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By Fax (2136 3281)

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Mrs Angelina CHEUNG
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Food and Health Bureau
Food Branch
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Dear Mrs CHEUNG,

Food Safety Bill

We are scrutinising the legal and drafting aspects of the Bill. We have the following questions for your clarification-

Clause 2(1)

In the definition of "food", the term "food" includes articles and substances used as ingredients in the preparation of food. Would you illustrate with examples to show the difference between "articles" and "substances" in the definition?

In the definition of "food", the term "food" does not include articles or substances used only as drugs. Would you illustrate with examples to show the difference between "articles" and "substances" in the definition?

In the definition of "food transport operator", would it be necessary to add "equitable interest" in order to exclude further possible interest of the carrier in the food?

Clause 3(3)

Why does not the Food Safety Ordinance, upon enactment of the Bill, apply to the propagation or promotion of growth of live aquatic products in captivity?

Clause 4(2)

Would you give examples of reasonable excuse in the provision?

Clause 5(2)

Would you give examples of reasonable excuse in the provision?

Clause 6(1)

Does the Director of Food and Environmental Hygiene (the Director) have any criteria for him to exempt a person from the requirement to be registered under Part 2 of the Bill in respect of a business?

Would it be appropriate to specify those criteria, if any, in the provision?

Clause 6(4)

Does the Director have any criteria for him to exempt a class of persons from the requirement to be registered under Part 2 of the Bill in respect of a class of business?

Would it be appropriate to specify those criteria, if any, in the provision?

Clause 7(2)

Does it apply to a limited partnership formed under the Limited Partnerships Ordinance (Cap. 37)? If yes, would it be appropriate to make it clear that the partnership means a partnership formed under the Partnership Ordinance (Cap. 38) and a limited partnership formed under the Limited Partnerships Ordinance?

Clause 7(3)(c)

Would you give examples of the additional information the Director may require for the purpose of considering the application?

Clause 8(2)(a)

How does the provision apply to an application by a partnership which consists of one partner who in his individual capacity has repeatedly contravened the Food Safety Ordinance, upon enactment of the Bill, within the specified period while the other partner, in his individual capacity, has done nothing in contravention of the Ordinance?

Clause 8(2)(b)

In relation to an application on behalf of a partnership, how does the provision apply to a case in which one of the partners whose registration in another partnership was revoked within the specified period; whereas the other partner in the application has done nothing in contravention of the Ordinance?

Clause 10(1)

Would you give examples to illustrate the conditions the Director may impose on a person's registration?

Clause 11(2)(b)

Would you give examples of the additional information the Director may require for the purpose of considering the application for renewal of registration?

Clause 14(1)

Could one of the partners make a request to the Director to have the registration revoked?

Clause 14(5)(b)

Would it be necessary to provide for the circumstance in which the Director considers it appropriate to revoke a person's registration earlier than the expiry of 30 days after the day on which the decision to revoke the registration is made under clause 14(2)?

Clause 16(1)

Would it be difficult to establish the time when the person was aware of the Director's decision made under Part 2 of the Bill?

Clause 29(1)

Would it be appropriate to specify the criteria for the Director to exempt a person from the requirement to keep a record?

Would you give examples to illustrate the circumstances in which the Director would exempt a person from the requirement to keep a record?

Clause 29(4)

Would it be appropriate to specify the criteria for the Director to exempt a class of persons from the requirement to keep a record?

Would you give examples to illustrate the circumstances in which the Director would exempt a class of persons from the requirement to keep a record?

Clause 41(2)(c)

Would you give examples to illustrate the person whom confidential information may be disclosed to in the provision?

Clause 46(1)

Are you satisfied that there is no need to include vehicle and aircraft as well?

Clause 47(1)

Are you satisfied that there is no need to provide for entry into any premises or vessel used for non business purposes?

Clause 67

The provision seeks to amend the reverse onus formulation in section 67 of the Principal Ordinance by changing it from "until the contrary is proved" to "unless there is evidence to the contrary". Would you explain the reason for the change and how is the change consistent with the Hong Kong Bill of Rights?

Your reply in both languages is appreciated.

Yours sincerely,

(Stephen LAM)
Assistant Legal Adviser

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