

立法會
Legislative Council

LC Paper No. LS5/13-14

**Paper for the House Committee Meeting
on 25 October 2013**

**Legal Service Division Report on
Air Pollution Control (Amendment) (No. 2) Bill 2013**

I. SUMMARY

- 1. The Bill**

The Bill proposes to amend the Air Pollution Control Ordinance (Cap. 311) so that, unless exempted, the use, supply, import and transhipment of asbestos and asbestos containing material are prohibited. It also proposes to amend the Factories and Industrial Undertakings (Asbestos) Regulation (Cap. 59AD) to prohibit any work with chrysotile to be conducted in an industrial undertaking and to increase the penalties for certain offences which relate to the use of or working with asbestos.
- 2. Public Consultation**

According to the Administration, the asbestos trading organisations and relevant stakeholders were consulted between April and August 2011. Further, since certain forms of asbestos may be contained in Chinese herbal medicines, the Chinese Medicine Council of Hong Kong has also been consulted on the proposal.
- 3. Consultation with LegCo Panel**

The Panel on Environmental Affairs was consulted on the proposal on 19 January 2012. Members generally supported the proposal to ban all forms of asbestos to better protect public health.
- 4. Conclusion**

A letter has been issued to the Administration to seek clarification of the implications of the proposed prohibition on the existing regulation on certain types of asbestos. In the light of the Administration's reply dated 23 October 2013, Members may wish to consider forming a Bills Committee to study any issue concerned in detail.

II. REPORT

The date of First Reading of the Bill is 23 October 2013. Members may refer to the LegCo Brief (File Ref: EP351/A4/1) issued by the Environment Bureau dated 25 September 2013 for further information.

Object of the Bill

2. The Bill proposes to amend the Air Pollution Control Ordinance (Cap. 311) (APCO) so that, unless exempted, the use, supply, import and transshipment of asbestos or asbestos containing material are prohibited. The Bill also proposes to amend the Factories and Industrial Undertakings (Asbestos) Regulation (Cap. 59AD) (FIU Regulation) so that the use of chrysotile in an industrial undertaking is prohibited. Further, the penalties of certain offences under the FIU Regulation are proposed to be increased.

Background

3. According to the Administration, asbestos had been widely used in building or fireproofing materials before the mid-1980s. Further, the World Health Organisation has classified all types of asbestos as definite human carcinogen.

4. At present, unless exempted, the import and sale of two types of asbestos¹ are prohibited under the APCO. Further, only registered qualified person may conduct certain work involving asbestos containing materials and engage in related activities under the APCO. Asbestos wastes must be properly disposed of in accordance with the Waste Disposal Ordinance (Cap. 354). In addition, a permit system to control the import, export, manufacturing and use of asbestos other than chrysotile (a type of asbestos) has also been implemented under the Hazardous Chemicals Control Ordinance (Cap. 595) (HCCO).

5. According to the Administration, to further abate the risk of asbestos and better protect the public from exposure to environmental asbestos, it is necessary to stop asbestos from entering Hong Kong by banning the import, transshipment, sale, supply and new use of all forms of asbestos. Further, given that proven and safer substitutes are now available, certain countries have already banned the import, sale, supply and use of asbestos in phases. In addition, the Administration also proposes to amend the FIU Regulation to tighten the control on the use of asbestos in industrial undertakings.

¹ The two types of asbestos are crocidolite (blue asbestos) and amosite (brown asbestos). According to the LegCo Brief, they are the more hazardous types of asbestos.

Provisions of the Bill

Proposed Amendments to APCO

6. The Bill proposes to extend the prohibition under the APCO so that, unless exempted, a person must not use, supply, import or tranship any asbestos or asbestos containing material (or cause or permit any of them to be used, supplied, imported or transhipped). Failure to comply with the prohibition constitutes an offence. However, the prohibition is not applicable to asbestos or asbestos containing material that is goods in transit², or registered or exempted under the Chinese Medicine Ordinance (Cap. 549). Further, the definition of "asbestos containing material" is also proposed to be amended by repealing the minimum amount of asbestos that must be present in the material for it to be considered as "asbestos containing material" under APCO.

Proposed Amendments to the FIU Regulation

7. At present, unless exempted, the FIU Regulation prohibits a proprietor of an industrial undertaking to undertake asbestos spraying, use asbestos insulation for certain purpose and use amphibole asbestos. The Bill proposes to add a prohibition to the FIU Regulation so that the proprietor is not allowed to carry out any work with chrysotile in the undertaking. However, the prohibition does not apply to the removal or disposal of chrysolite that was in use before Part 3 of the Bill comes into operation. Further, the Bill proposes to increase the maximum penalty for a violation of any such prohibition from \$50,000 to \$200,000 and 6 month imprisonment. In addition, the Bill proposes to amend the FIU Regulation so that, if the concentration of asbestos in the air from work with asbestos in an area exceeds or is liable to exceed any control limit, such work must be carried out in a designated "protective equipment zone".

Commencement

8. The Bill, if passed, would come into operation on a day to be appointed by the Secretary for the Environment by notice published in the Gazette.

Public Consultation

9. According to the Administration, asbestos trade organizations and relevant stakeholders were consulted on the proposal from April to August 2011. All written responses received by the Administration were supportive of the proposal. Further, the Chinese Medicine Council of Hong Kong has also been consulted on the

² "goods in transit" is defined to mean goods that are brought into Hong Kong solely for being taken out of Hong Kong and remain at all times on the vessel, vehicle or aircraft that brought the goods into Hong Kong.

proposal. The Council commented that certain types of asbestos in their particular form which are found in Chinese medicines should be exempted from the proposed prohibitions. The Administration has taken the comments into account in the drafting of the Bill.

Consultation with LegCo Panel

10. According to the Clerk to Panel on Environmental Affairs, the Panel was consulted on the proposal on 19 January 2012. Members generally supported the proposal to ban all forms of asbestos to better protect public health. During deliberation, members had enquired about the criteria for granting exemption for asbestos-containing items for special applications where asbestos-free alternatives were not available, the monitoring mechanism for demolition of building structures with asbestos-containing materials, as well as the rationale for the Chinese Medicine Council of Hong Kong to support including the import and use of Chinese herbal medicines containing asbestos in the proposed ban while excluding proprietary Chinese medicines with tremolite and actinolite from the control regime.

Concluding Remarks

11. It is noted that, at present, certain types of asbestos now regulated under a licence or permit system prescribed in APCO and HCCO are proposed to be prohibited under the Bill. A letter has been issued to the Administration to enquire whether any inconsistency would arise in both the policy and practical implementation of these existing regulatory regimes vis-à-vis the general prohibition as proposed and to seek the Administration's clarification on certain drafting aspects of the Bill. The Administration replied by a letter dated 23 October 2013 that there is no inconsistency between the Bill and APCO and HCCO.

12. It is noted that the issue of whether there is any inconsistency between the Bill, APCO and HCCO should be explored further in the light of the Administration's response. As such, Members may wish to consider forming a Bills Committee to study any issue concerned in detail.

Encl

Prepared by

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23 October 2013

EP 351/A4/1
LS/B/2/13-14
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By Fax (2572 0306)

21 October 2013

Mr MOK Wai Chuen, JP
Assistant Director (Air Policy)
Environmental Protection Department
16/F, East Wing
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2 Tim Mei Avenue
Hong Kong

Dear Mr MOK,

Air Pollution Control (Amendment) (No.2) Bill 2013

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

It is noted that the Bill proposes a general prohibition against, among other things, the use or import of any asbestos or asbestos containing material, with the only exceptions being goods in transit, Chinese proprietary medicine and work carried out in an industrial undertaking. However, an exemption may be granted by the Authority if it considers that the exemption is warranted and would be unlikely to lead to a health risk to the community.

At present, under section 14 of the Air Pollution Control (Ordinance) (Cap. 311) (APCO), certain types of asbestos works which are specified in Schedule 1 to the APCO may nonetheless be carried out pursuant to a successful application of a licence made to the Authority. According to the Administration, the Authority is, in practice, the Director of Environmental Protection (DEP).

Similarly, the use and import of five types of asbestos (specified asbestos) which are specified under the Hazardous Chemicals Control Ordinance (Cap. 595) (HCCO) are also subject to a permit system provided in

the HCCO. Under the system, a person must apply to the DEP for a permit if that person would like to import or use any of the specified asbestos and the DEP may attach, to the permit, any condition that the Director considers appropriate.

In so far that certain specified asbestos are regulated under a licence or permit system with DEP as the issuing authority under APCO and CHHO, please clarify whether any inconsistency would arise in both the policy and practical implementation of these existing regulatory schemes vis-à-vis the general prohibition as proposed. In this connection, it is noted that the proposed section 82(5) in the Bill expressly states that the proposed prohibition does not prohibit a person from using asbestos or asbestos containing material in work carried out in an industrial undertaking, which will continue to be regulated under the Factories and Industrial Undertakings Ordinance (Cap. 59) (FIUO) and the Factories and Industrial Undertakings (Asbestos) Regulation (Cap. 59AD). However, no provision is made to clarify how the APCO and HCCO regulatory schemes would apply in relation to the proposed general prohibition.

In addition, please clarify –

- (a) in relation to the terms "import" and "use", the former being defined in HCCO but not in the Bill whereas the latter is defined in the Bill but not in the HCCO, whether the definition of the term concerned would be used to interpret the same term which appears in the other ordinance; and
- (b) in relation to the terms "article in transit" which is defined in Part 2 of Schedule 2 to HCCO, and "goods in transit" which is defined in section 80 of APCO and proposed to be amended, whether the former term includes the latter after the amendment is made.

As the House Committee will consider the Bill at its meeting on 25 October 2013, I look forward to receiving your clarification in both Chinese and English languages by **23 October 2013**.

Yours sincerely,

(Evelyn LEE)
Assistant Legal Adviser

c.c. Clerk to House Committee

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23 October 2013

Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road,
Central Hong Kong
(Attn. Miss Evelyn Lee)

Dear Miss Lee,

Air Pollution Control (Amendment)(No.2) Bill 2013

I refer to your letter dated 21 October 2013 regarding your questions about the captioned Amendment Bill.

The Hazardous Chemicals Control Ordinance (HCCO)(Cap. 595) has been enacted in the local context by transposing the requirements of the Stockholm Convention on Persistent Organic Pollutants or the Rotterdam Convention on the Prior Informed Consent Procedure. A permit system is implemented under the HCCO to regulate the import, export, manufacture and use of non-pesticide hazardous chemicals, including all types of asbestos except chrysotile which is exempted under the Rotterdam Convention.

Section 10(3) of HCCO states that for the Director of Environmental Protection (DEP) to issue or renew a permit, she is to “have to regard to other enactments that govern the activity to which the application relates”. Hence, in the case of asbestos being the concerned scheduled chemical, exemption granted under APCO would be the prerequisite before issuing a permit under the HCCO. Should APCO ban the import or use of certain asbestos (i.e. without exemption given), DEP would also decline to grant a permit for the import, export, manufacture and use of the concerned asbestos under HCCO. No



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inconsistency would arise in the policy and practical implementation of the HCCO with the proposed general prohibition in the Bill.

With regard to Section 14 of APCO, there has been no manufacturing process in relation to asbestos and no specified process licence has been granted in Hong Kong so far under section 14 of APCO for "asbestos works". The proposed new banning control under the Bill will literally render the "asbestos works" inoperative. Again, there is no inconsistency arising in the policy and practical implementation of section 14 of APCO and the proposed prohibition under the Bill.

The APCO and HCCO are enacted for different purposes. Unless there are express provisions to the contrary (such as cross references to provisions in other statutes), terms and expressions in the APCO (or the Bill) should only be construed according to its interpretation sections and context, or in accordance with the general interpretation provisions in the Interpretation and General Clauses Ordinance (Cap. 1). In these premises, "import", "use" and "goods in transit" that appear in the APCO (or the Bill) should not be used to interpret similar terms and expressions in other statutes.

Yours sincerely,

A handwritten signature in black ink, consisting of a stylized 'W' followed by a long horizontal stroke that curves upwards at the end.

(W C MOK)

for Director of Environmental Protection

c.c. Clerk to House Committee