

立法會
Legislative Council

LC Paper No. CB(4)898/14-15
(These minutes have been seen
by the Administration)

Ref : CB4/SS/7/14

**Subcommittee on Proposed Resolution Relating to the Establishment of the
Innovation and Technology Bureau**

**Minutes of first meeting held on
Tuesday, 24 March 2015, at 8:30 am
in Conference Room 1 of the Legislative Council Complex**

- Members present** : Ir Dr Hon LO Wai-kwok, BBS, MH, JP (Chairman)
Hon CHAN Kam-lam, SBS, JP
Hon WONG Kwok-hing, BBS, MH
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Cyd HO Sau-lan, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Albert CHAN Wai-yip
Hon Frankie YICK Chi-ming
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Dr Hon Kenneth CHAN Ka-lok
Dr Hon KWOK Ka-ki
Hon SIN Chung-kai, SBS, JP
Dr Hon Elizabeth QUAT, JP
Hon TANG Ka-piu, JP
Dr Hon CHIANG Lai-wan, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
Hon Tony TSE Wai-chuen, BBS
- Members absent** : Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Claudia MO
Hon CHUNG Kwok-pan

**Public Officers
attending**

: Agenda item II

Commerce and Economic Development Bureau

Miss Susie HO, JP
Permanent Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Joe WONG, JP
Deputy Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Ivanhoe CHANG
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Technology)B

Office of the Government Chief Information
Officer

Miss Joey LAM, JP
Deputy Government Chief Information Officer
(Policy and Community)

Department of Justice

Ms Angie LI
Senior Government Counsel

Mr Winson KOO
Senior Government Counsel

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (4)3

Staff in attendance : Ms Wendy KAN
Assistant Legal Adviser 6

Mr Joey LO
Senior Council Secretary (4)3

Ms Anki NG
Council Secretary (4)3

Action

I Election of Chairman

Ir Dr LO Wai-kwok was elected Chairman of the Subcommittee.

II Meeting with the Administration

(Ref: CTB/B/480-20-6-6/3/C -- Proposed Resolution under section
(Annex A) 54A of the Interpretation and
General Clauses Ordinance (Cap.
1) to amend the definition of
commencement date in and add a
new definition of "amending
Resolution" to 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

Ref: CTB/B/480-20-6-6/3/C -- Legislative Council Brief on
"Resolution to be made relating to
the Establishment of the Innovation
and Technology Bureau" issued by
the Commerce and Economic
Development Bureau on 24
February 2015

LC Paper No. LS44/14-15 -- Legal Service Division Report

LC Paper No. -- Marked-up copy of the proposed
CB(4)642/14-15(01) Resolution prepared by the Legal
Service Division (Restricted to
members)

LC Paper No. -- Assistant Legal Adviser's letter
CB(4)657/14-15(01) dated 26 February 2015 to the
Administration

LC Paper No. -- Assistant Legal Adviser's letter
CB(4)657/14-15(02) dated 26 February 2015 to the
Administration

LC CB(4)657/14-15(03)	Paper	No. -- Assistant Legal Adviser's letter dated 13 March 2015 to the Administration
LC CB(4)657/14-15(04)	Paper	No. -- Administration's reply dated 26 February 2015 to Assistant Legal Adviser's letter dated 26 February 2015
LC CB(4)657/14-15(05)	Paper	No. -- Administration's reply dated 27 February 2015 to Assistant Legal Adviser's letter dated 26 February 2015
LC CB(4)657/14-15(06)	Paper	No. -- Administration's reply dated 23 March 2015 to Assistant Legal Adviser's letter dated 13 March 2015
LC CB(4)642/14-15(02)	Paper	No. -- Background brief prepared by the Legislative Council Secretariat)

2. The Subcommittee deliberated (index of proceedings in the **Appendix**).

Way forward

3. The Subcommittee noted that the Administration would not proceed further with the proposed Resolution to amend the resolution made and passed by the Legislative Council under section 54A of the Interpretation and General Clauses Ordinance on 29 October 2014 to effect the transfer of the relevant statutory functions for the establishment of the Innovation and Technology Bureau ("the original Resolution). The Administration would introduce another resolution to repeal the original Resolution as well as a fresh resolution for the transfer of the statutory functions in question by April 2015.

4. Some members opined that the Subcommittee should continue its scrutiny work and be tasked with examining the resolution to repeal the original Resolution and the fresh resolution to be introduced by the Administration. A majority of members considered that the Subcommittee should, before its dissolution, report its deliberations in writing to the House Committee given the Administration's decision not to proceed further with the proposed Resolution. These members also considered that the proper arrangement was to form a new

subcommittee under the House Committee to study the relevant subsidiary legislation upon their introduction into LegCo. Members of the existing Subcommittee could join the new subcommittee if they so wish.

(Post-meeting note: Following the Subcommittee meeting on 24 March 2015, the Assistant Legal Adviser ("ALA") wrote to the Administration in relation to the legal validity of the original Resolution on 30 March 2015, and the Administration replied to ALA on 1 April 2015. On 31 March 2015, the Secretary for Commerce and Economic Development gave notices to move two motions in respect of the resolution to repeal the original Resolution and the resolution to effect the transfer of the relevant statutory functions respectively at the Council meeting of 29 April 2015. ALA's letter and the Administration's reply were circulated vide LC Paper No. CB(4)730/14-15 on 2 April 2015.)

III Any other business

5. There being no other business, the meeting ended at 9:17 am.

Council Business Division 4
Legislative Council Secretariat
4 May 2015

**Proceedings of first meeting of the
Subcommittee on Proposed Resolution Relating to the
Establishment of the Innovation and Technology Bureau
on Tuesday, 24 March 2015, at 8:30 am
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Election of Chairman			
000130 – 000330	Mr CHAN Kam-lam Mr WONG Kwok-hing Mr Andrew LEUNG Mr WONG Ting-kwong Mr CHAN Chi-chuen Dr Elizabeth QUAT Dr CHIANG Lai-wan Ir Dr LO Wai-kwok	Election of Chairman	
Meeting with the Administration			
000331 – 004720	Chairman Mr CHAN Kam-lam Mr WONG Kwok-hing Mr Andrew LEUNG Mr WONG Ting-kwong Ms Cyd HO Mr Alan LEONG Mr LEUNG Kwok-hung Mr Albert CHAN Wai-yip Mr CHAN Chi-chuen Dr Kenneth CHAN Dr Elizabeth QUAT Dr CHIANG Lai-wan Mr Christopher CHUNG Clerk ALA Administration	<p>Briefing by the Administration on the proposed Resolution relating to the establishment of the Innovation and Technology Bureau ("ITB") (File Ref: CTB/B/480-20-6-6/3/C).</p> <p>ALA advised that according to paragraph 10.2.3 of Craies on Legislation, Sweet & Maxwell (10th edition, 2012) ("Craies"), while an Act of Parliament did not lapse for mere disuse, it was possible for the effect of an Act to lapse because it depended for its continuing effect on a state of affairs that had permanently ceased to exist. As reflected by the structure and drafting of the original Resolution where a definition was provided for the expression "commencement date" in paragraph (1) thereof, there was an argument that the only substantive provision in the original Resolution was paragraph (2) which effected the transfer of statutory functions. Paragraph (2) had since lapsed because the state of affairs contemplated as condition for its commencement (namely, the approval by the Finance Committee of the proposal to make changes to the Estimates of Expenditure 2014-2015 to provide for the specified matters arising from the establishment of ITB funding) would not happen as a matter of fact. If such argument was to stand, the proposed amendment to the so-called "commencement provision" might not have legal effect as the original Resolution which was sought to be amended had lapsed.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration advised that under the presumption of permanence, paragraph 10.2.2 of Craies stated that unless the legislature expressly repealed or revoked legislation, or in some other way made express arrangements for it to cease to have effect, it would continue in force indefinitely. The original Resolution was made and passed by the LegCo but had not yet come into operation. There was no fixed term nor sunset clause which provided that the original Resolution was to operate until a particular date or the occurrence of a future event. The original Resolution should therefore be presumed to be valid and subsisting. The case of the Agricultural Research Act 1956 as referred to in paragraph 10.2.3 of Craies was not pertinent to the present case of the original Resolution. The subject matter of the Act, i.e. the Agricultural Research Council, had vanished after the commencement of the Act, while the subject matter of the original Resolution, i.e. the transfer of statutory functions, had not yet come into operation. Since the original Resolution had yet to commence, there was not yet any "continuing effect" and thus no issue of lapse.</p> <p>Nevertheless, in view of ALA's concern regarding the legal status of the original Resolution, the Administration had decided not to proceed with the proposed Resolution to amend the original Resolution further. The Administration would introduce another resolution to repeal the original Resolution as well as a fresh resolution for the transfer of the statutory functions in question in due course. This was solely to avoid time being unnecessarily spent on an argument over a technical legal issue, and hence to expedite legislative process. This would not prejudice the Administration's position that the original Resolution was valid and subsisting, and thus could be amended by the proposed Resolution, and should not be regarded as a precedent. The Administration would 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.</p> <p>Discussion on the way forward for the Subcommittee given the Administration's decision not to proceed with the proposed Resolution.</p>	

Council Business Division 4
Legislative Council Secretariat
4 May 2015