



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

LC Paper No. CB(2)1017/13-14(01)



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14 February 2014

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(Special Duties)
Commerce, Industry and Tourism Branch
Commerce and Economic Development Bureau
22-23/F, West Wing
Central Government Offices
2 Tim Mei Avenue
Tamar
Hong Kong

Dear Ms CHAN,

**Toys and Children's Products Safety
(Additional Safety Standards or Requirements) Regulation
(L.N. 17 of 2014)**

Penalties provision

**Penalties under the Toys and Children's Products Safety Regulation (Cap. 424B)
(Safety Regulation)**

It is noted that section 5 of the Safety Regulation provides for the following-

"A person who commits an offence under section 2 [Identification marking for toys], 3 [Identification marking for children's products] or 4 [Bilingual warning or caution for toys and children's products] shall be liable-

- (a) on first conviction, to a fine at level 6 and to imprisonment for 1 year; and
- (b) on subsequent conviction, to a fine of \$500000 and to imprisonment for 2 years."

It is noted that the scope of section 5 of the Safety Regulation is consistent with the scope of section 35(2) (power of the Secretary for Commerce and Economic Development to make regulations) of the Principal Ordinance which provides for the following-

"A regulation may provide that a person who contravenes it commits an offence and shall be liable-

- (a) on first conviction, to a fine at level 6 and to imprisonment for 1 year; and
- (b) on subsequent conviction, to a fine of \$500000 and to imprisonment for 2 years."

Penalties for failing to comply with the additional safety standards or requirements in the Toys and Children's Products Safety (Additional Safety Standards or Requirements) Regulation (L.N. 17 of 2014)

The Safety Regulation will be repealed and the matters dealt with in it has been incorporated into L.N. 17 of 2014 (see paragraphs 10 and 11 of the LegCo Brief on L.N. 17 - L.N. 19 of 2014).

However, it is noted that there is no express penalty provision in L.N. 17 of 2014 for failing to comply with the additional safety standards or requirements in it, for example section 5 (identification markings for toys) which is substantially similar to section 2 of the Safety Regulation, section 6 (Bilingual warnings or cautions for toys) which is substantially similar to section 4 of the Safety Regulation and section 10 (Identification markings for children's products) which is substantially similar to section 4 of the Safety Regulation and section 11 (Bilingual warnings or cautions for children's products) which is substantially similar to section 4 of the Safety Regulation.

It is also noted that paragraph 17 of the Explanatory Note to L.N. 17 of 2014 states that "[i]f a person fails to comply with the additional safety standards or requirements in Part 2 [Additional Safety Standards or Requirements for Toys (sections 5 - 9)] or 3[Additional Safety Standards or Requirements for Children's Products (sections 10 - 15)], the person commits an offence under section 8 of the amended TCPSO [Toys and Children's Products Safety Ordinance]."

Section 8(1) of TCPSO as amended by the Toys and Children's Products Safety (Amendment) Ordinance 2013 (Ord. No. 18 of 2013) provides that "[a] person must not manufacture, import or supply a toy or children's product unless the toy or children's product complies with the general safety requirement and each additional safety standard." Section 8(6) provides that "[a] person who contravenes subsection (1) commits an offence." In this connection, section 31 of TCPSO provides for the following-

- "(1) A person who commits an offence under section 3, 5, 8, 10, 11, 12 or 13 shall be liable-
- (a) on first conviction, to a fine at level 6 and to imprisonment for 1 year; and
 - (b) on subsequent conviction, to a fine of \$500000 and to imprisonment for 2 years.
- (2) Where an offence referred to in subsection (1) is a continuing offence, in addition to the fine specified in that subsection the person shall be liable to a fine of \$1000 for each day during which it is proved to the satisfaction of the court that the offence has continued.
-"

Legal effects of making it an offence under section 8 of TCPSO for failing to comply with the additional safety standards or requirements in L.N. 17 of 2014

There is no provision on a continuing offence under section 5 of the Safety Regulation. However, where an offence under section 8 of TCPSO is a continuing offence, an additional daily fine may be imposed by the court under section 31(2) of TCPSO.

In light of the observation in the preceding paragraph, would you please explain whether there is a policy change in providing for a continuing offence for failing to comply with the additional safety standards or requirements in under sections 5, 6, 10 and 11 of L.N. 17 of 2014?

Further, both the Safety Regulation and L.N. 17 of 2014 were made under section 35 of TCPSO. How would you rationalise the decision to make the offences for failing to comply with the additional safety standards or requirements in the Safety Regulation subject to penalties which are different from those for similar offences in L.N. 17 of 2014 by virtue of reliance on the contravention of section 8 of TCPSO?

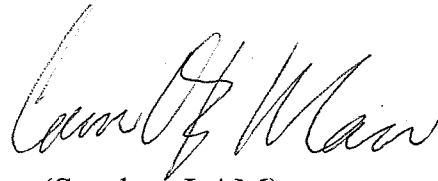
Meaning of "use" in sections 7(4), 8(4), 9(5), 13(4), 14(4) and 15(5)

Sections 7(4), 8(4), 9(5), 13(4), 14(4) and 15(5) basically provide that a component part of a toy or children's product is inaccessible if the component part cannot come into contact with a child, etc. through reasonably foreseeable use of the toy or children's product.

The term "use" is defined under section 2(1) of L.N. 17 of 2014 to include "improper use". Would you please illustrate with examples in the aforesaid provisions where a component part of a toy or children's product is inaccessible if the component part cannot come into contact with a child, etc. through reasonably foreseeable improper use of the toy or children's product?

It is appreciated for your reply, in both languages, to us by **17 February 2014**.

Yours sincerely,



(Stephen LAM)
Assistant Legal Adviser