

財經事務及庫務局  
(庫務科)

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中區政府合署

FINANCIAL SERVICES AND THE  
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本函檔號 Our Ref. : FIN CR 1/2311/88  
來函檔號 Your Ref. : LS/S/34/02-03

14 June 2003

Ms Connie Fung  
Assistant Legal Adviser  
Legal Service Division  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road  
Central

Dear Ms Fung,

**Dutiable Commodities (Amendment) Regulation 2003**

**(L.N. 136 of 2003)**

Thank you for your letter dated 9 June 2003. I set out below the Administration's response to your questions.

**Regulation 67A(6) offence**

2. It is proposed that if the labelling requirements in the new regulations 67A(1) and (2) are not complied with or if a label falsely describes the alcoholic strength, the importer or manufacturer of the liquor in Hong Kong commits an offence under the new regulation 67A(6). The offender shall be subject to a maximum fine of level 5 or \$50,000.

3. The new regulation 67A(6) may be construed as creating a strict liability offence. The offence in question is not "truly criminal" in character. Nevertheless, the provisions relate to an issue of social concern, namely, to raise and to protect revenue. The creation of strict liability will be effective to promote the objects of the provisions by encouraging greater vigilance to prevent the commission of the prohibited act –

greater vigilance would be encouraged by not requiring the prosecution to prove knowledge on the part of the offender relating to the label.

4. The importer or manufacturer is encouraged to set up an effective system to enable him to comply with the requirements in the new regulation 67A. He has to ensure that the system would enable him to label his liquors in accordance with the new provisions. This is a reasonable requirement as it is within the control of the importer or manufacturer to comply.

5. We propose a statutory defence of no knowledge, no reason to suspect and reasonable diligence. Such a defence would advance the legislative objective by permitting it to be attained without convicting blameless persons.

6. Under the new regulation the Prosecution will still bear the burden of proving whether the labelling requirements are complied with and whether the information in the labels falsely describes the alcoholic strength.

### **Home-brewed liquor**

7. The Administration does not intend to apply the labelling requirement to home-brewed liquor. As stated in the explanatory note of the Amendment Regulation, we require a container of liquor imported into or manufactured in Hong Kong for local consumption to bear a label stating the alcoholic strength for the purpose of assessment of duty. The new regulation 67A(1) prescribes the time at which the liability for a liquor container to bear a label would be triggered. It is stated that before a liquor manufactured in Hong Kong is removed from the premises on which it is manufactured (but not removed to a bonded warehouse), it should bear a label.

8. As home-brewed liquor is brewed for immediate consumption at home, the labelling requirement as described in paragraph 7 should not be triggered.

9. In any case, our intention is that a liquor container is required to bear a label before the time duty is payable, allowing the Customs and Excise Department (C&ED) to assess duty with reference to the label. The home-brewed liquor exempted from duty under regulation 12(ga) will not become duty payable, and will not be assessed by C&ED to duty. We will not expect such liquors to be labelled.

### **Reference to “Subregulation (1)” in the new regulation 67A(4)**

10. The Administration considers that it is appropriate to refer to “Subregulation (1)” in the new regulation 67A(4). Regulation 67A(4) disapplies the requirement for liquor containers to be labelled in regulation 67A(1) from liquors imported into or manufactured in Hong Kong for local consumption on or before, or within 12 months after, the date of commencement of the Amendment Regulation. As

there is no requirement for the containers to be labelled in the first place, it follows that the specifications regarding a label and the offence provision, etc, in the other subregulations of regulation 67A will not be applicable. Therefore, the Administration is of the view that there is no need to replace “Subregulation (1)” in regulation 67A(4) by “This regulation”.

### **Assessment of duty for liquors exempted under regulation 67A(5)**

11. According to a survey conducted by C&ED, 98% of all liquors in bonded warehouses (i.e. after import or manufacture) and in retail outlets already carry labels with descriptions of their alcoholic strength. The other 2% do not have any labels because, for example, the liquor was imported many years ago when it was not a standard requirement to require liquor for export to bear labels. If the importer of such liquor is unable to obtain the information needed for the label because the manufacturer of the liquor has ceased operation, it is exempted from the labelling requirement in the new regulation 67A(3). All trade associations and traders consulted have indicated that generally they will have no difficulty in complying with the labelling requirement. We expect that only a tiny fraction of liquors may require exemption under this regulation.

12. If a trader cannot, with reasonable diligence, ascertain the alcoholic strength from the manufacturer, regulation 67A(5) provides that the Commissioner of Customs and Excise may waive the labelling requirement for the liquors on application. In such circumstances, C&ED will draw samples of the liquors to ascertain the alcoholic strength for the purpose of duty assessment.

13. One of the main purposes of the Amendment Regulation is to introduce a labelling requirement for the purpose of duty assessment by C&ED. Nevertheless, as explained, the vast majority of all liquors in retail outlets already carry labels with descriptions of their alcoholic strength. Therefore, consumers are informed of alcoholic strength in the majority of cases.

### **Enforcement during the 12-month grace period**

14. We propose in the Amendment Regulation that the labelling requirement should take effect 12 months after the commencement date. This is a grace period for importers and local manufacturers to make preparations to comply with the requirement. During the consultation that C&ED conducted with major liquor traders and trade associations, the lead-time for liquor which does not currently bear an acceptable label to comply with the labelling requirement was welcomed by the trade. Such a lead time will be necessary for importers to place a request for manufacturers to make these labels and for manufacturers to prepare them.

15. Under existing requirements, traders have to declare in their dutiable commodities permit, inter alia, the type and alcoholic strength of their liquor for the purpose of duty payment. C&ED conducts risk-based sampling of liquor for laboratory analysis to verify the alcoholic strength. Currently, samples are collected for the majority of liquors declared with alcoholic strength below 30% (which attracts lower duty than liquors with alcoholic strength above 30%) and liquors in suspicious cases.

16. Duty assessment during the 12-month grace period will be akin to what C&ED is currently doing as set out in paragraph 15 above.

17. I hope the above helps to clarify matters. Please feel free to contact me if you have any questions concerning this reply.

Yours sincerely,

(Miss Erica Ng)  
for Secretary for Financial Services and the Treasury

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