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2869 9468
2877 5029

Secretary for Health, Welfare and Food
(Attn : Miss Wendy Au, AS(FEH)5)
Health, Welfare and Food Bureau
Food and Environmental Hygiene Division
20/F, Murray Building
Garden Road
Hong Kong

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BY FAX

Fax No. : 2136 3281

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Dear Miss Au,

Public Health and Municipal Services (Amendment) Bill 2005

We are scrutinising the legal and drafting aspects of the Bill.
We should be grateful for your clarification for the following points.

Clause 2(a)

- (a)(i) In new subsection (1AA), in the definition of “the appointed contractor”, does a contractor responsible for the renovation or maintenance of a building or flat fall within the meaning of “the appointed contractor”? Or does the word “site” mean only a construction site?
 - (ii) In paragraph (a) of the definition of “the appointed contractor”, does “the registered contractor appointed in respect of the site” mean a general building contractor or a specialist contractor referred to in section 8A of the Buildings Ordinance (Cap. 123)?
 - (iii) In paragraph (b) of the definition of “the appointed contractor”, how do you establish a person “has entered on” the Government site?
- (b) In new subsection (1AA), in paragraph (a) of the definition of “mosquito-related health hazard”, would you illustrate with examples as to the circumstances creating a “favourable condition”? Further, would

you give an exhaustive list of “mosquito-borne diseases which constitute a danger to human health”?

- (c) In new subsection (1AA), in paragraph (a)(iii) of the definition of “the person responsible for the premises”, a new category of person, namely the person responsible for the management of the premises, is created in comparing to the existing section 27(1) of the Public Health and Municipal Services Ordinance (Cap. 132) (“the Ordinance”). Would you explain the policy reason for creating such category of person?

Clause 2(b)(i)

- (a) In the existing section 27(1) of the Ordinance, the notice is served on the occupier of the premises, or, on the owner of such premises on specified grounds, or, where the premises consist of a building site or a building under construction, on the appointed contractor of the site. In relation to the occupier and owner of the premises, the occupier is the primary person to be served with the notice and hence bears the primary responsibility to comply with the requirement in the notice. Clause 2(b)(i) amends section 27(1) to empower the Authority i.e. Director of Food and Environmental Hygiene to serve the notice on the person responsible for the premises which means, in relation to the occupier and owner of such premises, the Authority may choose to serve on the occupier or owner. Would you explain the policy reason for changing the existing requirement?
- (b) In relation to a site, who would be the person to be served with the notice, if there is no appointed contractor, for example if there is no registered contractor appointed in respect of the site in accordance with the Buildings Ordinance or the appointed contractor has not entered the Government site?

Clause 2(c)

- (a) In relation to a site, who would be the person to be served with the notice, if there is no appointed contractor, for example if there is no registered contractor appointed in respect of the site in accordance with the Buildings Ordinance or the appointed contractor has not entered the Government site?
- (b)(i) In new section 27(1A), there is a reference to “any article capable of causing accumulation of water which allows the breeding of mosquitoes”. Is the scope of such reference wider in meaning than the

reference to “any accumulation of water ... likely to contain larvae or pupae of mosquitoes” in the existing section 27(1)?

- (ii) If the answer to (i) is yes, what is the policy reason for expanding the scope?
- (c) New section 27(1B)(a) empowers the Authority to take such action as he considers necessary to remove such accumulation of water, etc. Would section 126 of the Ordinance about general power of entry be available to the Authority in exercising his power under new section 27(1B)(a)?

Clause 2(d)

- (a) In new section 27(2A), why is the defence not available to a notice served under subsection (1A) in relation to a requirement referred to in subsection (1)(b)?
- (b)(i) New section 27(2B)(a)(i) and (ii) empower the Authority to take certain actions. Would section 126 of the Ordinance about general power of entry be available to the Authority in exercising his powers under new section 27(2B)(a)(i) and (ii)?
 - (ii) In new section 27(2B)(a), would it be appropriate to add a new provision empowering the Authority to take such other action as he considers necessary to prevent the existence of larvae or pupae of mosquitoes (c.f. the amended section 27(1)(c))?
- (c) New section 27(2B)(b)(i) empowers the Authority to take certain action. Would section 126 of the Ordinance about general power of entry be available to the Authority in exercising his power under new section 27(2B)(b)(i)?

Clause 2(e)

- (a) Is new section 27(3) a strict liability offence?
- (b)(i) In new section 27(3A), in relation to a building site, who would commit the offence, if there is no appointed contractor, for example if there is no registered contractor appointed in respect of the site in accordance with the Buildings Ordinance or the appointed contractor has not entered the Government site?
 - (ii) Is it a strict liability offence?

(iii) What is the difference between a “building site” and a “site” referred to in the definition of “the appointed contractor”?

We should be grateful for your earliest reply in both languages.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

c.c. DoJ (Attn: Mr Alan Chong, GC) (Fax No. 2869 1302)
LA