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By Fax (2136 3281)
5 February 2013

Ms Hinny LAM
Principal Assistant Secretary for Food and Health (Food)3
Food and Health Bureau
Food Branch
17/F, East Wing, Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Ms LAM,

Pesticides (Amendment) Bill 2013

I am scrutinizing the above Bill with a view to advising Members.
Please let me have your clarifications on the following –

(a) Time lapse

According to the LegCo Brief, the Central People's Government has applied the Stockholm Convention and the Rotterdam Convention to Hong Kong on 11 November 2004 and 26 August 2008 respectively. To comply with the requirements of the Conventions, Environmental Protection Department has enacted the Hazardous Chemicals Control Ordinance (Cap. 595) in 2007, which commenced operation in 2008. For requirements relating to regulation of pesticides, the Pesticides Ordinance (Cap. 133) (the Ordinance) needs to be amended. However, no information has been provided to account for the time lapse since 2008 up to the introduction of the Bill and to explain whether there are any measures for their compliance in relation to pesticides during that time.

(b) Proposed section 2(1) on Interpretation

The expression "as amended from time to time" used in the proposed definition of "Rotterdam Convention" and "Stockholm Convention" will have the effect that any subsequent changes to the Convention requirements will affect directly the provisions of the Ordinance as proposed to be amended without the need for corresponding legislative amendments. This may render the scope of the relevant provisions uncertain and not readily ascertainable particularly in the case of the proposed section 18A (Director may exercise powers for implementing requirements of Rotterdam Convention or Stockholm Convention).

(c) Proposed section 2(4) on Interpretation

The components of the proposed definition of "air transhipment cargo"¹ to be added to the Ordinance is largely in line with the definition of "air transhipment cargo" in section 2 of the Import and Export Ordinance (Cap. 60). It is noted that "consigned" used in the proposed definition of "air transhipment cargo" is defined in section 2 of Cap. 60 but not in the Bill. It is unclear whether this would result in or is meant to reflect any actual difference in the definitions.

(d) Proposed section 3A on Ordinance applies to Government

According to the Administration, the proposed section 3A is in line with the approach adopted in Cap. 595. However, it is noted that the Lifts and Escalators Ordinance (Cap. 618), which was enacted 5 years after Cap. 595, contains in addition detailed provisions on the action to be taken by the Director in case of suspected contravention of a provision. It is unclear whether the proposed section 3A reflects a change in the Government approach taken in Cap. 595 insofar as immunity is concerned.


¹ The definition of "consign" in Cap. 60 is "to deliver or transmit an article into the custody of a person for the purpose of delivery or transmission of the article by that person to another specified person".

(e) Updating of other provisions

It is noted from paragraphs 10 to 12 of the LegCo Brief that the Administration has taken the opportunity to update the provisions of the Ordinance in line with Cap. 595. Unlike Cap. 595, there is no provision in the Bill on false or inaccurate information and liability of employers. It is unclear whether the updating exercise has included these two aspects.

The scrutiny of the Bill is continuing. I would be grateful if you would let me have the Administration's reply in both languages by 22 February 2013.

Yours sincerely,


(Miss Carrie WONG)
Assistant Legal Adviser

c.c. Clerk to Bills Committee