

THB(1)PML 8/10/90/8
LS/B/27/14-15
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By Fax (2523 0030)

16 April 2015

Miss Joyce CHAN
Assistant Secretary for Transport and Housing (Transport)10C
Transport Branch
Transport and Housing Bureau
21/F, East Wing
Central Government Offices
2 Tim Mei Avenue
Tamar
Hong Kong

Dear Miss CHAN,

**Merchant Shipping (Prevention of Pollution by Garbage) Regulation
(L.N. 74 of 2015)**

Further to my letter dated 14 April 2015, I would like to seek further information in relation to the captioned Regulation and section 3A of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413).

It is noted that section 3A of Cap. 413 provides that, among other things, for the purpose of giving effect to any provisions of any international agreements applicable to Hong Kong as in force from time to time and so far as the agreement relates to any matter for or in relation to which provision may be made by regulations made under Cap. 413, any such regulation may set out or refer to those provisions and specify amendments, modifications or adaptations subject to which those provisions shall have effect (known as direct reference approach (DRA)). However, section 3A does not provide for any factor that may or must be taken into account for the said purpose. It is further noted that paragraph 9 of the LegCo Brief (File Ref: THB (1) PML 8/10/90/8) issued by

the Transport and Housing Bureau dated 8 April 2015 states the factors that must be taken into account in deciding whether to apply DRA for implementing requirements under international agreements. In addition, according to paragraph 9 of the LegCo Brief, it seems that the list of factors that are stated in the paragraph is not an exhaustive list.

In light of the above, please provide the following information —

- (a) given that section 3A of Cap. 413 does not provide for any factor that may or must be taken into account in relation to the said purpose, the legal or legislative basis for stating in paragraph 9 of the LegCo Brief that the factors that are stated in the same paragraph must be taken into account when deciding whether to apply DRA to the captioned Regulation;
- (b) the legal considerations of taking the said factors into account;
- (c) whether the same factors will be taken into account on each occasion which involves an assessment on whether to apply DRA to a piece of legislation; and
- (d) given that the list of factors that are stated in paragraph 9 is not an exhaustive list, other factors which are not listed in the paragraph and the considerations of taking those other factors into account.

As the House Committee will consider the captioned Regulation at its meeting on 17 April 2015, we would be grateful to have your response in both Chinese and English language before the meeting, if practicable.

Yours sincerely,

(Miss Evelyn LEE)
Assistant Legal Adviser

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