



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF : CTB/B480-20-6-6/3/C
本函檔號 OUR REF : LS/R/4/14-15
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URGENT BY FAX
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26 February 2015

Mr LAM Shing-fung, Billy
AS for Commerce & Economic Development
(Communications & Technology)B1
Commerce and Economic Development Bureau
21/F, West Wing
Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Dear Mr LAM,

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

Thank you for your letter of 26 February 2015.

You explained in your letter that the status of the Original Resolution, similar to that of an un-commenced Ordinance, is valid and subsists except that it has yet to come into operation. The commencement provision of the Original Resolution can therefore be amended by the Proposed Resolution by substituting a new commencement provision.

Paragraph 10.2.3 of *Craies on Legislation*, Sweet & Maxwell (10th edition, 2012) says that while an Act of Parliament does not lapse for mere disuse, it is possible for the effect of an Act to lapse because it depends for its continuing effect on a state of affairs that has permanently ceased to exist. It then quotes, as an example, the lapse of the Agricultural Research Act 1956 before its formal repeal by the Statute Law (Repeals) Act 1998 because that Act concerned a Council established under a Charter which subsequently surrendered its Charter. Paragraph 10.2.1 of *Craies on Legislation* further says

that many of the principles discussed are equally relevant to subordinate legislation.

The commencement provision of the Original Resolution is tied with an event that could not happen anymore, namely, the approval by the Finance Committee of the 2014-15 funding proposal as explained in paragraph 2 of the LegCo Brief. It appears that it is not a matter as to whether the Original Proposal is not commenced but it is rather that the Original Proposal is unable to be commenced because the approval by the Finance Committee of the 2014-15 funding proposal could not happen. Therefore, in applying the example of the lapse of the Agricultural Research Act 1956 mentioned in the preceding paragraph to the present scenario, it would be possible to come to the view that the Original Resolution has lapsed and hence is not capable of being amended by the Proposed Resolution. We would be grateful if you could explain whether you would agree to such view.

Your reply by mid noon tomorrow, in both languages, is appreciated.

Yours sincerely,



(Wendy KAN)
Assistant Legal Adviser

cc. DoJ (Attn: Ms Angie LI, SGC (By Fax: 2869 1302))
LA
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