



LC Paper No. CB(2)1990/08-09(03)

中華人民共和國香港特別行政區政府總部食物及衛生局
Food and Health Bureau, Government Secretariat
The Government of the Hong Kong Special Administrative Region
The People's Republic of China

本函檔號 Our ref.: FH CR 2/3231/08 Pt.3
來函檔號 Your ref.:

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19 June 2009

Mr Stephen LAM
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mr LAM,

**Subcommittee on
Food Business (Amendment) Regulation 2009**

I refer to your letter of 1 June 2009 in which you sought our clarification on the way the prohibited areas are described in the proposed Schedule 1A to the Food Business Regulation (Cap.132 sub. leg. X) (the principal Regulation). Our considerations are set out in the ensuing paragraphs.

The prohibited areas covered in the proposed Schedule 1A include, among other areas, typhoon shelters which are specified in the Schedule to the Merchant Shipping (Local Vessels) (Typhoon Shelters) Regulation (Cap. 548 sub. leg. E). Of the 14 typhoon shelters specified therein -

- (a) seven (namely Causeway Bay, Kwun Tong, New Yau Ma Tei, Rambler Channel, Sam Ka Tsuen, Shau Kei Wan, To Kwa Wan) are located entirely within the boundary of the Victoria Harbour, i.e. within the area as demarcated in item 2 of the proposed Schedule 1A, which describes the statutory boundary of the Victoria Harbour;
- (b) four (namely Cheung Chau, Hei Ling Chau, Shuen Wan and Yim Tin Tsai) fall completely outside any areas demarcated in items 2 to 6 of the proposed Schedule 1A; and

- (c) the remaining three (namely Aberdeen South, Aberdeen West and Tuen Mun) fall partially within the areas demarcated in item 3, 4 or 5 of the proposed Schedule 1A.

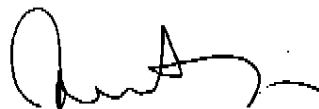
To avoid duplication in the description of the prohibited areas as you have suggested, it is technically feasible to set out these typhoon shelters individually in items 2 to 6 of the proposed Schedule 1A depending on whether they fall within or outside the areas demarcated, instead of as a separate category of prohibited areas in item 1 of the proposed Schedule 1A. However, adopting such an alternative approach will render the delineation and presentation more cumbersome and complicated, in particular in relation to typhoon shelters which fall only partially within the areas demarcated in item 3, 4 or 5 of the proposed Schedule 1A. That may cause confusion to the trade and the general public. A further disadvantage is that corresponding legislative amendment to the proposed Schedule 1A will become necessary whenever any typhoon shelter is added to or removed from Cap. 548E.

We consider the current description and delineation of the prohibited areas in the proposed Schedule 1A straight-forward and user-friendly. It will help avoid any misunderstanding that some typhoon shelters, if not specifically referred to / mentioned in the proposed Schedule 1A, may be exempted from the prohibition. From the legal point of view, it is not objectionable even if there is duplication in the descriptions of the prohibited areas in the proposed Schedule 1A provided that there is no contradiction between the descriptions.

We would like to point out further that, by nature of both the congregation of static vessels and human activities therein, typhoon shelters usually have poor quality of seawater. This is evident from the extremely high *E. coli* count of 49,000 per 100 ml of seawater detected in the Causeway Bay Typhoon Shelter by the Environmental Protection Department in 2008. It is therefore considered reasonable and necessary to specify all typhoon shelters stipulated in Cap. 548E as prohibited areas for the current purpose.

Should you require further information, please feel free to contact the undersigned on 2973 8148.

Yours sincerely,



(Owin FUNG)

for Secretary for Food and Health

c.c. DoJ (Attn: Miss Emma WONG) (Fax: 2869 1302)
DFEH (Attn: Mr. LO Fu-wai) (Fax: 2530 1368)