

香港特別行政區政府  
商務及經濟發展局  
工商及旅遊科



香港添馬添美道二號  
政府總部西翼二十三樓

Your Ref. : LS/S/14/13-14  
Our Ref. : CITB CR 08/18/3

COMMERCE, INDUSTRY AND TOURISM BRANCH  
**COMMERCE AND ECONOMIC  
DEVELOPMENT BUREAU**  
GOVERNMENT OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION

23/F, WEST WING  
CENTRAL GOVERNMENT OFFICES  
2 TIM MEI AVENUE  
TAMAR, HONG KONG

Tel : 2810 2969  
Fax : 2869 4420

**By Facsimile (2877 5029)**

19 February 2014

Mr. Stephen Lam  
Assistant Legal Adviser  
Legal Service Division  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear Mr. Lam,

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

I refer to your letters of 14 and 17 February 2014.

**Penalties for failing to comply with the Toys and Children's Products Safety  
(Additional Safety Standards or Requirements) Regulation and statutory defence  
under section 8(7) of the Toys and Children's Products Safety Ordinance**

Before the Toys and Children's Products Safety (Amendment) Ordinance 2013, the Toys and Children's Products Safety Ordinance (Cap. 424) (the Ordinance) was last amended in 2010 by the Toys and Children's Products Safety (Amendment) Ordinance 2010 (the 2010 Amendment Ordinance).

The 2010 Amendment Ordinance amended, amongst others, section 8(1) of the Ordinance to provide that a toy or children's product must comply with the general safety requirement and any additional safety standard established by

regulation made under section 35<sup>1</sup>. The policy intention was that a failure to comply with any additional safety standard established by regulation should attract the offence provision under section 8 of the Ordinance. As a result of the amendment to section 8(1), non-compliance with the general safety requirement or any additional safety standards established by regulation would constitute an offence under section 8(6). Such offence is subject to the penalties under section 31<sup>2</sup>, and defence under section 8(7) is available.

In line with the above, and as both the Toys and Children's Products Safety Regulation (Cap. 424B) and the new regulation on the proposed phthalate control involve additional safety standards or requirements for toys and children's products, we have taken the opportunity of introducing the Toys and Children's Products Safety (Additional Safety Standards or Requirements) Regulation to make it clear that non-compliance of these additional safety standards or requirements breaches section 8(1), constitutes an offence under section 8(6) where defence under section 8(7) is available, and which is subject to the penalties under section 31.

Meaning of "use" in sections 7(4), 8(4), 9(5), 13(4), 14(4) and 15(5) of the Toys and Children's Products Safety (Additional Safety Standards or Requirements) Regulation

Under the Toys and Children's Products Safety (Additional Safety Standards or Requirements) Regulation, sections 7(4), 8(4), 9(5), 13(4), 14(4) and 15(5) respectively 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 or with the mouth of a child under four years of age through reasonable foreseeable use of the toy or children's product. Section 2(1) defines "use" as including "improper use".

---

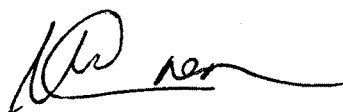
<sup>1</sup> Before amendment by the 2010 Amendment Ordinance, section 8(1) read "No person shall manufacture, import or supply a toy or children's product, if it fails to comply with the general safety requirement." Upon amendment by the 2010 Amendment Ordinance, section 8(1) read "A person must not manufacture, import or supply a toy or children's product unless the toy or children's product complies with the general safety requirement and any additional safety standard established by regulation." Under the Toys and Children's Products Safety (Amendment) Ordinance 2013, the reference to "any additional safety standard established by regulation" is replaced by "each additional safety standard" as a matter of drafting change.

<sup>2</sup> Section 31 provides that -

- "(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."

An example of such an inaccessible part within the coverage of the provisions concerned is a cable which remains securely enclosed inside a toy (e.g. a toy car) or children's product even if a child throws the toy or children's product around.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Manda Chan', written in a cursive style.

( Manda Chan )

for Secretary for Commerce and Economic Development

c.c. DoJ (Attn.: Ms Frances Hui) (Fax No. 2869 1302)  
DoJ (Attn.: Ms Florence Ling) (Fax No. 2869 0670)