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**BY FAX**  
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Dear

**Public Health and Municipal Services (Amendment) Bill 2008**

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

New section 78A

- (a) In the definition of "supply", in paragraph (c), is it intended to cover an exchange or disposition of food for consideration, other than money consideration? If so, would it be clearer to reflect the policy intent by adding ", other than money consideration" after "consideration" in paragraph (c)? The same query also applies to paragraph (d)(ii) in the definition of "supply".
- (b) In the definition of "supply", in paragraph (e), why does it not apply to food disposed of in the manner as described for charitable purposes?

New section 78B(1)(c)

Would you consider extending the power to recall to food in relation to which an activity is being carried on under new section 78B(1)(e)?

New section 78B(1)(e)

- (a) Is it intended that sub-paragraph (e) to cover activity other than that covered under sub-paragraphs (a) and (b) because on the face of it the

scope of sub-paragraph (e) is wide enough to cover that of sub-paragraphs (a) and (b)? If so, would it be clearer to expressly provide for it in sub-paragraph (e)?

- (b) Would you give examples to be covered under the provision?

New section 78B(2)

Would you give examples to be covered under an order to "mitigate any adverse consequence of a danger to public health"?

New section 78C(3)

Why is it necessary to use "notice of a section 78B order" instead of "a section 78B order"? There is no mention of "a notice of a section 78B order" in either 78C(1)(b) or (c). It may also arouse doubt as to whether a notice of a section 78B order is the same as a section 78B order? Hence, whether a notice of a section 78B order published under new section 78C(6) is a subsidiary legislation or not.

New section 78D(3)(b)

What is the justification for one of the prerequisites of the statutory defence to be that an employee must not exercise managerial functions at the relevant time? Such prerequisite may cause difficulties in legal and policy aspects. First, it is difficult to define what "managerial functions" are. Secondly, in a large organisation where there is multi-layers of responsibilities, an employee who exercises managerial functions, as contrast to a small organisation, may not be responsible for making the decision influencing the act or omission at issue.

New section 78H

- (a) What is the justification for limiting the amount of compensation to the maximum market value of the food at the time of making a section 78B order and not extending to financial loss arising from the making of the order, for example, loss of goodwill of the business?
- (b) Compensation payable depends on, among other things, whether the person bound by a section 78B order can prove that he has suffered loss as a result of the order, etc. (new section 78H(1)(b)). What is the loss intended to be proved? Does it cover the person's financial loss arising from the making of the order? If it only covers the maximum market value of the food at the time of making a section 78B order, the use of the term "loss" may be too wide.
- (c) What is the justification for not protecting the interest of an innocent third party who may be indirectly affected by the making of a section 78B order? For example, a tenant rents a unit to supply food. The tenant is bound by a section 78B order. As a result, the tenant's

business is so adversely affected that he has to close the business and terminate the tenancy agreement pre-maturely. Later, the tenant is awarded with compensation under the new section 78H. What is the justification for not compensating the landlord for his loss as a result of the early termination of the tenancy agreement?

- (d) What are the legal grounds for justifying that the compensation system, in particular the limit on the claim for loss to the maximum value of the food only, is compatible with Article 105 of the Basic Law?
- (e) How would you compare and contrast the compensation system pertaining to a section 78B order with the compensation system pertaining to a food recall order (similar to a section 78B order) in overseas jurisdictions?

New section 78J

The provision only deals with the employment relationship. Would you consider extending the coverage to the liability of a principal and agent (c.f. section 59 of the Unsolicited Electronic Messages Ordinance (Cap. 593))?

Since a Bills Committee has been formed to consider the Bill in detail, it is appreciated that your reply, in both languages, could reach us before the holding of the first Bills Committee's meeting.

Yours sincerely,

(Stephen LAM)  
Assistant Legal Adviser

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