



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 9/150/28 PT.4
本函檔號 OUR REF : LS/B/8/14-15
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By Fax (2110 4172)

8 April 2015

Mr Samson LAI
Assistant Director (Waste Management Policy)
Environmental Protection Department
16/F, East Wing
Central Government Offices
2 Tim Mei Avenue
Tamar
Hong Kong

Dear Mr LAI,

**Promotion of Recycling and Proper Disposal
(Electrical Equipment and Electronic Equipment) (Amendment) Bill 2015**

It is noted that clause 13 of the Bill provides for a defence to be established by a person who is charged under section 16 of the Waste Disposal Ordinance (Cap. 354) for the storage, treatment, reprocessing or recycling of any e-waste that is not chemical waste. The clause further provides, in the new section 18(5), that the person is taken to have established a fact that needs to be established for the defence if there is sufficient evidence to raise an issue with respect to the fact (evidential burden) and the contrary is not proved by the prosecution beyond reasonable doubt. It is further noted that the respective new sections 20G(5) and 20G(6) (which are proposed under clause 16 of the Bill) provide for a similar defence and a set of similar conditions in relation to a person who is charged with an offence under section 20E of Cap. 354 for the import or export of any e-waste that is not chemical waste. In light of the aforesaid, please provide the following information—

- (a) the legal considerations of requiring the person to discharge an evidential burden in the respective new sections 18(5) and 20G(6) instead of requiring the person to establish that, on the balance of probabilities, a fact which needs to be established for the defence exists;
- (b) given that, besides the new section 20G(5), section 20G(1) also provides for a defence, clarification on whether the new section 20G(6) would be applicable to the defence provided in section 20G(1); and
- (c) if the answer to (b) is in the negative, whether and how clause 16 of the Bill will be amended to reflect the legislative intent.

We would be grateful for your reply in both languages to reach us as soon as practicable.

Yours sincerely,



(Miss Evelyn LEE)
Assistant Legal Adviser

c.c. DoJ (Attn.: Miss Cindy CHEUK, GC) (Fax : 2869 1302)
LA