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21 May 2005

Assistant Legal Adviser
(Attn: Mr Stephen Lam)
Legislative Council Building
8 Jackson Road, Central
Hong Kong
(Fax: 2877 5029)

Dear Mr Lam,

Public Health and Municipal Services (Amendment) Bill 2005

I refer to your letter of 18 May 2005. Our comments are set out below.

Clause 2(a)

(a) The Buildings Ordinance (Cap. 123) requires "registration" of particular contractors. It is the policy intent to hold those registered contractors appointed in respect of a building site responsible for the mosquito breeding problem which may appear on the site. Those kinds of contractors required to be registered under Cap. 123 may be changed in future. It is therefore more appropriate to refer to "the registered contractor appointed in respect of the site in accordance with the Buildings Ordinance (Cap. 123)" in the definition of "the appointed contractor".

(b) The expression "has entered on the site" has the meaning of "occupying the site". Although the term "occupy" is defined in the Interpretation and General Clauses Ordinance (Cap. 1) as including "use, inhabit, be in possession of or enjoy the land or premises", in reality, a contractor will only be appointed to carry out work on a building site, thus being in possession of and exercising control over the site at the material time. No example can thus be given for a contractor appointed other than for the aforementioned purpose.

Clause 2(b)(i) and (c)

If the occupier of the premises or the person responsible for the management of the premises occupies or manages the premises in the capacity of a government official, e.g. an official/member of the government management team responsible for the management of the premises, the person will not be liable under the Bill. However, they would normally adopt measures to prevent mosquito breeding in the premises as part of their duty and would take immediate action to eliminate larvae or pupae on the premises once they are aware of any mosquito breeding.

Clause 2(c) and (d)

No provision other than section 126 of the Public Health and Municipal Services Ordinance (Cap. 132) is applicable to the Authority when he is exercising the powers under the new provisions.

Clause 2(e)

(a) No legal sanction will be imposed by the new section 27(3) in such situation since the provision does not bind the Government. The person acting in the capacity of a government official will normally take immediate action to prevent mosquito breeding and eliminate larvae or pupae on the premises once the person is aware of the situation.

(b) The new section 27(3A) is expressly made to be without prejudice to the new section 27(3). Section 27(3) is to hold the person whose act, default or sufferance the existence of larvae or pupae on premises is attributable to (who can be the owner, the occupier or any other person) responsible for the mosquito breeding problem, be the premises a building site or not. Section 27(3A) is to hold also the appointed contractor responsible for the existence of larvae or pupae where the premises consists of a building site.

Upon review of the policy, we would like to maintain the current arrangement to hold only the appointed contractor responsible for any mosquito breeding problem in the building site as the appointed contractor has ultimate responsibility for the management of the building site. It is therefore proposed that section 27(3) be made applicable only to premises which do not consist of a building site and section 27(3A) be made not subject to the new section 27(3). The administration will move CSAs in due course.

Chinese text of our comments is attached.

Yours sincerely,

(Vincent Liu)
for Secretary for Health, Welfare and Food

Encl.

c.c.

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