

LEGISLATIVE COUNCIL BRIEF

RESOLUTIONS TO BE MADE RELATING TO THE ESTABLISHMENT OF THE INNOVATION AND TECHNOLOGY BUREAU

INTRODUCTION

At the meeting of the Executive Council on 31 March 2015, the Council **ADVISED** and the Chief Executive **ORDERED** that the Legislative Council (LegCo) should be invited to consider (a) the resolution at **Annex A**, to be made under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) (IGCO) (hereafter referred to as **A** “the Repeal Resolution”), to repeal the original Resolution at **Annex B**, i.e. the resolution made and passed by the LegCo under section 54A of the IGCO to effect the transfer of statutory functions for the establishment of the Innovation and Technology Bureau (ITB); and (b) the resolution at **Annex C**, to be made under section 54A of the IGCO (hereafter referred to as **C** “the New Resolution”), to effect the transfer of statutory functions for the establishment of the ITB.

JUSTIFICATIONS

2. 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 proposal to make changes to the Estimates of Expenditure for 2014-15 to provide for matters arising from the establishment of the ITB (hereafter referred to as “the 2014-15 funding proposal”), or the 14th day after the day on which the original Resolution is made and passed, whichever is the later. While the original Resolution was made and passed by the LegCo on 29 October 2014, the 2014-15 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 2015. As such, another proposal to make changes to the Estimates of Expenditure for 2015-16 to provide for matters arising from the establishment of the ITB (hereafter referred to as “the 2015-16 funding proposal”) will need to be submitted later. It follows that the original Resolution could not commence as its commencement provision is tied with an event that could not happen anymore.

3. As advised by the Executive Council and ordered by the Chief Executive on 24 February 2015, we proposed to the LegCo the resolution, at **Annex D**, to be made under section 54A of the IGCO to amend the commencement provision of the original Resolution (hereafter referred to as “the Amending Resolution”). 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.

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4. The Administration does not agree to the LSD’s views, and considers that the original Resolution, similar to an un-commenced Ordinance, 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 have formally notified the LegCo of this decision on 23 March 2015 and explained the same at the meeting of the Subcommittee on Proposed Resolution Relating to the Establishment of the Innovation and Technology Bureau on 24 March 2015, making it clear that (a) this is solely to avoid time being unnecessarily spent on an argument over a technical legal issue, and hence to expedite the legislative process; (b) this does not prejudice our above position, and should not be regarded as a precedent; and (c) 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.

5. To avoid any argument that the original Resolution still has any effect and that there might be two resolutions dealing with the transfer of relevant statutory functions, it would be preferable to repeal the original Resolution first before making the New Resolution. Section 28(1)(c) of the IGCO provides that where an Ordinance confers power on a person to make subsidiary legislation, the subsidiary legislation may at any time be amended by the same person and in the same manner by and in which it was made. Under section 3 of the IGCO, “amend” includes repeal, add to or vary and the doing of all or any of such things simultaneously or by the same Ordinance or instrument. Therefore, the same manner and procedure in which the original Resolution was made would apply to the Repeal Resolution, i.e. a resolution has to be made under section 54A of the IGCO by the LegCo. The New Resolution is also to be made under section 54A of the IGCO.

THE REPEAL RESOLUTION AND THE NEW RESOLUTION

6. The Repeal Resolution repeals the original Resolution. The New Resolution is the same as the original Resolution¹, except that the commencement provision is amended such that the New Resolution will commence on the 14th day after the day on which the FC approves the 2015-16 funding proposal. If the New Resolution is made and passed after the day on which the 2015-16 funding proposal is approved, the New Resolution will commence on the 14th day after the day on which it is passed.

LEGISLATIVE TIMETABLE

7. We have given notices to the LegCo on 31 March 2015 on moving two motions in respect of the Repeal Resolution and the New Resolution respectively at the LegCo sitting of 29 April 2015.

¹ The New Resolution provides for the simple substitution of the current title of the public officers (i.e. the Secretary for Commerce and Economic Development and Permanent Secretary for Commerce and Economic Development (Communications and Technology) respectively) by the new title of the public officers in whom policy responsibility for the provision in question will be vested with after the establishment of the ITB (i.e. the Secretary for Innovation and Technology and Permanent Secretary for Innovation and Technology respectively). In order to give full effect to the New Resolution, incidental, consequential and supplemental amendments as appropriate are provided for in the New Resolution.

IMPLICATIONS OF THE PROPOSAL

8. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The Repeal Resolution and the New Resolution have no civil service, economic, environmental, family, financial, productivity, or sustainability implications. They do not affect the current binding effect of the relevant ordinances. The New Resolution and the 2015-16 funding proposal, if passed by the LegCo and the FC respectively, will effect the establishment of the ITB, which will entail an additional funding requirement of \$ 29.7 million in a full year to meet its staffing and daily operation cost.

PUBLIC CONSULTATION

9. The original Resolution was discussed and passed by the LegCo in October 2014. The Repeal Resolution and the New Resolution are in effect just a technical amendment to replace the commencement provision of the original Resolution which is tied with an event that could not happen anymore.

ENQUIRIES

10. For enquiries, please contact Mr Ivanhoe Chang, Principal Assistant Secretary for Commerce and Economic Development (Communications and Technology) at 2810 2713.

Commerce and Economic Development Bureau
31 March 2015

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.

L.N. 132 of 2014

Interpretation and General Clauses Ordinance

Resolution of the Legislative Council

Resolution made and passed by the Legislative Council under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) on 29 October 2014.

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 2014–15 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.

Resolution of the Legislative Council

Schedule

L.N. 132 of 2014
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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

Kenneth CHEN Wei-on
Clerk to the Legislative Council

29 October 2014

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

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 amended as set out in the Schedule.

Schedule

Amendments to Resolution of the Legislative Council

1. Resolution amended

(1) The Resolution, paragraph (1)—

Repeal the definition of *commencement date*

Substitute

“*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 the amending Resolution is made and passed after the day on which the Committee approves the proposal mentioned in subparagraph (a), means the 14th day after the day on which the amending Resolution is made and passed;”.

(2) The Resolution, paragraph (1)—

Add in alphabetical order

“*amending Resolution* (《修訂決議》) means the Resolution made and passed by the Legislative Council under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) to amend the definition of *commencement date* in paragraph (1) of 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;”.