

立法會的信頭
Letterhead of LEGISLATIVE COUNCIL

來函檔號 YOUR REF:
本函檔號 OUR REF: **CB1/SS/5/98**
電話 TELEPHONE: **2869 9245**
圖文傳真 FACSIMILE: **2524 3802**

5 February 1999

Director of Administration
(Attn: Mr Jacky LUM)
Chief Secretary for Administration's Office
12/F, West Wing, Central Government Offices
11 Ice House Street
Central, Hong Kong

Dear Mr LUM,

**Subcommittee to study issues relating to the tabling
of subsidiary legislation in Legislative Council**

Follow up to meeting on 2 February 1999

Please refer to our telephone conversation on 3 February 1999.

Pursuant to the discussion of the captioned Subcommittee at the meeting on 2 February 1999, members form the view that the first commencement notice in respect of the Ozone Layer Protection (Controlled Refrigerants) Regulation and the 19 pieces of subsidiary legislation gazetted on 27 and 30 June 1997 but not tabled in the Legislative Council are valid. The Subcommittee requests the Administration the following -

- (a) to confirm if anything can be done under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) to rectify the failure of tabling of the 19 pieces of subsidiary legislation;
- (b) to advise whether the Administration considers it necessary to introduce a validation ordinance in respect of the subsidiary legislation in question. Please provide justifications for the decision and explain whether the introduction of a validation ordinance having retrospective effects will contravene the provisions of the International Covenant on Civil and Political Rights;
- (c) to advise the way to rectify the confusion of having appointed two commencement dates in respect of the Ozone Layer Protection (Controlled Refrigerants) Regulation; and

- (d) to propose ways by which the responsibility of the executive for tabling of subsidiary legislation in the Legislative Council as is required under section 34 of Cap. 1 could be effectively fulfilled.

I should be grateful for your response as soon as possible.

With best regards,

Yours sincerely,

(Miss Odelia LEUNG)
Clerk to Subcommittee

BY FAX

政府總部的信頭

Letterhead of GOVERNMENT SECRETARIAT

本函檔號 OUR REF.:
來函檔號 YOUR REF.: CB1/SS/5/98

Tel: 2810 3946
FAX: 2501 5779

12 April 1999

Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

(Attn: Miss Odelia Leung)

Dear Miss Leung,

**Subcommittee to study issues relating to the tabling
of subsidiary legislation in Legislative Council**

Thank you for your letter of 5 February 1999.

Our responses to the issues of follow up to the Subcommittee meeting set out in your letter are in seriatim as follow-

- (a) Section 34(1) of Cap. 1 expressly provides that "All subsidiary legislation shall be laid on the table of the Legislative Council at the next sitting thereof after the publication in the Gazette of that subsidiary legislation.". We do not consider that section 34 of Cap. 1 provides a way of resolving the issue of non-tabling of the 19 pieces of subsidiary legislation.
- (b) We are considering the desirability of enacting validating legislation in order to remove any doubt on the validity of the subsidiary legislation and have yet to come to a conclusion. If we eventually decide to proceed with enacting validating legislation, the relevant Bill would be drafted in such a way as not to contravene the International Covenant on Civil and Political Rights.

- (c) We intend to amend the loose-leaf edition of the laws to indicate a commencement date of 1 January 1994 for the Ozone Layer Protection (Controlled Refrigerants) Regulation in accordance with G.N. 4794 of 1993 and to delete the current entry. This is currently targeted for release in May/June.

- (d) In order to facilitate the tabling of subsidiary legislation for negative vetting under section 34 of Cap. 1, we intend to divide the Legal Supplement No. 2 of the Gazette into two parts, differentiating those items which are subject to negative vetting by LegCo. Subject to our sorting out the details of the arrangement, we hope to put it into effect as soon as possible.

Yours sincerely,

(Jacky Lum)
for Director of Administration

cc D of J (Attn: Mr R Allcock
Mr David Morris
Mr James O'Neil
Mr Michael Scott)
CEC (Attn: Mrs Hedy Chu)
SPEL (Attn: Mr Howard Chan)