



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF : EP CR 9/150/37 Pt.10
本函檔號 OUR REF : LS/B/21/12-13
電話 TELEPHONE : 3919 3509

傳真 FACSIMILE : 2877 5029
電郵 E-MAIL : wkan@legco.gov.hk

By Fax (3121 5762)

8 July 2013

Mr WU Tin Yau, Gordon
AO (Waste Mgt Policy Div)
Environmental Protection Department
Waste Management Policy Division
15/F, East Wing
Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Dear Mr WU,

Re: Waste Disposal (Amendment) Bill 2013

I am scrutinizing the Bill with a view to advising Members on its legal and drafting aspects.

Please find attached a schedule listing my observations on the English text of the Bill for your consideration. I would be grateful if you could let me have the Administration's response in bilingual form before 5:00 pm on 10 July 2013.

Yours sincerely,

(Wendy KAN)
Assistant Legal Adviser

cc. DoJ (Attn.: Mr Peter SZE (By Fax: 2845 2215))
Clerk to Bills Committee

Schedule

Commencement of the Bill

1. Clause 1(2) of the Bill provides that the Bill, if enacted, will come into operation on a day to be appointed by the Secretary for the Environment by notice published in the Gazette. Please advise if there is any intended commencement date of the Bill.

Definition of private lot and proposed new section 16B(1)(a) of the Ordinance

2. Please confirm whether there is any piece or parcel of ground in Hong Kong which is -
 - (a) held under a Government lease without identified by a lot number;
 - (b) identified by a lot number but not held under a Government lease; and
 - (c) neither held under a Government lease nor identified by a lot number.

If so, please provide examples of such piece or parcel of ground.

3. Please explain the meaning of "a piece or parcel of ground held under a Government lease and identified by a lot number". Does "a piece or parcel of ground" only refer to a piece or parcel of ground without any house, building or other structure built upon it? Does the ground floor of a house or building on a piece or parcel of ground fall within the meaning of "a piece or parcel of ground"? Does it require that the ground must be subject to one Government lease and identified by one lot number? If a house or building occupies a piece of ground held under a Government lease which is identified by more than one lot number, will it be considered as one private lot?
4. Please clarify how the boundary of a private lot be determined for the purpose of assessing the total area on which construction waste has been deposited within the lot under proposed new section 16B(1)(a) of the Ordinance.
5. Proposed new section 16B(1)(a) of the Ordinance states that the proposed new section 16B does not apply in relation to the depositing of

construction waste on a private lot if the total area on which construction waste has been deposited within the lot, regardless of who deposited the waste, does not exceed 20 m². Please clarify whether the total area means, in case of a multi-storey building within the private lot, the total areas of all the floors of the building.

Proposed new sections 16B(3) and (5) of the Ordinance

6. If there is a multi-storey building on a piece of ground which is held under a Government lease and identified by a lot number, should the permission be given by all the owners of every unit of the building for depositing construction waste in that building/piece of ground?
7. If a private lot is owned by three persons and one of them intends to deposit construction waste on such private lot, does such owner require to obtain the valid permission of the other two owners? Does such owner also require to give self-permission as required under proposed new section 16B(3) of the Ordinance because of the inapplicability of proposed new section 16B(5) of the Ordinance? What if the private lot is owned by two persons who are married couple?
8. It appears that there will be occasions where a person may commit both the offences under proposed new section 16B(3) and section 16A(1) of the Ordinance by doing a single act. Please advise which of the offences will be charged by the prosecution.

Proposed new section 16C(4) of the Ordinance

9. It appears that the duty to display the acknowledged form under proposed new section 16C(4) of the Ordinance is only imposed upon a person who deposits construction waste on a private lot, but not on one who causes to be deposited construction waste on a private lot. Please state the policy reason(s) for making such arrangement.

Proposed new section 16C(7) of the Ordinance

10. In view of the amendment proposed to be made to section 31 of the Ordinance under clause 8 of the Bill, please confirm whether it is not intended to make the offence under proposed new section 16C(7) of the Ordinance an offence of strict liability. If so, please provide the policy reason(s).

Penalties for the offences under proposed new section 16C(6) and (7) of the Ordinance

11. Please explain the policy reason(s) for setting a fine at level 6 as the penalty for the offences under proposed new section 16C(6) and (7) of the Ordinance. Are these two offences offences of the same nature and seriousness?

12. Could the offence under proposed new section 16C(7) of the Ordinance be committed continuously? If so, please clarify the policy reason(s) for not including daily default fine as the penalty for this offence in the case of a continuing offence.