

立法會
Legislative Council

LC Paper No. LS102/06-07

Paper for the Bills Committee on Patents (Amendment) Bill 2007

At its meeting on 21 June 2007, the Bills Committee requested the Legal Service Division to advise whether an import compulsory licence granted by the Director of Health under the proposed new section 72C (clause 5 of the Bill) would be affected by a subsequent repeal of a notice declaring a period of extreme urgency by the Legislative Council (under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1)).

2. Members may recall that under the proposed new section 72B(1), the Chief Executive in Council may by notice published in the Gazette declare a period of extreme urgency whenever the Chief Executive in Council considers it to be necessary or expedient in the public interest to do so to address any public health problem or threatened public health problem in Hong Kong. The proposed new section 72B(2) provides that the notice so published is subsidiary legislation. Under the proposed new section 72C, during a period of extreme urgency declared under section 72B(1), where the Director of Health considers that the pharmaceutical industry in Hong Kong has no or insufficient capacity to manufacture a patented pharmaceutical product to meet the needs for the product in Hong Kong, the Director may grant an import compulsory licence under the patent concerned.

3. Members may note that section 23 of the Interpretation and General Clauses Ordinance (Cap. 1) provides that:-

“ Where an Ordinance repeals in whole or in part any other Ordinance, the repeal shall not-

- (a)
 - (b) affect the previous operation of any Ordinance so repealed or anything duly done or suffered under any Ordinance so repealed;
 - (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any Ordinance so repealed;
-”.

Under section 3 of Cap. 1, an ordinance includes subsidiary legislation.

4. Section 2(1) of Cap. 1 provides that save where the contrary intention appears from the context, the provisions of Cap. 1 shall apply. In our view, no such contrary intention is found from the context of the Bill.

5. In light of the provisions in Cap. 1 referred to in paragraphs 3 and 4 above, a repeal of a notice published in the gazette under the proposed new section 72B(1) would not affect anything duly done under that notice, nor affect any right, privilege, obligation or liability acquired, accrued or incurred under it. Thus, it appears that the legality of an import compulsory licence granted under the proposed new section 72C would not be affected by a subsequent repeal of the notice.

Prepared by

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