

商務及經濟發展局  
通訊及科技科

香港添馬添美道二號  
政府總部西翼二十一樓



COMMUNICATIONS  
AND TECHNOLOGY BRANCH  
COMMERCE AND ECONOMIC  
DEVELOPMENT BUREAU

21/F, West Wing  
Central Government Offices  
2 Tim Mei Avenue  
Tamar, Hong Kong

本局檔號 OUR REF :  
來函檔號 YOUR REF :  
電話 TEL. NO. : 2810 2713  
傳真 FAXLINE : 2511 1458  
電子郵件 E-mail Address:

By Fax (2877 5029)

23 March 2015

Miss Wendy Kan  
Assistant Legal Adviser  
Legal Service Division  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road, Central  
Hong Kong

Dear Miss Kan,

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

Thank you for your letter of 13 March 2015.

Under the presumption of permanence, “unless the legislature expressly repeals or revokes legislation, or in some other way makes express arrangements for it to cease to have effect, it will continue in force indefinitely” (paragraph 10.2.2 of *Craies on Legislation*, Sweet & Maxwell (10th edition, 2012) (Craies)). The Original Resolution was made and passed by the Legislative Council but has not yet come into operation. There is no fixed term nor sunset clause which provides that the Original Resolution is 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.

We have considered your view on the statement in paragraph 10.2.3 of Craies (the statement) quoted in your second letter of 26 February 2015. We would reiterate our view that the case of the Agricultural Research Act 1956 as referred to in the statement is not pertinent to the present case. With respect, we consider that the statement is not conclusive authority for saying that the Original Resolution has lapsed. Nor does it lay down a legal principle that is applicable to the present case. In our view, the presumption of permanence referred to in the above paragraph is more legally relevant to the present situation.

We would like to draw your attention to an incident where an Ordinance could not commence because an event provided under the commencement provision could no longer happen and the commencement provision was later amended by another Ordinance.

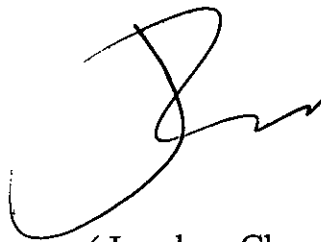
Under the commencement provision (section 1(2)) of the Air Pollution Control (Amendment) Ordinance 1993 (13 of 1993) (the Amendment Ordinance), the Secretary for Planning, Environment and Lands (SPEL) was empowered to appoint a commencement date for the Amendment Ordinance. In 1999, SPEL was renamed as the Secretary for Planning and Lands under the Declaration of Change of Titles (Planning, Environment and Lands Bureau and Secretary for Planning, Environment and Lands) Notice (L.N. 330 of 1999) and the reference to SPEL in the Air Pollution Control Ordinance (Cap. 311) was changed to "Secretary for the Environment and Food" by the Provision of Municipal Services (Reorganization) Ordinance (Cap. 552). The post of SPEL ceased to exist since then. In other words, section 1(2) of the Amendment Ordinance referred to an event (i.e. SPEL to appoint a commencement date) that could no longer happen. That section was later amended by the Statute Law (Miscellaneous Provisions) Ordinance 2012 (26 of 2012) to substitute the reference of SPEL with "Secretary for the Environment", which was a separate office from the office formerly known as SPEL. The Secretary for the Environment exercised the power under the amended section 1(2) to appoint a commencement date for the un-commenced provision of the Amendment Ordinance by the Air Pollution (Amendment) Ordinance 1993 (Commencement) Notice 2013 (L.N. 60 of 2013).

The above case supports our view that even though a piece of legislation cannot commence because an event provided under the commencement provision can no longer happen, the commencement provision can still be amended such that the legislation could be brought into operation.

For the reasons stated above, we consider that the Original Resolution is valid and subsisting, and thus is capable of being amended by the Amending Resolution.

Nonetheless, in view of your concerns as regards the legal status of the Original Resolution, we will not proceed with the Amending Resolution further, and will introduce a resolution to repeal the Original Resolution as well as a fresh resolution under section 54A of Cap. 1 for the transfer of the statutory functions in question in due course. This is solely to avoid time being unnecessarily spent on argument over a technical legal issue, and hence to expedite the legislative process. This does not prejudice our above position and should not be regarded as a precedent. We reiterate our stance that the Original Resolution is valid and subsisting, and we will continue to adopt the approach in the Amendment Ordinance to amend commencement provisions in future similar cases such that the un-commenced legislation concerned could be brought into operation.

Please let us know if you need any further information.



( Ivanhoe Chang )

for Secretary for Commerce and Economic Development

c.c. DoJ (Attn: Ms Angie Li, SGC (By Fax: 2869 1302))  
Clerk to Subcommittee (Attn: Ms Yue Tin-po (By Fax: 2840 0269))