



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

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By Fax (2511 1458)

30 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) (the Proposed Resolution)

We refer to your letter of 23 March 2015. It is noted that you have reiterated in your letter 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 (the Resolution) is valid and subsisting, and thus is capable of being amended by the Proposed Resolution. It is also noted that you will be proposing a resolution under section 54A of Cap. 1 to repeal the Resolution and to effect afresh the transfer of statutory functions for the establishment of the Innovation and Technology Bureau. In light of the approach to be adopted in that proposal, the legal validity of the Resolution should not be in issue. Nonetheless, we would like to put on record that we maintain our view that as a matter of principle the Resolution has lapsed because it depends for its continuing effect on a state of affairs that has permanently ceased to exist (the Principle).

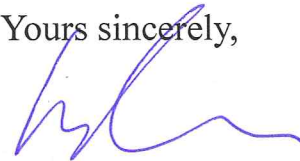
In addition, we would like to set out briefly our views on your references to the presumption of permanence and the Air Pollution Control (Amendment) Ordinance 1993 (the 1993 Amendment Ordinance) in your letter as follows.

It is noted that the Administration is of the view that because of the presumption of permanence, the Resolution should be presumed to be valid and subsisting as there is no fixed term nor sunset clause which provides that the Resolution is to operate until a particular date or the occurrence of a future event. However, our view is that whilst a legislative instrument may lapse due to maturity of a sunset clause or expiry of a fixed term as provided, the Principle should apply where the state of affairs that the legal instrument depends for its continuing effect has permanently ceased to exist. It appears that the presumption of permanence and the Principle are not mutually exclusive.

As regards the 1993 Amendment Ordinance, the Administration is of the further 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. It is noted that the commencement mechanism of the Resolution is provided in the definition provision of the Resolution and is, in our view as previously explained, an integral part of the Resolution as a whole. Therefore, the 1993 Amendment Ordinance would only be useful if the Resolution contains a free-standing commencement provision.

We would like to take this opportunity to express our appreciation of your sharing with us your views on the matter, and we hope our respective views will be useful for future references.

Yours sincerely,



(Wendy KAN)
Assistant Legal Adviser

cc. DoJ (Attn: Ms Angie LI, SGC (By Fax: 2869 1302))
LA
SALA2
Clerk to Subcommittee