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Secretary for the Environment, Transport and Works      By Fax (2511 6775) and By Post  
Environmental Protection Department      7 March 2007  
(Attn: Mr Esmond LEE,  
    Dep Dir of Env Protection(4))  
46/F, Revenue Tower  
5 Gloucester Road  
Wan Chai, Hong Kong

Dear Mr LEE

**Hazardous Chemicals Control Bill (“the Bill”)**

I refer to your letter dated 13 February 2007 and have the following comments:

Sections 6(1), 7(1), 8(1), 9(1), 10(4)(a)(i), 11(3), 13(3), 22(3), 23(3) and 47(4)

The Administration has advised that the legal effect of the term “may not” used in section 10(4)(a)(i) and sections 11(3), 13(3), 22(3), 23(3) and 47(4) are of the same legal effect. In these circumstances, the Chinese text of these sections should be the same to maintain consistency of drafting of the Bill. Please amend the Chinese text of the provisions accordingly.

Sections 10(3) and (4), 11(2) and (3), 13(2) and (3), 19(1)(d), 22(2) and (3), 23(2) and (3) and 27(1)

Article 18 of the Basic Law stipulates that the laws in force in the Hong Kong Special Administrative Region shall be this Law, the laws previously in force in Hong Kong as provided for in Article 8 of this Law, and the laws enacted by the legislature of the Region.

It was held that in construing a statute, a court may refer to an international agreement if it is embodied in the statute or has in effect been incorporated in the statute... . An international agreement may also be referred to for the purpose of resolving ambiguities or obscurities where the statute was plainly intended to give effect to it. Where, however, a provision of a statute intended to give effect to such an agreement is clear and unambiguous, reference cannot be made

to the agreement for the purpose of giving the provision a meaning other than its plain meaning...<sup>1</sup>

Regarding the power of the Director under the Bill, members have reiterated that if reference is to be drawn from the two Conventions, all relevant provisions in the Conventions have to be expressly set out in the Bill and the Administration has advised members that all the requisite power of the Director by reference to the Convention requirements have been incorporated in the Bill.

In the meeting held on 29 January 2007, the Chairman of the bills committee reiterated her view that relevant Convention requirements should be clearly specified in the Bill and the inclusion of a general reference clause on Convention requirements in the issue/variation of permits might not be necessary lest this might give rise to grey areas and uncertainties.

In these circumstances, upon the deletion of the general reference clause as requested by the members, there will be no ambiguity on the power of the Director under the Bill. The power of the Director is expressly provided in the Bill.

Moverover, as the Administration has mentioned in the Draft Hong Kong Implementation Plan under the Stockholm Convention on Persistent Organic Pollutants (POPs) (LC Paper No. CB(1)950/05-06(03)) that the Stockholm Convention requirements will be met by various proposed legislative action items undertaken by various departments and the Bill also covers chemicals other than those regulated under the two Conventions, it appears that any suggestion of reference to the two Conventions other than those specified in the Bill will create ambiguities, which is not the intention of the members.

Yours sincerely

(Monna LAI)  
Assistant Legal Adviser

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<sup>1</sup> Halsbury's Law of Hong Kong, para. 365.075.