

## **LEGISLATIVE COUNCIL BRIEF**

Import and Export Ordinance  
(Chapter 60)

### **Import and Export (General)(Amendment) Regulation 2006 and Import and Export (Fees)(Amendment) Regulation 2006**

#### **INTRODUCTION**

A & B  
At the meeting of the Executive Council on 28 February 2006, the Council ADVISED and the Chief Executive ORDERED that, under section 31(1) of the Import and Export Ordinance, the Import and Export (General)(Amendment) Regulation 2006 and Import and Export (Fees)(Amendment) Regulation 2006, at Annexes A and B, should be made.

#### **JUSTIFICATIONS**

##### **The Review**

2. The Government has reviewed the implementation of the Kimberley Process Certification Scheme (KPCS) in Hong Kong to identify potential areas where we can further facilitate the trade while maintaining the integrity of the control system.

##### **Registration Requirement on Owners**

3. Registration is an integral part of the rough diamond control system so that the movement and transaction of rough diamonds can be traced. Regulation 6DB of the Import and Export (General) Regulations (Cap. 60A) provides that any person who carries on a business of

“importing, exporting, buying, selling or carrying” of rough diamonds is required to register as a registered rough diamond trader with the Director-General of Trade and Industry (DGTI) and contravention of the requirement is an offence. At present, the provision on “carrying” of rough diamonds mainly captures owners of vessel, aircraft or vehicle, couriers, freight forwarders and other transportation companies (e.g. security companies).

4. We have reviewed the registration requirement on the “carrying” of rough diamonds by an “owner of a vessel, aircraft or vehicle” (“owner”) as defined in section 2 of the Import and Export Ordinance (Cap. 60) (the “Ordinance”). Under this section, an owner, in respect of a vessel, aircraft or vehicle, means -

- (a) the registered owner and any person holding himself out to be the owner thereof;
- (b) any person acting as agent for the owner in connexion with the handling of cargo carried in or on the vessel, aircraft or vehicle;
- (c) any person to whom the vessel, aircraft or vehicle has been chartered or hired; and
- (d) any person having for the time being the control or management of the vessel, aircraft or vehicle.

5. Under sections 7(1), 8(2)(b), 10(1)(a) and 11(2)(b) of the Ordinance, certain obligations are imposed on an owner when prohibited articles are imported or exported on his vessel, aircraft or vehicle. In the case of rough diamonds, a prohibited article under import and export licensing control, it is an owner’s obligation –

- (a) not to release rough diamonds imported unless there is a valid import licence for the shipment (see section 7(1));
- (b) not to accept rough diamonds for export unless there is a valid export licence for the shipment (section 10(1)(a));
- (c) to deliver to DGTI the import licence for the shipment together with the manifest of the vessel, aircraft or vehicle on which the goods were imported (sections 8(2)(b)); and

- (d) to deliver to DGTI the export licence for the shipment together with the manifest of the vessel, aircraft or vehicle on which the goods were exported (section 11(2)(b)).

Failure to fulfill the obligations shall be liable on conviction to a fine and imprisonment.

6. We consider that the obligations imposed upon an owner in paragraph 5 above should suffice for the effective monitoring of import and export of rough diamonds into and out of Hong Kong carried by an owner for the purpose of the Kimberley Process (KP). There is no overriding need for a trader registration requirement on an owner who is also a carrier. We propose to lift the requirement which should relieve the owner from incurring compliance cost.

7. A party involved in the carrying of rough diamonds and is not an owner is not subject to sections 7(1), 8(2)(b), 10(1)(a) and 11(2)(b) of the Ordinance. Such a carrier will not be covered under the proposed lifting of registration requirement.

8. The registration requirement for an owner who, apart from carrying, also carries on the business of importing, exporting, buying and selling of rough diamonds will also continue. This is to facilitate the tracing of the transactions of rough diamonds effectively.

## **Refund**

9. At present, each registration as a rough diamond trader is valid for a period of two years. With the lifting of the registration requirement for an owner-cum-carrier suggested in paragraph 6 above, we propose to amend the Import and Export (Fees) Regulations (Cap. 60B) to empower DGTI to refund, upon application, the initial registration and renewal fees for the part of services not yet rendered to an owner.

## **Revision of Fees**

C 10. It is the Government's policy to set fees on a cost recovery basis. The current registration and renewal fees for rough diamond traders and for issue of KP Import and Export Licences were first introduced in 2003. DGTI and the Commissioner of Customs and Excise have conducted a costing review on the above fees. The cost statements are at Annex C. Based on the costing results, we propose to reduce all the above fees to their full cost recovery level and to amend item 15 of the Schedule to the Import and Export (Fees) Regulations (Cap. 60B).

## **THE REGULATIONS**

### **Import and Export (General)(Amendment) Regulation 2006**

11. Section 2 of the Import and Export (General)(Amendment) Regulation 2006 amends regulation 6DB of the Import and Export (General) Regulations (Cap. 60A) to dispense with the rough diamond trader registration requirement for a person who carries on a business of carrying rough diamonds if the person -

- (a) is an owner of a vessel, aircraft or vehicle as defined in section 2 of the Ordinance; and
- (b) is subject to the requirements under sections 7(1), 8(2)(b), 10(1)(a) and 11(2)(b) of the Ordinance.

### **Import and Export (Fees)(Amendment) Regulation 2006**

12. Section 2 of the Import and Export (Fees)(Amendment) Regulation 2006 ("the Fees Amendment Regulation") adds a new regulation 3 to the Import and Export (Fees) Regulations (Cap. 60B). Regulation 3 empowers the DGTI to refund an appropriate part of the registration fee (whether it is an initial registration or renewal) as a transitional arrangement after the lifting of the rough diamond trader registration requirement in paragraph 11 above. After the making of refund, the DGTI will remove the name of the trader from the register of rough diamond traders. The detailed refund arrangements are set out as follows -

- (a) if a registrant is deregistered during his first year of registration (whether it is an initial registration or renewal), the amount to be refunded is the unutilized fee of HK\$275 (being the administrative cost calculated for the second year of the initial or renewed registration); or
- (b) if a registrant is deregistered during his second year of registration (whether it is an initial registration or renewal), the amount to be refunded is that part of the unutilized fee, calculated on a pro rata basis by reference to the unexpired term of the registration period over 365 days.

13. Section 3 of the Fees (Amendment) Regulation amends item 15 of the Schedule to the Import and Export (Fees) Regulations (Cap. 60B) to reduce the relevant fees as follows -

	<b>Existing Fees (HK\$)</b>	<b>Proposed Fees (HK\$)</b>
Initial Registration (Biennial)	840	660
Registration Renewal (Biennial)	595	435
Import Licence	175	160
Export Licence	200	170

## **LEGISLATIVE TIMETABLE**

14. The legislative timetable will be –

Publication in the Gazette	10 March 2006
Tabling at the Legislative Council	15 March 2006
Commencement of the Amendment Regulations	15 May 2006

## **IMPLICATIONS OF THE PROPOSAL**

D 15. As the number of traders affected and the volume of registrations, registration renewals and KP Import or Export Licence are small, the proposal has minor financial implications as set out at Annex D.

16. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the binding effect of the Ordinance. Among the 319<sup>1</sup> registered rough diamond traders, the Trade and Industry Department (TID) estimated that about 22 owners would be able to benefit from the lifting of the registration requirement. The civil service implication is minimal as the reduction in workload arising from the expected decrease in the number of initial registration and registration renewal applications is small. It has no economic, productivity, environmental or sustainability implications.

## **PUBLIC CONSULTATION**

17. We have consulted nine relevant trade associations<sup>2</sup> and they all welcomed the proposals in general. We have also consulted the Commerce and Industry Panel of the Legislative Council, and Members have raised no objection.

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<sup>1</sup> As at 31 December 2005.

<sup>2</sup> The consultation document was issued to nine relevant trade associations in July 2005 including the Diamond Federation of Hong Kong, China Limited (DFHK), Carrier Liaison Group (CLG), Hong Kong International Courier Association, Hongkong Association of Freight Forwarding and Logistics Limited, The Hong Kong Sea Transport & Logistics Association, Hong Kong Cargo-Vessel Traders' Association Limited, Hong Kong Jewellers' & Goldsmiths' Association, Hong Kong Jewellery & Jade Manufacturers Association and Hong Kong Jewelry Manufacturers' Association. Meetings were held with the two key trade associations, DFHK and CLG in August 2005.

## **PUBLICITY**

18. A press release will be issued when the Amendment Regulations are published in the Gazette on 10 March 2006. On the same day and when the Amendment Regulations come into effect in mid-May 2006, TID will inform the diamond industry and all registered rough diamond traders of the implementation arrangements through its trade circulars and website. A spokesman will be available to answer media and public enquiries.

## **BACKGROUND**

19. The KP is a negotiating forum originated from discussions in the United Nations General Assembly regarding rebel activities in some parts of Africa. It seeks to stop trade in conflict diamonds<sup>3</sup> from fuelling armed conflicts, activities of rebel movements and illicit proliferation of armament. The KPCS for rough diamonds was launched by the KP on 1 January 2003.

20. Under the KPCS, a participant undertakes, among other things:
- (a) not to trade rough diamonds with a non-participant economy;
  - (b) put in place a number of measures to monitor the trade of rough diamonds; and
  - (c) as required, amend or enact appropriate laws or regulations to implement and enforce the KPCS and to maintain dissuasive and proportional penalties for transgressions.

21. Participation in the KP is limited to sovereign states. Currently, there are 69 participants in the KP, including the People's Republic of China (PRC), the European Community and the United States. Hong Kong participates in the KP as a designated Importing and Exporting Authority of the PRC. The Central People's Government agreed in 2002

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<sup>3</sup> Conflict diamonds means rough diamonds used by rebel movements or their allies to finance conflicts aimed at undermining legitimate governments, as described in relevant United Nations Security Council resolutions, and as understood and recognised in the relevant United Nations General Assembly Resolutions.

that Hong Kong could issue and validate the KP certificates (i.e. the KP Import and Export Licences) and draw up the implementation measures as required under the KPCS on its own.

22. For the purpose of implementing the KPCS in Hong Kong, the Import and Export (General) (Amendment) Regulation 2002 and the Import and Export (Fees) (Amendment) Regulation 2002 came into operation in 2003.

23. The Import and Export (General) (Amendment) Regulation 2002 provides for -

- (a) a registration scheme for any person who carries on a business of importing, exporting, buying and selling or carrying of rough diamonds; and
- (b) certification control on the import and export of rough diamonds.

24. The registration scheme enables the Government to better monitor the movements of rough diamond within Hong Kong. The certification control prevents imports of rough diamonds from, or exports of rough diamonds to, a non-KP participant.

25. The Import and Export (Fees) (Amendment) Regulation 2002 prescribes fees payable for registration as a rough diamond trader and for issue of an import or export licence for rough diamonds.

## **ENQUIRY**

26. Any enquiries on the brief should be addressed to Miss Amy Chan, Assistant Secretary for Commerce, Industry and Technology (Commerce and Industry) on 2918 7452.

Commerce, Industry and Technology Bureau  
March 2006



Import and Export Ordinance  
(Chapter 60)

**IMPORT AND EXPORT (GENERAL)(AMENDMENT)  
REGULATION 2006 and IMPORT AND EXPORT  
(FEES)(AMENDMENT) REGULATION 2006 : ANNEXES**

- Annex A - Import and Export (General)(Amendment)  
Regulation 2006
- Annex B - Import and Export (Fees)(Amendment) Regulation  
2006
- Annex C - Cost Computation
- Annex D - Financial Implications

**IMPORT AND EXPORT (GENERAL) (AMENDMENT)  
REGULATION 2006**

(Made by the Chief Executive in Council under section 31 of the Import and Export Ordinance (Cap. 60))

**1. Commencement**

This Regulation shall come into operation on 15 May 2006.

**2. Traders in rough diamonds to be registered**

(1) Regulation 6DB(1) of the Import and Export (General) Regulations (Cap. 60 sub. leg. A) is amended by repealing “No” and substituting “Subject to paragraph (1A), no”.

(2) Regulation 6DB is amended by adding –

“(1A) Paragraph (1) does not apply to a person by reason only that he carries on a business of carrying rough diamonds, if the person –

- (a) is an owner of a vessel, aircraft or vehicle; and
- (b) is required to comply with the requirements applicable to an owner of a vessel, aircraft or vehicle under –

- (i) in the case of the import of rough diamonds, section 7(1) and section 8(2)(b) of the Ordinance; and
- (ii) in the case of the export of rough diamonds, section 10(1)(a) and section 11(2)(b) of the Ordinance.”.

Clerk to the Executive Council

COUNCIL CHAMBER

2006

### **Explanatory Note**

Under regulation 6DB of the Import and Export (General) Regulations (Cap. 60 sub. leg. A) (“principal Regulation”), a person who carries on a business of carrying rough diamonds (“carrier”) is required to be registered as a registered rough diamond trader (“registration requirement”). The registration requirement enables the movement and transaction of rough diamonds to be traced.

2. The object of this Regulation is to amend the principal Regulation in order to dispense with the registration requirement for a carrier who is an owner of a vessel, aircraft or vehicle, and who is required to comply with the requirements imposed on such an owner under sections 7(1) and 8(2)(b) of the Import and Export Ordinance (Cap. 60)(“the Ordinance”) (in relation to the import of prohibited articles) or sections 10(1)(a) and 11(2)(b) of the Ordinance (in relation to the export of prohibited articles).

3. Rough diamonds are prohibited articles. Under those provisions of the Ordinance, the owners are required–

- (a) to retain possession of imported rough diamonds until an import licence is produced to him or he receives the direction of the Commissioner of Customs and Excise to

remove the rough diamonds (see section 7(1) of the Ordinance);

- (b) to deliver to the Director-General of Trade and Industry (“Director”) the import licence together with the manifest of the vessel, aircraft or vehicle on which the rough diamonds were imported (see section 8(2)(b) of the Ordinance);
- (c) not to accept rough diamonds for export until an export licence is produced to him (see section 10(1)(a) of the Ordinance); and
- (d) to deliver to the Director the export licence together with the manifest of the vessel, aircraft or vehicle on which the rough diamonds were exported (see section 11(2)(b) of the Ordinance).

4. The requirements imposed on such an owner are sufficient for the effective monitoring of import and export of rough diamonds into or out of Hong Kong carried by the owner. Thus, upon the commencement of this Regulation, a carrier who is also an owner of a vessel, aircraft or vehicle will no longer be required to be registered as a registered rough diamonds trader.

**IMPORT AND EXPORT (FEES) (AMENDMENT)  
REGULATION 2006**

(Made by the Chief Executive in Council under section 31 of the Import and Export Ordinance (Cap. 60))

**1. Commencement**

This Regulation shall come into operation on 15 May 2006.

**2. Regulation added**

The Import and Export (Fees) Regulations (Cap. 60 sub. leg. B) is amended by adding –

**“3. Transitional arrangement relating  
to Import and Export (General)  
(Amendment) Regulation 2006  
(refund of certain  
registration fees)**

- (1) This regulation applies to a person who –
- (a) before regulation 6DB(1A) of the Import and Export (General) Regulations (Cap. 60 sub. leg. A) (“relevant Regulations”) comes into operation (“relevant time”), has paid a fee for registration (“registration fee”) as a registered rough diamond trader under regulation 6DD of the relevant Regulations for a period that expires after the relevant time; and
  - (b) after the relevant time, is a person to whom regulation 6DB(1) of the relevant Regulations does not apply by virtue of regulation 6DB(1A) of the relevant Regulations.

(2) A person to whom this regulation applies may apply in writing to the Director for refund of the appropriate part of the registration fee.

(3) If the Director is satisfied that the person who makes an application under paragraph (2) (“applicant”) is a person to whom this regulation applies, he shall refund the appropriate part of the registration fee to the applicant.

(4) Upon refunding the appropriate part of the registration fee to the applicant, the Director shall –

- (a) remove the name of the applicant from the register maintained under regulation 6DC of the relevant Regulations; and
- (b) send a notice to the applicant informing him that his name has been so removed.

(5) In this regulation, the amount of the appropriate part of the registration fee shall be –

- (a) where the date of notice referred to in paragraph (4)(b) (“notification date”) is within one year from the date of registration, \$275; and
- (b) where the notification date is more than one year from the date of registration, a sum calculated in accordance with the following formula, with the result rounded up to the nearest dollar –

$$\$275 \times \frac{A}{365}$$

where A represents the number of calendar days within the period that begins on the notification date and expires on the date of expiration of the registration.

(6) This regulation ceases to have effect on the second anniversary of the day on which the Import and Export (Fees) (Amendment) Regulation 2006 (L.N. of 2006 ) comes into operation.”.

### 3. Scale of fees

Item 15 of the Schedule is amended –

- (a) in paragraph (a)(i), by repealing “840” and substituting “660”;
- (b) in paragraph (a)(ii), by repealing “595” and substituting “435”;
- (c) in paragraph (b), by repealing “175” and substituting “160”;
- (d) in paragraph (c), by repealing “200” and substituting “170”.

Clerk to the Executive Council

COUNCIL CHAMBER

2006

### **Explanatory Note**

Under regulation 6DD(1) of the Import and Export (General) Regulations (Cap. 60 sub. leg. A) (“relevant Regulations”), a person shall pay a prescribed fee for registration as a registered rough diamond trader. After regulation 6DB(1A) of the relevant Regulations (“new provision”) comes into operation, the registration requirement for persons to whom the new provision applies will be dispensed with.

2. The object of this Regulation is to amend the Import and Export (Fees) Regulations (Cap. 60 sub. leg. B) to empower the Director-General of Trade and Industry (“Director”) to refund the appropriate part of the registration fee paid by a person whose registration requirement has been dispensed with under the new provision. Upon refunding the appropriate part of the registration fee to the person concerned, the Director shall remove the name of the person from the register of registered rough diamond traders and send him a notice informing him of this fact. The amount to be refunded is \$275 if the unexpired term of the registration on the date of the notice is not less than one year. The amount to be refunded is a portion of \$275 if the unexpired term of the registration on the date of the notice is less than one year.

3. This Regulation also reduces the various fees payable, namely the required fees for the initial registration as a registered rough diamond trader and for the renewal of such registration, and the required fees for the issue of an import licence and for the issue of an export licence in respect of rough diamonds.



**COST COMPUTATION****Trade and Industry Department****Biennial Registration (New Registration) fee for Rough Diamond payable under the Import and Export (Fees) (Amendment) Regulation 2006****Cost at 2005-06 Prices**

	\$
Staff Costs	193
Departmental Expenses	110
Accommodation Costs	8
Depreciation	119
Cost of Services Provided by Customs and Excise Department (C&ED)	200
Central Administrative Overhead	32
<b>Unit Cost</b>	<u><b>662</b></u>
Proposed fee with effect from May 2006	<b>660</b>

**Biennial Registration (Renewal) fee payable for Rough Diamond  
under the Import and Export (Fees) (Amendment) Regulation 2006**

**Cost at 2005-06 Prices**

	\$
Staff Costs	156
Departmental Expenses	109
Accommodation Costs	6
Depreciation	119
Cost of Services Provided by C&ED	20
Central Administrative Overhead	26
<b>Unit Cost</b>	<b><u>436</u></b>
Proposed fee with effect from May 2006	<b>435</b>

**Import Licence fee for Rough Diamond under the Import and Export (Fees) (Amendment) Regulation 2006**

**Cost at 2005-06 Prices**

	\$
Staff Costs	64
Departmental Expenses	16
Accommodation Costs	2
Depreciation	16
Cost of Services Provided by C&ED	50
Central Administrative Overhead	11
<b>Unit Cost</b>	<u>159</u>
Proposed fee with effect from May 2006	<b>160</b>

**Export Licence fee for Rough Diamond under the Import and Export  
(Fees) (Amendment) Regulation 2006**

**Cost at 2005-06 Prices**

	\$
Staff Costs	87
Departmental Expenses	15
Accommodation Costs	3
Depreciation	15
Cost of Services Provided by C&ED	36
Central Administrative Overhead	14
<b>Unit Cost</b>	<u>170</u>
Proposed fee with effect from May 2006	<b>170</b>

## FINANCIAL IMPLICATIONS

### Lifting of Rough Diamond Traders Registration Requirements for Owners

Among the 319<sup>1</sup> registered rough diamond traders, TID estimated that about 22 owners would be able to benefit from the lifting of the registration requirement.

2. With the maximum amount of refund to each owner at \$275, the maximum amount that would have to be refunded to the owners concerned would be about **HK\$6,000**.

### Fee Reduction

3. Based on historical numbers of licences/registrations in the financial year of 2004-05, the proposed fees revision is estimated to result in a reduction of about **HK\$141,000** in Government revenue per year.

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<sup>1</sup> As at 31 December 2005.