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Environmental Protection Department
Air Policy Division
(Attn. : Mr SHIU Lik-king
Sr AO(Air Policy Div))
46/F, Revenue Tower
5 Gloucester Road
Wan Chai
Hong Kong

29 November 2006
BY FAX
Fax No. : 2136 3321

Dear Mr SHIU,

**Air Pollution Control (Volatile Organic Compounds) Regulation
(L.N. 258 of 2006)**

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

Section 2

Definition of “goods in transit”

Is it necessary to add “train” and “vehicle” to the various modes of transportation? It is noted that “vehicle” is mentioned in the definition of “transhipment”.

Definition of “manufacture”

It is noted that the definition of “manufacturer” excludes a person whose business only involves adding colourant to the tint base of a regulated product. Does the activity of adding colourant to the tint base of a regulated product fall into one of the activities prescribed in the definition of “manufacture”? If the answer is yes, should that activity be excluded from the definition of “manufacture”?

Definition of “manufacturer”

Why is a person whose business only involves adding colourant to the tint base of a regulated product excluded from the definition?

Definition of “packaging”

It is a non-exhaustive definition. Could you give examples of “packaging” which are not covered by the definition of the term?

Definition of “transhipment”

In paragraph (b) of the definition, is it necessary to add “train” to the various modes of transportation?

Section 3

Is it necessary to define the term “import”? Notably, the act of importing a regulated paint under section 3, a regulated printing ink under section 10 or a regulated consumer product under section 13 under specified circumstances is an offence. A list of references in the Laws of Hong Kong where the term “import” is defined is at Annex 1 for your reference. It is also noted that the term “importer” is defined under the Regulation.

Section 4 to section 7

In relation to regulated paints, the provisions provide for a transitional period and the ancillary requirements during that period, the requirement for certain information to be displayed, and the requirement of product notification. Why similar provisions are not applicable to regulated printing inks or regulated consumer products?

Section 6(1)

Is it necessary to define the term “the Material Safety Data Sheets”?

Section 9(2)

Why is the Authority empowered to adopt a method in place of the test method?

Would you give example to illustrate the kind of alternate method to be adopted?

Section 12(3)

Why is the Authority empowered to adopt a method in place of the test method?

Would you give example to illustrate the kind of alternate method to be adopted?

Section 15(2)

Why is the Authority empowered to adopt a method in place of the test method?

Would you give example to illustrate the kind of alternate method to be adopted?

Section 16(4)

Would it be appropriate to specify the criteria for the Authority to follow to arrive at the conclusion that he “is not satisfied with the result of any certification”?

Section 19(1) & (2)

In light of **HKSAR and Hung Chan Wa & Another** (Final Appeal No 1 of 2006 (Criminal)), would you justify whether the statutory presumption in section 19(1) and (2) is compatible with the presumption of innocence under Article 11(1) of the Hong Kong Bill of Rights?

Would you explain with reasons whether the burden of proof in the two provisions is a persuasive burden or evidential burden?

Section 20

Is it necessary to define the term “in transit”? A list of references in the Laws of Hong Kong where the term “in transit” is defined is at Annex 2 for your reference.

Why does not the provision apply to a lithographic heatset web printing machine under section 16?

Section 21

Would you give examples to illustrate each of the circumstance described in subsection (1)(a)-(c)?

Would you give examples to illustrate the conditions which may be imposed under subsection (2)?

Why does not the provision apply to a lithographic heatset web printing machine under section 16?

Section 22

Why does not the provision apply to a lithographic heatset web printing machine under section 16?

Schedule 1, PART 1 & Schedule 3, PART 2

The term “exempt compound” is defined respectively under Schedule 1, PART 1 and Schedule 3, PART 2. However, it is noted that not all the elements in the term “exempt compound” are the same under the respective Parts. For example, under paragraph (k) of Schedule 1, PART 1, it refers to “cyclic, branched, or linear, completely methylated siloxanes (VMS)”; while under paragraph (xi) of Schedule 3, PART 2, it refers to “cyclic, branched, or linear, completely methylated siloxanes”. Is it intended that the elements in the term “exempt compound” are different under the two Parts?

Chinese text

We have marked our comment on the Chinese text of section 18 at Annex 3 for your consideration.

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

Yours sincerely,

(Stephen LAM)
Assistant Legal Adviser

Encl

c.c. LA
SALA1
DoJ (Attn : Mr Vidy CHEUNG, SGC)
(Fax : 2845 2215)

Search Results . . . Definition of "Report"

Annex 1

19 section(s) found

	Version Date
(1) <u>Cap 132BW REG 2 Interpretation</u>	26/05/2000
(2) <u>Cap 207 SECT 2 Interpretation</u>	01/01/2000
(3) <u>Cap 403 SECT 2 Interpretation</u>	01/07/2002
(4) <u>Cap 60A REG 2 Interpretation</u>	08/01/2004
(5) <u>Cap 354 SECT 20I Interpretation and application</u>	30/06/1997
(6) <u>Cap 316C PARA 2 Interpretation</u>	30/06/1997
(7) <u>Cap 132AK REG 2 Interpretation</u>	26/05/2000
(8) <u>Cap 316M SECT 1 Interpretation</u>	01/07/1997
(9) <u>Cap 414 SECT 23 Contributions to the Fund</u>	05/01/2000
(10) <u>Cap 526 SECT 2 Interpretation</u>	18/06/2004
(11) <u>Cap 60 SECT 2 Interpretation</u>	11/04/2003
(12) <u>Cap 296 SECT 2 Interpretation</u>	11/04/2003
(13) <u>Cap 362 SECT 2 Interpretation</u>	17/06/2005
(14) <u>Cap 187 SECT 2 Interpretation</u>	01/01/2000
(15) <u>Cap 109 SECT 2 Interpretation</u>	01/07/2002
(16) <u>Cap 528 SECT 198 Minor definitions</u>	28/11/2003
(17) <u>Cap 586 SECT 2 Interpretation</u>	15/01/1999
(19) <u>Cap 1 SECT 3 Interpretation of words and expressions</u>	08/07/2005

[\[Simple Search\]](#) [\[Advanced Search\]](#)

Search Results . . . Definition of "in transit"

24 section(s) found

- (1)Cap 421A SECT 2 Interpretation
- (2)Cap 132BW REG 2 Interpretation
- (3)Cap 586 SECT 3 Meaning of "in transit"
- (4)Cap 132V REG 2 Interpretation
- (5)Cap 132U REG 2 Interpretation
- (6)Cap 132H REG 2 Interpretation
- (7)Cap 132AF REG 2 Interpretation
- (8)Cap 311 SECT 80 Ban on import and sale of amosite and crocidolite
- (9)Cap 291A REG 1A Interpretation
- (10)Cap 424 SECT 2 Interpretation
- (11)Cap 296 SECT 2 Interpretation
- (12)Cap 207 SECT 2 Interpretation
- (13)Cap 112 SECT 23C Ascertainment of the assessable profits of a resident aircraft-owner
- (14)Cap 112 SECT 23D Ascertainment of the assessable profits of a non-resident aircraft-owner
- (15)Cap 456 SECT 2 Interpretation
- (16)Cap 139E REG 2 Interpretation
- (17)Cap 60 SECT 2 Interpretation
- (18)Cap 132BD REG 2 Interpretation
- (19)Cap 528 SECT 198 Minor definitions
- (20)Cap 362 SECT 2 Interpretation
- (21)Cap 134 SECT 2 Interpretation
- (22)Cap 112 SECT 23B Ascertainment of the assessable profits of a ship-owner carrying on business
- (23)Cap 106 SECT 2 Interpretation
- (24)Cap 586 SECT 2 Interpretation

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18. 免責辯護

(1) 在就本規例所訂罪行而針對某人進行的法律程序中，如該人證明他已採取一切合理步驟及已盡一切應盡的努力以避免犯該罪行，即可以此作為免責辯護。

(2) 凡在任何法律程序中，第(1)款所訂的免責辯護涉及一項指稱，謂罪行的發生——

- (a) 是另一人的作為或過失所致；或
- (b) 是倚賴另一人所提供的資料所致，

則被控人除非已按照第(3)款送達通知，否則無權在沒有法院許可的情況下援引該項免責辯護。

(3) 為施行第(2)款而送達的通知必須——

- (a) 提供他在送達該通知時管有的任何可指出或有助指出作出有關作為或犯有關過失或提供第(2)(b)款所提述的資料的人的身分資料；及
- (b) 於聆訊有關法律程序前的最少7整個工作天之前，送達提起該法律程序的人。
→他

(4) 在每人都非證明在整體有關情況下，尤其是在顧及以下事宜下，倚賴另一人所提供的資料屬合理——

- (a) 他為核實該等資料而已採取的步驟，及為核實該等資料而理應已採取的步驟；及
- (b) 他是否有任何理由不相信該等資料。

否則無權以倚賴該等資料為理由而援引第(2)(b)款所訂的免責辯護。

任何人 → 倚賴另一人所提供的資料為理由。

19. 推定：受規管產品的生產或輸入日期；

並非屬過境的受規管產品等

(1) 在根據第17條就違反第3、10或13條的禁制或不遵守第4、6或7條的規定所訂罪行而進行的檢控中，經證明為由某人生產或輸入的受規管產品在沒有相反證據的情況下，須推定為由該人在有關日期或之後生產或輸入的受規管產品。

(2) 在就本規例所訂罪行而進行的檢控中，在香港發現的受規管產品在沒有相反證據的情況下，須推定為並非——

- (a) 過境貨品；
- (b) 轉運中的貨品；或

18. Defences

(1) In any proceedings against a person for an offence under this Regulation, it is a defence for that person to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings, the defence under subsection (1) involves an allegation that the commission of the offence was due—

- (a) to the act or default of another person; or
- (b) to reliance on information given by another,

the person charged is not, without the leave of the court, entitled to rely on the defence unless he has served a notice in accordance with subsection (3).

(3) A notice for the purposes of subsection (2) must—

- (a) give information that is in the possession of the person serving the notice at the time he serves the notice, identifying or assisting in the identification of the person who committed the act or default or gave the information referred to in subsection (2)(b); and
- (b) be served on the person bringing the proceedings at least 7 clear working days before the hearing of the proceedings.

(4) A person is not entitled to rely on the defence under subsection (2)(b) by reason of his reliance on information given by another person, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular—

- (a) to the steps which he had taken, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether he had any reason to disbelieve the information.

19. Presumptions: date of manufacture or importation of regulated products; regulated products not in transit etc.

(1) In a prosecution for an offence under section 17 for the contravention of a prohibition under section 3, 10 or 13 or non-compliance with a requirement under section 4, 6 or 7, a regulated product that is proved to have been manufactured or imported by a person is presumed, in the absence of evidence to the contrary, to be a regulated product manufactured or imported by that person on or after the relevant date.

(2) In a prosecution for an offence under this Regulation, a regulated product that is found in Hong Kong is presumed, in the absence of evidence to the contrary, to be a regulated product that is not—

- (a) goods in transit;
- (b) goods in the course of transhipment; or