



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

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By Fax (2102 2520)

13 March 2015

Ms Wendy AU  
Principal Assistant Secretary for  
Food and Health (Health) Special Duties 1  
Food and Health Bureau  
19/F, East Wing  
Central Government Offices  
2 Tim Mei Avenue, Tamar  
Hong Kong

Dear Ms AU,

### **Human Reproductive Technology (Amendment) Bill 2015**

We are scrutinizing the Human Reproductive Technology (Amendment) Bill 2015 ("the Bill") with a view to advising Members and shall be grateful if you could clarify the following matters in relation to the new sections 15(3A) and (3B) proposed to be added to the Human Reproductive Technology Ordinance (Cap. 561).

#### Question 1

According to paragraph 7 of the LegCo Brief (File Ref: FH CR 1/6/3921/13) dated 4 March 2015 issued by the Food and Health Bureau, the new section 15(3A) seeks to prohibit advertising on sex selection services through human reproductive technology procedures on all media, including the Internet. If such an advertisement is uploaded to the Internet outside Hong Kong but it can be viewed in Hong Kong, would this constitute "publish or distribute" for the purpose of the new section? If so, please explain how the new section could be enforced in such circumstances.

## Question 2

If a person while surfing on the web in Hong Kong notices an advertisement relating to sex selection services and forwards the hyperlink to his friends or relatives, would this amount to "cause the advertisement to be published or distributed" within the meaning of the new section 15(3A)?

## Question 3

In the second part of the new section 15(3A), the word "knowingly" is used before "publish or distribute", but the word "knowingly" does not appear in the first part of the provision regarding the act of "cause to be published or distributed". Please clarify whether, for a person to be found guilty of the offence of "cause to be published or distributed" an advertisement under the new section 15(3A), there is any requirement that the person "knowingly" does the relevant act. If there is no such requirement, please explain the reasons for the different treatment of these two offences.

## Question 4

The new section 15(3A) prohibits publication or distribution of advertisements "purporting to" promote sex selection services. If an advertisement does not so purport but has the effect of promoting sex selection services, it seems that the prohibition in the new section 15(3A) would not be applicable. Does this reflect the Administration's policy intent? If not, should the new section 15(3A) be revised to cover this scenario?

## Question 5

It is noted that sections 16(2) and 17(2) of Cap. 561 provide for prohibitions of advertisements relating to commercial dealings of gametes/embryos and surrogacy arrangements. However, those provisions do not contain the word "purporting", but the word "purporting" is used in the new section 15(3A). Please explain the reasons for adding such a word in the new section 15(3A) and whether an objective standard is to be used in assessing if the advertisement is "purporting to" promote sex selection services.

#### Question 6

According to section 2 of Cap. 561, "advertisement" includes any form of advertising whether to the public generally, to any section of the public or individually to selected persons. If a person engages in discussion about the topic of sex selection on the Internet, and such discussion contains not only medical information but also a hyperlink which may further link to institutes where sex selection services are provided, would such a discussion amount to "advertisement purporting to promote sex selection services" within the meaning of the new section 15(3A)?

#### Question 7

If a webpage host or operator is alleged to have committed the offence under the new section 15(3A), would it be a defence that the advertisement is uploaded or distributed without the knowledge or consent or control of the webpage host/operator? If so, please include a provision providing for such defence in the section. It is noted that for a licensee charged with an offence under Cap. 561, section 39 provides for certain defences. Should a similar approach be adopted in relation to other persons who may be charged with the new offence?

#### Question 8

It is noted that the way the new section 15(3A) is drafted differs from those of the other subsections of section 15 as well as sections 16(2) and 17(2). For the purpose of consistency, will the Administration consider referring the offence in the new section 15(3A) as "*No person shall cause to be published or distributed, or knowingly publish or distribute...*".

#### Question 9

Under the new section 15(3B), "sex selection services" is defined as "*services provided for selecting the sex of an embryo by means of a reproductive technology procedure, whether directly or indirectly (including by the implantation of an embryo of a particular sex in the body of a woman).*" Please clarify whether the phrase "directly or indirectly" refers to the selecting of embryo or the reproductive technology procedure, and explain with examples if appropriate.

Question 10

In respect of the offence of "publish or distribute" or "cause to be published or distributed" an advertisement under the new section 15(3A), and particularly with regard to advertising on the Internet, has the Administration, before introducing the Bill, considered the approaches adopted by overseas jurisdictions and the effectiveness of enforcement? If so, please provide the relevant information for Members' consideration.

The Bill will be considered by the House Committee at its meeting on 20 March 2015. We should therefore be grateful if you could reply to us in both Chinese and English as soon as possible.

Yours sincerely,



(M. L. CHANG)

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