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21 September 2006

Mr Stephen Lam
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
8 Jackson Road
Central
(Fax: 2877 5029)

Dear Mr Lam,

Food Business (Amendment) Regulation 2006 (L.N. 169)

Thank you for your letter of 1 September 2006 on the Food Business (Amendment) Regulation 2006 (L.N. 169 of 2006) (“the Amendment Regulation”). Our responses to the questions you raised are set out below.

New Section 30D

Licensing requirements/conditions

- The objective of the Amendment Regulation is to enhance food hygiene. The new arrangements introduced thereunder shall make it more difficult for unscrupulous meat traders to sell chilled meat as fresh meat, but we have to remain vigilant and guard against any possible attempt to circumvent the Amendment Regulation.

You asked if an area separated by a Perspex divider to a height of 7 feet from the ground but less than the full height to the ceiling will be regarded as “separate premises”. As a matter of principle, it appears inappropriate for

us to comment on hypothetical cases, especially as information available is so limited. Nevertheless, for the reason stated in the first bullet, and without prejudicing our decision on similar cases in future, we can say that our intention is to adopt a stringent standard in respect of dividers that are used to separate premises. In this connection, a full-height concrete/brick wall from the front to the back with no openings thereupon (e.g. windows or doors, etc.) is normally acceptable, but a 7-foot Perspex divider is probably not. Having said that, each case will be considered on its own merits, and the Administration will watch out for and guard against any possible attempt to circumvent the Amendment Regulation.

Legal responsibility for contravention of section 30D(1) or (2)

- We have given this matter careful consideration during the drafting stage and are of the view that the current formulation of “[n]o person shall...” is suitable for the following reasons:

(a) our target, subject to sufficient evidence being collected, is to hold the person in charge of the business, e.g. the licensee/nominated manager of an FPS or the tenant of a market stall, responsible for any contraventions detected. However, if the Amendment Regulation was so drafted that only the licensee/nominated manager/market stall tenant would be liable to prosecution, an enforcement problem might arise in the event that the licensee/nominated manager/market stall tenant is not in fact the person in charge of the business at the material time when the contravention was detected;

(b) depending on the actual circumstances of the case, it is possible that the licensee/nominated manager/market stall tenant is genuinely not responsible for any contraventions at the FPS/market stall. It would be unfair to hold him responsible in such a case. With the Amendment Regulation in its current form, we should be able to take enforcement actions against any person, including but not limited to the licensee/nominated manager/market stall tenant or any employee, having regard to the actual circumstances of the case or available evidence.

I hope the above clarify matters.

Yours sincerely,

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

c.c.

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