Agenda, be passed.

2. The objective of this resolution is to effect the transfer of statutory functions under the Electronic Transactions Ordinance (Cap. 553) from the Secretary for Commerce and Economic Development and Permanent Secretary for Commerce and Economic Development (Communications and Technology) to the Secretary for Innovation and Technology and Permanent Secretary for Innovation and Technology respectively for the establishment of the Innovation and Technology Bureau.

3. When I move the motion on the first resolution (that is, the resolution to repeal the original Resolution), I have explained the background of the two resolutions, in particular, our position on the technical legal issue raised by the Legal Service Division of the Legislative Council (LegCo). I would not repeat here.

4. This resolution is the same as the original Resolution passed by the LegCo on 29 October 2014, except that reference to the “Estimates of Expenditure for 2014-15” in the commencement provision of the original Resolution is substituted with the “Estimates of Expenditure for 2015-16”, such that this resolution will commence on the 14th day after the day on which the Finance Committee approves the funding proposal to be

submitted in financial year 2015-16, or the 14th day after the day on which this resolution is made and passed, whichever is the later.

5. This resolution is in effect just a technical amendment to the original Resolution, and does not involve any substantive amendments to the latter. I appeal to Members for supporting the resolution.

6. Thank you, President.