



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
電話 TELEPHONE: 3919 3509

傳真 FAX : 2877 5029
電郵 E-MAIL: wkan@legco.gov.hk

By Fax (2511 1458)

13 March 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 27 February 2015.

We note your comment in paragraph 2 of your reply that the case of the Agricultural Research Act 1956 (the 1956 Act) as referred to in *Craies on Legislation*, Sweet & Maxwell (10th edition, 2012) (Craies) is not pertinent to the present case in that the subject matter of the 1956 Act has vanished after the commencement of the 1956 Act, while the subject matter of the resolution made and passed by the Legislative Council (LegCo) on 29 October 2014 and published in the Gazette as Legal Notice No. 132 of 2014 (the Resolution) that effects the transfer of statutory functions to the proposed Secretary for Innovation and Technology and the proposed Permanent Secretary for Innovation and Technology has not yet come into operation. Apparently, the reference to "subject matter" of a piece of legislation and whether it has vanished after the commencement of the legislation in question may not be a principle that Craies was seeking to establish for determining if a piece of legislation in question has lapsed.

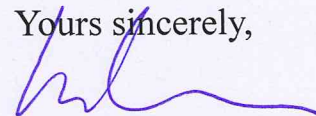
Whilst we would agree that the Resolution is subject to amendment because it is subsidiary legislation within the meaning of section 3 of Cap. 1, the view that we have expressed in our letter of 26 February 2015 is that the Resolution may have lapsed because the transfer of statutory functions to be effected by it is subject to the state of affairs (as specifically provided for in paragraph 1(a) of the Resolution) which will not take place. The 1956 Act as referred to in Craies was quoted as an example to support the principle that "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" which applies to a commenced legislation as well as an un-commenced legislation.

As reflected by the structure and drafting of the Resolution where a definition is provided for the expression "commencement date" in paragraph (1) thereof, there is an argument that the only substantive provision in the Resolution is paragraph (2) which effects the transfer of statutory functions. Paragraph (2) has since lapsed because the state of affairs contemplated as condition for its commencement will not happen as a matter of fact. If such argument stands, the proposed amendment to the so-called "commencement provision" may not have legal effect as the Resolution which is sought to be amended has lapsed.

We did not find any judicial precedent which is on all fours with the present case. Therefore, it is appreciated that the legal effect of the Resolution from the time when it is certain that the state of affairs contemplated as condition for its commencement is not going to occur could be subject to different views and arguments thereon. In order to obviate any arguments on the technical propriety of the proposed amendment to the so-called "commencement provision", it seems that the prudent approach to take in the present case would be for LegCo to make and pass a fresh resolution under section 54A of Cap. 1 for the transfer of the statutory functions in question, with or without a formal repeal of the Resolution.

In view of the fact that a Subcommittee has been appointed by the House Committee to scrutinize the captioned proposed resolution, we will provide to the Clerk to the Subcommittee copies of our correspondence on this subject matter for her reference. We should be grateful if you would provide a copy of your response to our further views expressed in this letter to her as well.

Yours sincerely,



(Wendy KAN)

Assistant Legal Adviser

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

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Clerk to Subcommittee