

**立法會**  
*Legislative Council*

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**Paper for the House Committee Meeting  
on 20 March 2015**

**Legal Service Division Report on  
Human Reproductive Technology (Amendment) Bill 2015**

**I. SUMMARY**

- 1. The Bill**                      The Bill amends the Human Reproductive Technology Ordinance (Cap. 561) to provide for a new offence in respect of publishing or distributing advertisements purporting to promote sex selection services and for related matters.
- 2. Public Consultation**      The Administration consulted the Council on Human Reproductive Technology (CHRT) in 2013 and CHRT members supported the proposal to amend Cap. 561 to prohibit advertisements on the provision of sex selection services using reproductive technology procedures. In 2014, the Administration conducted a stakeholders' consultation and majority of the respondents supported the proposal.
- 3. Consultation with LegCo Panel**      The Panel on Health Services was consulted on the proposal at its meeting on 15 December 2014. While Panel members in general supported the proposal, various concerns were raised.
- 4. Conclusion**                The Legal Service Division is seeking clarification with the Administration on certain legal and drafting issues. In view of the concerns raised by members of the Panel on Health Services, Members may wish to form a Bills Committee to study the Bill in detail.

## **II. REPORT**

The date of First Reading of the Bill is 18 March 2015. Members may refer to the LegCo Brief (File Ref.: FH CR 1/6/3921/13) issued by the Food and Health Bureau on 4 March 2015 for further details.

### **Object of the Bill**

2. The Bill amends the Human Reproductive Technology Ordinance (Cap. 561) to provide for a new offence in respect of publishing or distributing advertisements purporting to promote sex selection services through reproductive technology (RT) procedures, irrespective of whether the services are provided in or outside Hong Kong.

### **Background**

3. Cap. 561, which was enacted in 2000, regulates RT procedures and the use of embryos and gametes, confines the provision of RT procedures to infertile couples, regulates surrogacy arrangements, and provides for matters connected therewith. Under section 15(3) of Cap. 561, sex selection using RT procedures is prohibited except for medical reasons to avoid the birth of a child suffering from a serious sex-linked genetic disease.

4. According to paragraph 2 of the LegCo Brief, Council on Human Reproductive Technology (CHRT) has observed an increase in local press advertisements and promotion leaflets on the availability of sex selection services using RT procedures in other countries and expressed concern about the existing regulatory regime. Apart from CHRT, medical profession also raised their concern and urged that such promotional activities be prohibited by law.

5. At present, sections 16(2) and 17(2) of Cap. 561 prohibit advertisements relating to commercial dealings of gametes/embryos and surrogacy arrangements. However, there is no similar provision to prohibit advertisement on sex selection services through RT procedures. The Administration considers it necessary to rectify the inconsistency and amend the law in this regard.

### **Provisions of the Bill**

6. The main provisions of the Bill are clauses 3 and 4. Clause 3 adds a new section 15(3A) to Cap. 561 to create a new offence in respect of

publishing or distributing advertisements to promote sex selection services through RT procedures. Under the new section 15(3A), a person commits an offence if he/she causes to be published or distributed, or knowingly publishes or distributes, an advertisement<sup>1</sup> purporting to promote sex selection services, whether or not the services are provided in Hong Kong. The term "sex selection services" is defined in the new section 15(3B). Like all other offences under Cap. 561, no proceedings for the new offence shall be instituted except by or with the consent of the Secretary for Justice<sup>2</sup>.

7. In respect of penalty, clause 4 of the Bill amends section 39(1) of Cap. 561 to provide that the maximum penalty for the new offence would be a fine at level 4 (\$25,000) and imprisonment for six months on a first conviction, and a fine at level 6 (\$100,000) and imprisonment for two years on a subsequent conviction. The proposed levels of penalty are the same as those for offences relating to advertisements on commercial dealings of gametes/embryos and surrogacy arrangements.

### **Commencement**

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

### **Public Consultation**

9. According to paragraphs 13 and 14 of the LegCo Brief, the Administration consulted CHRT in 2013 on the proposal to amend Cap. 561 to prohibit advertisements on sex selection services using RT procedures. CHRT members supported the proposal including those advertisements and promotional materials circulated through the Internet.

10. In mid-2014, the Administration conducted a consultation with various stakeholders including RT treatment centres licensed by CHRT, public and private hospitals, medical, health and legal related professional bodies, specialists in Obstetrics and Gynaecology, Reproductive Medicine and Surgery (Urology), the academia, family and social services organizations, the Consumer Council and media associations. Majority of the respondents supported the proposal.

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<sup>1</sup> Under section 2(1) 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.

<sup>2</sup> See section 40 of Cap. 561.

## **Consultation with LegCo Panel**

11. As advised by the Clerk to the Panel on Health Services, the Administration briefed the Panel on the proposed amendments to Cap. 561 at its meeting on 15 December 2014. While Panel members in general supported the proposal, various concerns were raised including the scope of the prohibition, particularly with regard to advertising on the Internet, definition of "advertisement", enforcement of the new offence, and the liability of parties who facilitated the distribution of such advertisement.

## **Conclusion**

12. The Legal Service Division is seeking clarification with the Administration on certain legal and drafting issues. In view of the above concerns raised by members of the Panel on Health Services, Members may wish to form a Bills Committee to study the Bill in detail.

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