

Import and Export (General) (Amendment)

Regulation 2002

(Made by the Chief Executive in Council under section 31 of the Import and Export Ordinance (Cap. 60))

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Director-General of Trade and Industry by notice published in the Gazette.

2. Part heading substituted

The Import and Export (General) Regulations (Cap. 60 sub. leg.) is amended by repealing the heading to Part IV and substituting---

"PART IV

Textiles Trader Registration".

3. Part heading added

The following is added before regulation 6---

"PART V

Application of, and Exemption from, Licensing Requirements".

4. Application and exemption

Regulation 6(1)(a) is amended by adding ", unless otherwise provided in regulation 6DF" after "transit".

5. Application to air transshipment cargo

Regulation 6AA(1) and (3) is amended by repealing "Section" and substituting "Unless otherwise provided in regulation 6DF, section".

6. Part added

The following is added after regulation 6D---

"PART VI

Control on Import, Export, Etc. of Rough Diamonds

6DA. Interpretation of Part VI

In this Part, unless the context otherwise requires---

"diamond" (鑽石) means a natural mineral consisting essentially of pure crystallized carbon in the isometric system, with a hardness on the Mohs (scratch) scale of 10, a specific gravity of approximately 3.52 and a refractive index of 2.42;

"Kimberley Process" (金伯利進程) means the international forum in which the participants have developed an international certification scheme for rough diamonds;

"registered rough diamond trader" (登記未經加工鑽石商) means a person registered

under regulation 6DD;

"rough diamonds" (未經加工鑽石) means diamonds that are unworked or simply sawn, cleaved or bruted and fall under the Hong Kong Harmonisation System Codes 7102 1000, 7102 2100 and 7102 3100 under the heading 7102 in the Hong Kong Imports and Exports Classification List (Harmonised System) issued by the Commissioner (as amended from time to time);

"Scheme" (計劃) means the international certification scheme for rough diamonds presented in the form of a document entitled the "Kimberley Process Certification Scheme" and adopted at a meeting of the Kimberley Process on 5 November 2002 in Interlaken, Switzerland;

"specified country or place" (指明國家或地方) means a country or place for the time being specified in the Seventh Schedule as being---

(a) a country or place for which the Scheme is effective; or

(b) any other country or place from which the import of rough diamonds into, and to which the export of rough diamonds from, a country or place for which the Scheme is effective is permitted by the Kimberley Process.

6DB. Traders in rough diamonds to be registered

(1) No person shall carry on a business of importing, exporting, buying, selling or carrying rough diamonds, unless he is a registered rough diamond trader.

(2) A person who contravenes paragraph (1) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 1 year.

6DC. Register of registered rough diamond traders

(1) The Director shall maintain a register of registered rough diamond traders.

(2) The register maintained under this regulation shall be in such form, and shall contain the names and such other particulars of persons who are registered under regulation 6DD, as the Director may consider appropriate.

6DD. Registration

(1) The Director shall, on an application to him in accordance with paragraph (2) by any person and upon payment of the prescribed fee, register the person as a registered rough diamond trader by entering the name of the person in the register maintained under regulation 6DC.

(2) An application to the Director shall be made in such manner and in such form, and be accompanied by such information, as the Director may determine.

(3) The Director is to assign a registration number to each person registered under paragraph (1) and is to inform the person of the registration number.

(4) Registration under paragraph (1) shall be valid for a period of 2 years.

6DE. Rough diamonds to be traded with specified country or place only

(1) No person shall, whether as agent or otherwise, import rough diamonds from, or export rough diamonds to, a country or place other than a specified country or place.

(2) A person who contravenes paragraph (1) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 2 years.

6DF. Rough diamonds in transit or as air transshipment cargo not to be tampered with

(1) Notwithstanding regulation 6(1)(a), the licensing requirements under sections 6C(1) and 6D(1) of the Ordinance shall apply to rough diamonds that are in transit, unless the requirements specified in paragraph (3) are complied with in respect of the rough diamonds.

(2) Notwithstanding regulation 6AA(1) and (3), the licensing requirements under sections 6C(1) and 6D(1) of the Ordinance shall apply in relation to rough diamonds that are air transshipment cargo, unless the requirements specified in paragraph (3) are complied with in respect of the rough diamonds.

(3) The requirements specified for the purposes of paragraphs (1) and (2) are---

- (a) that the rough diamonds are sealed in a container; and
- (b) that the container has not been tampered with and the seals on the container remain intact.

6DG. Registered rough diamond trader to keep daily trade record, etc.

(1) A registered rough diamond trader who carries on a business of importing, exporting, buying or selling rough diamonds shall, in such manner and in such form as the Director may require, keep an accurate and up-to-date record of his daily import, export, purchase and sale of rough diamonds. The record must contain---

- (a) the name of each person from or to whom the trader buys or sells the rough diamonds and (if that person is also a registered rough diamond trader) that person's registration number;
- (b) the amount and value of rough diamonds imported, exported, bought or sold; and
- (c) such other particulars as the Director may require.

(2) A registered rough diamond trader referred to in paragraph (1) shall retain each record kept under paragraph (1)---

- (a) for 5 years from the day on which it is made; or
- (b) for such shorter period as the Director may, bearing in mind requirements of the Scheme, specify.

(3) A registered rough diamond trader shall submit such returns or notifications relating to the import, export, purchase and sale of rough diamonds as the Director may require at such intervals as the Director may require.

(4) Neither the Director nor any other person who has access to any record kept, or information obtained, under this regulation in the course of exercising or performing any powers or duties shall disclose such record or information except for the purposes of or in connection with---

- (a) the exercise or performance of any of the powers or duties conferred or imposed by the Ordinance, or of any regulation made under it, applicable to rough diamonds;
- (b) the Scheme or its implementation; or
- (c) the institution of any proceedings for an offence under the Ordinance or any regulation made under it.

(5) A person who contravenes paragraph (1), (2) or (3) commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 1 year.

(6) A person who contravenes paragraph (4) commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 1 year.

6DH. Appointment of persons to assist in examination of rough diamonds

(1) Without prejudice to sections 4 and 4A of the Ordinance and any other law that enable a person to exercise or perform any of the powers or duties conferred or imposed by the Ordinance, the Commissioner may appoint in writing any person to assist any authorized officer or any member of the Customs and Excise Service in the examination of rough diamonds.

(2) For the purpose of assisting in the examination of rough diamonds, a person appointed under paragraph (1) may accompany an authorized officer or a member of the Customs and Excise Service in entering any place or premises which the officer or member is empowered by the Ordinance to enter.

6DI. Non-derogation from other laws

The provisions of these regulations relating to rough diamonds are in addition to, and do not derogate from, any other law prohibiting or restricting the import into, or export from, Hong Kong of rough diamonds."

7. Part heading added

The following is added before regulation 6E---

"PART VII

Miscellaneous".

8. Offences

Regulation 6F(1) is amended---

- (a) in subparagraph (d), by repealing "or";
- (b) in subparagraph (e), by repealing the comma and substituting a semicolon;
- (c) by adding---

"(f) gives or causes to be given any information, which he knows or has reason to believe to be false or misleading in a material particular, in support of an

application for registration under regulation 6DD; or

(g) makes in any record kept, or any return or notification submitted, under regulation 6DG any statement that he knows or has reason to believe to be false or misleading in a material particular,".

9. Amendment of Schedules

Regulation 7 is amended---

(a) by renumbering it as regulation 7(1);

(b) by adding---

"(2) The Director-General of Trade and Industry may, by notice published in the Gazette---

(a) add to the Seventh Schedule the name of---

(i) a country or place for which the Scheme is effective; or

(ii) any other country or place from which the import of rough diamonds into, and to which the export of rough diamonds from, a country or place for which the Scheme is effective is permitted by the Kimberley Process; and

(b) delete from the Seventh Schedule the name of a country or place that is not a country or place referred to in subparagraph (a)(i) or (ii).".

10. First Schedule amended

The First Schedule is amended, in Part I, by adding---

"5A. Rough diamonds within the meaning of regulation 6DA.".

11. Second Schedule amended

The Second Schedule is amended, in Part I, by adding---

"6. Rough diamonds within the meaning of regulation 6DA. Without prejudice to regulation 6DE, any country or place.".

12. Seventh Schedule added

The following is added---

"SEVENTH SCHEDULE [regs. 6DA & 7]

Specified Countries or Places".

CHENG Mei-sze, Maisie

Clerk to the Executive Council

Council Chamber

26 November 2002

Explanatory Note

This Regulation amends the Import and Export (General) Regulations (Cap. 60 sub. leg.) ("the principal Regulations") for the purpose of implementing in Hong Kong the Kimberley Process Certification Scheme ("KPCS"). (KPCS is an international certification scheme for rough diamonds that seeks to stop trade in rough diamonds

from fuelling armed conflicts, activities of rebel movements and the illicit proliferation of armament.) This Regulation introduces---

- (a) a registration scheme for any person who carries on a business of importing, exporting, buying, selling or carrying of rough diamonds; and
- (b) control on the import and export of rough diamonds.

For these purposes, sections 4, 5, 8, 9, 10 and 11 amend respectively regulations 6, 6AA, 6F and 7 of, and the First and Second Schedules to, the principal Regulations. Further, section 6 adds a new Part VI (comprising 9 new regulations from regulations 6DA to 6DI) and section 12 adds a new Seventh Schedule. Sections 2, 3 and 7 are technical amendments. The effects of the provisions are explained in the following paragraphs.

2. New definitions are added for the purposes of the control concerning rough diamonds in new regulation 6DA added by section 6.

3. Any person who carries on a business in the import, export, purchase, sale and carriage of rough diamonds is required to be registered and contravention of the requirement is an offence (new regulation 6DB, added by section 6). The keeping of a register and registration are provided for (new regulations 6DC and 6DD, added by section 6).

4. It is an offence to import rough diamonds from, or export rough diamonds to, a country or place other than a specified country or place (new regulation 6DE, added by section 6). The new Seventh Schedule added to the principal Regulations will set out the specified countries or places, being---

- (a) countries or places for which the KPCS is effective; or
- (b) any other country or place from which the import of rough diamonds into, and to which the export of rough diamonds from, a country or place for which the Scheme is effective is permitted by the Kimberley Process.

5. Rough diamonds are added to the First and Second Schedules to the principal Regulations so that import and export of rough diamonds becomes subject to the licensing requirements under sections 6C(1) and 6D(1) of the Import and Export Ordinance (Cap. 60)("the licensing requirements") (sections 10 and 11).

Contravention of any of those requirements is an offence under the Ordinance.

6. For rough diamonds that are in transit or are air transshipment cargo, the licensing requirements apply. However, the licensing requirements do not apply if such rough diamonds are not tampered with (new regulation 6DF, added by section 6).

7. New regulation 6DG (added by section 6) requires a record to be kept, and returns and notification to be submitted, respecting rough diamonds. It further prohibits the disclosure of any record accessed or information obtained other than for specified purposes. Penalties for contravention of these requirements or prohibition are

provided for.

8. New regulation 6DH (added by section 6) empowers the Commissioner of Customs and Excise to appoint a person to assist in examining rough diamonds.

9. New regulation 6DI (added by section 6) makes it clear that the new provisions are in addition to, and do not derogate from, existing prohibitions and restrictions on the import and export of rough diamonds.

10. Section 8 amends regulation 6F of the principal Regulations so that it is an offence if any information given, or record kept, or return or notification submitted by a registered rough diamond trader is false or misleading.

11. Section 9 amends regulation 7 of the principal Regulations to empower the Director-General of Trade and Industry to amend the new Seventh Schedule.