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來函檔號 Your Ref.: LS/S/27/14-15

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23 April 2015

Miss Evelyn Lee
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Miss Lee,

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

Thank you for your letter dated 16 April 2015 on the captioned subject. Having consulted the Department of Justice, our replies to the matters raised in your letter are set out below.

Item (a) – legal or legislative basis for the factors to be considered when deciding whether to apply DRA

2. Section 3A of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413) (“the Ordinance”) is the enabling provision for adopting the direct reference approach (“DRA”) in the subsidiary legislation enacted under the Ordinance. It does not lay down any restriction on the scope of adopting DRA.

3. During the deliberations of the Bills Committee on Merchant Shipping (Seafarers) (Amendment) Bill 2013, the Administration was asked to provide justifications and situations for adopting DRA in making subsidiary legislation under the Merchant Shipping (Seafarers) Ordinance (Cap.478). We have, vide LC Paper CB(1)1213/12-13(03), explained to Members the five factors that must be taken into account by the Administration when adopting the DRA. They are the same five factors as stated in paragraph 9 of the LegCo Brief. At the Bills Committee meetings then, Members noted and expressed no objection to the use of the five factors as guiding principles for considering the adoption of DRA. We have thus applied the same five factors to other marine legislation as far as the use of DRA is concerned.

Item (b) – legal considerations of taking the said factors into account

4. The background and reasons for taking those factors into account are set out in paragraph 3 above. Legally speaking, in brief, the law must be clear and certain so that those obliged to comply with the law and those under a duty to enforce the law will have no doubt over the meaning of the provisions concerned.

Item (c) – Whether same factors will be taken into account on each occasion which involves an assessment on whether to apply DRA in a piece of legislation

5. Yes, the same five factors will be taken into account for other marine legislation.

Item (d) – Other factors to be taken into account which are not listed in the LegCo Brief

6. All the factors that would be considered for the adoption of DRA in the Merchant Shipping (Prevention of Pollution by Garbage) Regulation (L.N. 74 of 2015) have been listed out in paragraph 9 of the LegCo Brief.

7. Should you have any enquiries, please feel free to contact me at 3509 8257. Thank you.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Joyce Chan', written in a cursive style.

(Joyce Chan)

for Secretary for Transport and Housing

c.c.

DoJ (Attn.: Ms. Francoise Lam) Fax: 2869 1302

(Attn: Ms. Cecilia Aw) Fax: 2869 0670

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