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BY FAX

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(Attn : Mrs Ingrid Yeung
Principal Assistant Secretary
for the Environment and Food)

Dear Mrs Yeung,

**Harmful Substances in Food
(Amendment) Regulation 2001 (L.N. 148 of 2001)**

I am scrutinizing the Harmful Substances in Food (Amendment) Regulation 2001 (L.N. 148 of 2001) ("the Amendment Regulation") published in the Gazette on 22 June 2001 and shall be grateful if you would clarify the following :

Section 1 Commencement (Regulation 1)

1. Items 1 and 17 of the proposed First Schedule of the Amendment Regulation are the same as the two items set out in the existing First Schedule of the Principal Regulation ("the existing items"). Please clarify :

- (a) whether the existing Regulation 3 has come into effect insofar as it applies to the two existing items;

- (b) whether a commencement notice would be made before or during the first phase implementation to the effect that Regulation 3 as amended would come into operation insofar as it applies to items 1 and 17 of the proposed First Schedule.

Section 2 Interpretation (Regulation 2)

2. I note that the proposed definition of "food animal" follows the same definition in the Public Health (Animals and Birds)(Chemical Residues) Regulation (L.N. 146 of 2001). Such definition contains references to "animal" and "bird" which are defined in the Public Health (Animals and Birds) Ordinance (Cap. 139). By comparison, the term "animal" has a different definition in the Public Health and Municipal Services Ordinance (Cap. 132). The term "bird" is not defined in the Principal Regulation nor in Cap. 132. Please clarify the intended scope of application and account for the differences.

3. The definition of the terms "milk" and "poultry" in Cap. 132 are different from those in Cap. 139. Please clarify the intended scope of application and account for the differences.

Section 4 Prohibition of sale of fish, meat and milk containing prohibited substances (Regulation 3A)

4. Please explain why the reference to "poultry (including live poultry)" is proposed to be repealed. Is the sale of live poultry regulated under L.N. 146 of 2001, and the sale of dead poultry regulated under the Amendment Regulation by virtue of the definition of "meat" in the Principal Regulation?

5. Why does the proposed Regulation 3A prohibit the sale of fish, meat and milk containing prohibited substances without prohibiting the import of such food as in the proposed Regulation 3?

Section 7 Prohibited substances (Second Schedule)

6. Please explain the reasons for repealing item 4 from the Second Schedule. Why is Oestradiol no longer a prohibited substance?

Defence (Regulation 3B)

7. Regulation 3B(2) of the Principal Regulation provides a defence, for a person in proceedings in relation to the import of food under certain prescribed conditions to show that he took all reasonable steps and exercised reasonable diligence to avoid the removal from the cargo transshipment area of the Hong Kong International Airport. Please clarify :

- (a) whether there is any defence (other than in Regulation 3B(2)) available to persons contravening Regulation 3;
- (b) whether there is any defence available to persons contravening Regulation 3A;
- (c) whether the defence in section 70 of Cap. 132 is applicable so that a defendant may be acquitted if he proves that the contravention

was due to the act or default of another person and that he has used all due diligence to secure compliance of the provisions in question;

- (d) why a similar defence is not available to the offences created under L.N. 146 of 2001?

Examination and seizure and marking or destruction of food (Section 59 of Cap. 132)

8. Please confirm that section 59 of Cap. 132 applies so that an authorized public officer may examine, seize, remove, affix a designation and destroy or otherwise dispose of any food if it appears to him that any of the provisions in the Amendment Regulation have been contravened.

I am still studying the Chinese text of the Amendment Regulation and will seek further clarification from you where necessary

Yours sincerely,

(Bernice Wong)
Assistant Legal Adviser

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