



中華人民共和國香港特別行政區政府總部食物及衛生局

Food and Health Bureau, Government Secretariat
The Government of the Hong Kong Special Administrative Region
The People's Republic of China

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By Fax : 2877 5029

Dear Miss Chang,

Human Reproductive Technology (Amendment) Bill 2015

Thank you for your letter of 31 March 2015. Our response to the questions raised in the letter is set out in the ensuing paragraphs.

Answer to Question 1

Under the new section 15(3A) to be added after section 15(3) of Cap. 561, whether the new section 15(3A) would cover an advertisement that is uploaded or distributed by using overseas server, or the uploading or distributing of an advertisement outside Hong Kong (even if the advertisement can be viewed in Hong Kong) would be a matter of fact and degree for the tribunal of fact. The fact that an advertisement can be viewed in Hong Kong usually implies the "distribution" of such advertisement. Whether an offence has been committed depends on whether there is sufficient evidence to show that the acts "causing" such advertisement to be published or distributed, such as the initiation of placing such advertisement, making payment in relation to the placing of such advertisement etc. take place in Hong Kong.

Answer to Question 4

An advertisement is a medium for promoting products and services. As mentioned in our reply of 19 March 2015, an advertisement may not necessarily contain words expressly setting out provision of sex selection services are provided, but may rather contain suggestive pictures or phrases. The expression “purporting to” is meant for covering such scenarios. Given the inherent nature of an advertisement, we do not consider it necessary to amend the provision to “an advertisement promoting or purporting to promote”.

Answer to Question 7

(a) Liability of employees

The term “person” in the new section 15(3A) could be interpreted to include the “person-in-charge” e.g. director(s) or owner(s) of a company and/or individuals who cause objectionable advertisements to be published or distributed or knowingly publish or distribute such advertisement.

The proposed offence aims at imposing criminal responsibility on companies, agents or media agencies who cause to be published or distributed, or knowingly publish or distribute, an advertisement purporting to promote sex selection services. Whether or not such parties will be held liable depends on what kind of act the party has done. In the absence of real facts, we are not in a position to advise or confirm categorically whether employees who take part in the advertising process would be held liable under the proposed provision.

(b) Provision of a defence

The provision is drafted to catch those persons who “cause to be published or distributed” or “knowingly publish or distribute” advertisements purporting to promote sex selection services. If the publisher or the distributor of the advertisement is an innocent disseminator who has no knowledge about the advertisement uploaded or distributed, he / she could not have the necessary *mens rea* for the offence and so, a defence is not required in such circumstances.

(c) Express provision regarding posting of advertisements by webpage hosts or operators

At present, the term "advertisement" is defined under Cap. 561 as "any form of advertisement whether to the public generally, to any section of the public or individually to selected persons" and that should include advertisement published on the Internet. This is also our intention to prohibit advertising on sex selection services through reproductive technology procedures on all media, including the Internet. Subject to availability of evidence, local webpage hosts or operators who knowingly post advertisements purporting to promote sex selection services on a webpage under their management could be held liable.

Answer to 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).".

In our previous reply dated 19 March 2015, we have provided information on the reproductive technology procedures to bring about sex selection directly or indirectly. In the draft bill, the adverbial phrase "directly or indirectly" refers to the verbal phrase "selecting". We consider that the current Chinese text in our Bill is appropriate.

Yours sincerely,



(Ms Wendy AU)

for Secretary for Food and Health

c.c.

Department of Health (Attn: Dr Kellie SO)

Department of Justice (Attn: Mr Jonathan LUK)