

立法會
Legislative Council

LC Paper No. LS26/09-10

**Paper for the House Committee Meeting
on 18 December 2009**

**Legal Service Division Report on
Toys and Children's Products Safety (Amendment) Bill 2009**

I. SUMMARY

- 1. Objects of the Bill** To amend the Toys and Children's Products Safety Ordinance (Cap. 424) by replacing the safety standards for toys and children's products with new standards, to revise the definitions of toys and children's products, and to enable the Secretary for Commerce and Economic Development to amend the standards by notice published in the Gazette.
- 2. Comments** As there are discrepancies between the safety standards named in Cap. 424 and the most up-to-date, operative safety standards, the Bill seeks to amend Cap. 424 to adopt the most updated standards. The Bill also seeks to improve the mechanism for updating the safety standards by putting them in two new Schedules to Cap. 424 so that future changes can be effected by way of subsidiary legislation subject to amendment by the Legislative Council under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).
- 3. Public Consultation** The Administration had consulted 46 major trade associations and organizations advocating children welfare, and had also attended a discussion forum hosted by the Federation of Hong Kong Industries. A gist of the proposed amendments was posted on the Government's website. Six submissions have been received, all of which supported the proposed amendments.
- 4. Consultation with LegCo Panel** The Panel on Economic Development was consulted on the Administration's proposal at its meeting on 16 November 2009. Members were in support of the proposed amendments.
- 5. Conclusion** Apart from the mechanism for future changes to the safety standards, the proposed amendments are primarily technical in nature. No difficulties have been observed in the legal and drafting aspects of the Bill.

II. REPORT

Objects of the Bill

To amend the Toys and Children's Products Safety Ordinance (Cap. 424) (the Ordinance) by replacing the safety standards for toys and children's products with new standards, to revise the definitions of toys and children's products, and to enable the Secretary for Commerce and Economic Development (SCED) to amend the standards by notice published in the Gazette.

LegCo Brief Reference

2. File ref.: CITB CR 08/18/3 issued by the Commerce, Industry and Tourism Branch, Commerce and Economic Development Bureau on 9 December 2009.

Date of First Reading

3. 16 December 2009.

Background

4. The Ordinance was enacted in 1992 to provide for safety standards for children's toys and safety standards for specified chattels used in association with children to enhance the safety of children. At present, the Ordinance stipulates three sets of safety standards for toys, namely, International Voluntary Toy Safety Standard (IVTSS) established by the International Committee of Toy Industries, European Standard EN 71 established by the European Committee for Standardization and ASTM F963 established by the American Society for Testing and Materials. As regards children's products, the Schedule to the Ordinance sets out the safety requirements for 13 specified types of children's products which are commonly used by babies and very young children.

5. Under the Ordinance, a person commits an offence if he manufactures, imports or supplies toys or children's products that do not comply with any of the safety standards and requirements provided in the Ordinance. The maximum penalty for the offence is, on first conviction, a fine of \$100,000 and imprisonment for 1 year, and on subsequent conviction, a fine of \$500,000 and imprisonment for 2 years.

Comments

6. Under the Ordinance, "toy" means a product or material that is designed or clearly intended for use in play by a child and "children's product" means a product listed in the Schedule to the Ordinance and, for the purposes of Parts IV to IX of the Ordinance,

includes a product designated by regulation to be a children's product. The Bill proposes to amend these definitions to include the packaging of toys and children's products. In response to the enquiries of the Legal Service Division, the Administration has confirmed that the proposed definitions will not have the effect of widening the scope of application of the Ordinance. The correspondence between the Legal Service Division and the Administration is annexed for members' reference.

7. The Bill seeks to replace the safety standards for toys and children's products with new standards. According to paragraph 5 of the LegCo Brief, these standards need to be updated as a result of product changes arising from technological developments, manufacturing technologies, consumer demands, latest information pertaining to safety (such as accident data and scientific reports) and other factors.

8. The proposed amendments relating to toys are summarized as follows:

- (a) replacing the IVTSS with the International Standard ISO 8124 series established by the International Organization for Standardization, supplemented by IEC 62115 standard for electric toys established by the International Electrotechnical Commission;
- (b) adopting the most up-to-date, operative versions of the European Standard EN 71 series, and also EN 62115 standard for electric toys;
- (c) adopting the most up-to-date, operative version of ASTM standard; and
- (d) making clear the intention of the Ordinance by making beyond doubt that a toy is regarded as safe if it complies in all aspects with any one applicable set of the three named sets of standards.

9. In relation to children's products specified in the Schedule to the Ordinance, the Bill replaces the outdated standards with the most up-to-date, operative standards. The Bill also removes "baby nests" from the list of specified children's products under the Ordinance as the only named safety standard for this product has been withdrawn by the British Standards Institution. Suppliers of this product should then still be required to comply with the general safety requirement applicable to general consumer goods provided for under section 4 of the Consumer Goods Safety Ordinance (Cap. 456).

10. The Bill also seeks to improve the mechanism for updating the safety standards by putting them in two new Schedules to the Ordinance which may be amended by SCED by notice published in the Gazette. The effect is that future changes to the safety standards can be effected by way of subsidiary legislation subject to amendment by the Legislative Council under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

11. Other amendments proposed by the Bill relate to updating the penalty in line with the referential fine level system under Schedule 8 to the Criminal Procedure Ordinance (Cap. 221) and certain technical and consequential amendments to the Ordinance and its subsidiary legislation.

12. The Bill, if enacted, will come into operation on a day to be appointed by SCED by notice published in the Gazette.

Public Consultation

13. According to paragraph 9 of the LegCo Brief, the Administration had consulted 46 major trade associations and organizations advocating children welfare, and had also attended a discussion forum hosted by the Federation of Hong Kong Industries. A gist of the proposed amendments was posted on the Government's website for public information and comments from 3 to 23 September 2009. Six submissions have been received, all of which supported the proposed amendments.

Consultation with LegCo Panel

14. The Administration briefed the Panel on Economic Development on the proposed amendments at the meeting on 16 November 2009. Members were in support of the proposed legislative amendments. Members noted that to raise public awareness about the latest safety standards, the Administration would step up publicity and consumer education in joint efforts with the Consumer Council.

Conclusion

15. Apart from the mechanism for future changes to the safety standards as stated in paragraph 10 above, the proposed amendments are primarily technical in nature. No difficulties have been observed in the legal and drafting aspects of the Bill.

Encl.

Prepared by

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Assistant Legal Adviser
Legislative Council Secretariat
16 December 2009

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15 December 2009

Mr K.C. Yau
Prin AS for Commerce & Econ Dev
(Commerce & Industry) SD
Commerce and Economic Development Bureau
Level 29, One Pacific Place
88 Queensway, Hong Kong

Dear Mr Yau,

Toys and Children's Products Safety (Amendment) Bill 2009

I am scrutinizing the legal and drafting aspects of the above Bill. I would be most grateful if you could clarify the following matter.

Clause 3(1) and (3) of the Bill seeks to amend the definitions of "children's product" and "toy" respectively to include the packaging of the product and toy. It is noted that packaging of toy is already covered by the existing sections 3(1) and 8(3)(b) of the Toys and Children's Products Safety Ordinance (Cap. 424) (the Ordinance). However, the packaging of toy and children's product is not explicitly mentioned in some provisions of the Ordinance, e.g. sections 5, 8(1), 11 and 12. In the circumstances, please clarify whether the proposed amendment of the definitions to include the packaging of the product or toy would have the effect of widening the scope of application of the Ordinance.

I would appreciate if you could let me have your reply (in both Chinese and English and with soft copy to Miss Joey LEE at jmylee@legco.gov.hk) by close of play on 16 December 2009.

Yours sincerely,

(Timothy TSO)
Assistant Legal Adviser

c.c. DoJ (Attn.: Mr Allen LAI, Sr Govt Counsel (By Fax: 2869 1302))
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檔案號碼 : CITB CR 08/18/3 IV
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16 December 2009

Mr. Timothy Tso
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Legal Service Division
Legislative Council Secretariat
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8 Jackson Road
Central
Hong Kong

Dear Mr. Tso,

Toys and Children's Products Safety (Amendment) Bill 2009

Thank you for your letter of 15 December 2009.

The packaging of a toy or a children's product may have an impact on the safety or otherwise of that toy or children's product. Where appropriate, the Administration already considers this element when exercising the functions under the existing Toys and Children's Products Safety Ordinance (Cap. 424). Indeed, the toy standards and the majority of the children's product standards already impose requirements on the packaging of toys and children's products. If a current standard contains requirements on packaging, the Administration is obliged to examine the packaging of a sample when it determines if the sample complies with that standard. If a current standard does not contain any requirements on

packaging (e.g. in the case of “bunk beds for domestic use”), how the sample is packaged is not a factor in our determination of whether it complies with the standard. This position will remain unchanged after the proposed amendments to the definitions of “toy” and “children’s product” (which seek to cover expressly the element of “packaging”) are passed. The proposed amendments do not have the effect of widening the scope of application of the Ordinance.

Please feel free to contact me if I can be of further assistance.

Yours sincerely,



(K.C. Yau)

for Secretary for Commerce and Economic Development