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**Paper for the House Committee Meeting
on 1 December 2006**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 24 November 2006**

Date of Tabling in LegCo : 29 November 2006

Amendment to be made by : 20 December 2006 (or 17 January 2007 if extended by resolution)

PART I CONTROL OF EMISSION OF VOLATILE ORGANIC COMPOUNDS

Air Pollution Control Ordinance (Cap. 311)

Air Pollution Control (Volatile Organic Compounds) Regulation (L.N. 258)

The main purpose of this Regulation is to prohibit the manufacture and importation of regulated products (i.e. regulated paints, regulated printing inks and regulated consumer products) if the volatile organic compound content of the product exceeds the maximum limit that is prescribed by the Regulation for that product. Volatile organic compound (“VOC”) content means the amount of volatile organic compounds contained in the product.

Regulated paints

2. Part 2 sets out the prohibitions and requirements relating to regulated paints. Schedule 1 sets out the paints to which the Regulation applies, the prescribed limit of VOC content for each regulated paint and the test methods for determining the VOC content.

3. Members may refer to paragraphs 2 to 8 of the Explanatory Note of the Regulation in the Gazette for details of the relevant provisions.

Regulated printing inks

4. Part 3 sets out the prohibitions and requirements relating to regulated printing inks. Schedule 2 sets out the printing inks to which the Regulation applies,

the prescribed limit of VOC content for each regulated printing ink and the test methods for determining the VOC content.

5. Members may refer to paragraphs 10 and 11 of the Explanatory Note of the Regulation in the Gazette for details of the relevant provisions.

Regulated consumer products

6. Part 4 sets out the prohibitions and requirements relating to regulated consumer products. Schedule 3 sets out the consumer products to which the Regulation applies, the maximum VOC content for each regulated consumer product and the method of calculating the VOC content.

7. Members may refer to paragraphs 13 and 14 of the Explanatory Note of the Regulation in the Gazette for details of the relevant provisions.

Lithographic heatset web printing machines

8. Part 5 contains requirements relating to lithographic heatset web printing machines. Schedule 4 explains the meaning of volatile organic compound in relation to these machines.

9. Members may refer to paragraph 16 of the Explanatory Note of the Regulation in the Gazette for details of the relevant provision.

Offences and defences

10. Part 6 provides for the offences under the Regulation, the defences available to a person charged under the Regulation and certain presumptions.

11. Section 17 provides for offences and penalties ranging between a fine of \$200,000 and at level 5 (\$50,000), and imprisonment for 6 and 3 months.

12. Section 18 provides that it is a defence for a person being charged with an offence under the Regulation to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence. Further, it allows the defendant, subject to certain procedures, to raise the defence that the commission of the offence was due to the act or default of another person or the reliance on information given by another.

13. The prohibitions and requirements relating to the manufacture and importation of regulated products under the Regulation are imposed with reference to certain dates. Under section 19, one of the presumptions is that, in the absence of evidence to the contrary, a regulated product that is found in Hong Kong is presumed to have been imported or locally manufactured after the date on which the prohibition or requirement became effective. The other presumption is that, in the absence of evidence to the contrary, a regulated product found in Hong Kong is presumed to be

not in transit, not in the course of transshipment and not goods that are solely for export or re-export.

General provisions

14. Part 7 sets out the provisions that are generally applicable to all regulated products. Notably, section 20 disapplies the Regulation to regulated products that are in transit, in the course of transshipment or are solely for export or re-export.

15. Members may refer to LegCo Brief (with no file reference) of November 2006 from Environmental protection Department for background information.

Consultation with LegCo Panels

16. The control of VOCs was discussed by the Panel on Environmental Affairs (“the EA Panel”) on 28 June 2004 and 28 November 2005.

17. At the meeting on 28 June 2004, the Panel was briefed on the proposed scheme to require registration and mandatory labelling of the content of VOCs in paints, printing inks and selected consumer products for sale in Hong Kong. Some members were concerned that the requirements would affect those retailers who had to rely on exporters to provide the requisite information on VOC contents. The registration and labelling requirements would also likely affect the import of VOC-containing products manufactured in countries which did not have such requirements. Besides, there were cost implications in relation to the testing of VOC content in meeting the labelling requirement. They therefore considered it necessary for the Administration to consult the trades. A two-month public consultation exercise on the scheme was subsequently embarked in September 2004.

18. In view of the trades' concerns collected during the consultation, the Panel on Commerce and Industry held a meeting on 14 December 2004 to receive views from different parties. While the environmental concern groups were supportive of the proposed scheme to control highly polluting VOC emissions, the trades were concerned about the adverse impact of the proposal on business environment. Given that Hong Kong was primarily an importer of consumer products, it had to rely on exporters to provide the requisite information on VOC content. Failure of exporters to provide such information might result in certain products not being able to be sold in Hong Kong, thereby limiting consumers' choice. Members stressed that the Administration should not tackle the problem from the single perspective of environmental protection and overlook the implications of the proposed scheme on other sectors of the society. The members considered that the Administration should conduct a regulatory impact assessment, and that it should step up communication with the affected trades to formulate genuinely effective VOC-reducing measures that could benefit the public and cause least disruption to the business sector.

19. Recognizing the trades' concerns, the Administration had set up a Working Group on Regulatory Control of VOCs to work with the trades with a view to finding measures that could effectively reduce VOC emission and yet minimize the impacts on the affected trades. A revised control programme was subsequently worked out. The previous two-stage scheme comprising registration and labelling requirements as well as testing of VOC-containing products had been dispensed with in the light of the trades' concern about cost implications and difficulties in complying with these requirements. Instead, limits on VOC contents were imposed to expedite the control programme. The scope of control would also be narrowed down to the six largest emitting sources which accounted for about 80% of VOC emissions from consumer products.

20. The EA Panel was briefed on the revised control programme on 28 November 2005. While supporting the proposal, members emphasized that the Administration should have consulted the trades before the initial control programme was worked out. They also noted that the control programme would help to achieve the emission reduction target of 55% VOC by 2010.

Public consultation

21. According to the LegCo Brief, the Administration has fully consulted the relevant trades on the Regulation and addressed their concerns on possible compliance burden.

Commencement

22. The Regulation will come into operation on 1 April 2007.

Recommendation

23. We have written to the Administration to clarify certain drafting and legal points in relation to the Regulation. The Administration has not yet replied to our enquiries. We will further report on this item upon receipt of the Administration's reply. In the meantime, Members may decide whether they wish to set up a subcommittee to study details of the proposals in the Regulation.

PART II DESIGNATION OF PUBLIC MARKET

Public Health and Municipal Services Ordinance (Cap. 132)

Public Health and Municipal Services (Designation of Public Markets) Order 2006 (L.N. 259)

Public Health and Municipal Services Ordinance (Amendment of Tenth Schedule) (No. 2) Order 2006 (L.N. 260)

24. Members may recall that the Market to which the Public Health and Municipal Services Ordinance Applies Declaration 2006 (L.N. 256 of 2006) ("the

Market Declaration”) was gazetted on 17 November 2006. The Market Declaration declares the Stanley Waterfront Mart at No. 20 Stanley Market Road, Stanley, Hong Kong to be a market to which the Public Health and Municipal Services Ordinance (Cap. 132) (“the Ordinance”) applies with effect from 24 November 2006. L.N. 259 and L.N. 260 relate to the Market Declaration.

25. L.N. 259 designates the Stanley Waterfront Mart at No. 20 Stanley Market Road, Stanley, Hong Kong as a public market.

26. Consequent upon designation of the Stanley Waterfront Mark as a public market, L.N. 260 amends the Tenth schedule to the Ordinance to reflect the designation.

27. L.N. 259 and L.N. 260 came into operation on the day on which they were published in the Gazette, that is 24 November 2006. The date ties in with the commencement date of the Market Declaration.

28. Members may refer to the LegCo Brief File Ref.: HWF(F)7/13 Pt.6 of November 2006 issued by the Health, Welfare and Food Bureau for background information.

29. No legal or drafting difficulties have been identified in relation to L.N. 259 and L.N. 260.

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