



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

來函檔號 YOUR REF : FH CR 1/4050/17  
本函檔號 OUR REF : LS/B/22/16-17  
電 話 TELEPHONE : 3919 3505

傳真 FAX : 2877 5029  
電郵 E-MAIL : jyschan@legco.gov.hk

By Fax (2840 0467)

11 July 2017

Miss Renie LAI  
AS for Food & Health (Health)9  
Food and Health Bureau  
Health Branch  
19/F, East Wing,  
Central Government Offices,  
2 Tim Mei Avenue,  
Tamar, Hong Kong

Dear Miss LAI,

### **Dutiable Commodities (Amendment) Bill 2017**

We are scrutinizing the legal and drafting aspects of the captioned Bill and shall be grateful if you could clarify the following matters:

#### Clause 7 – new regulation 44 (powers of inspectors)

##### *Entry into and inspection of an area in a public place*

It is proposed in the new regulation 44(1)(a) of the Dutiable Commodities (Liquor) Regulations (Cap. 109B) that inspectors are empowered to "at any reasonable time enter and inspect an area in a public place as the inspector considers necessary to ascertain whether this Part is complied with" (i.e. the new Part 5 of Cap. 109B). We note that under the Bill, "place" is defined to include "a licensed premises, but does not include an aircraft or a train". However, "public place" is not defined in the Bill or in Cap. 109B. Please confirm whether in referring to "public place" in the new regulation 44(1)(a) under the Bill, it is intended that the definition of "public place" in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) would apply.

Please also clarify whether an inspector may enter any public place that is a common part of any premises to which the public are not entitled or permitted to have access (see section 15G(3) of the Smoking (Public Health) Ordinance (Cap. 371)).

*Detention of things that appear to be evidence of an offence*

It is proposed in the new regulation 44(1)(d) that inspectors are empowered to "seize, remove or detain anything that appears to the inspector to be evidence of an offence under this Part". Please clarify whether the detention of a thing in the inspector's custody would be subject to any time limitation.

Given it is proposed under the new regulation 46 that section 102 of the Criminal Procedure Ordinance (Cap. 221) would apply in respect of the disposal of properties seized by inspectors, please also clarify whether section 102(2) of Cap. 221 is applicable if a person makes an application to a magistrate for the return of a thing detained by the inspector.

*Taking of photographs or making of sound/video recordings*

It is proposed in the new regulation 44(1)(f) that inspectors are empowered to "take photographs or make sound or video recordings for obtaining evidence in connection with an offence under this Part". Please clarify whether such photographs and recordings, which may contain information that amounts to personal data within the meaning of section 2(1) of the Personal Data (Privacy) Ordinance (Cap. 486), would be collected, retained and used in accordance with the Data Protection Principles in Schedule 1 to Cap. 486.

*Inspection of documents or records*

It is proposed in the new regulation 44(1)(g) that an inspector would have the power to "require any person to produce for inspection documents or records under the person's control to enable the inspector to obtain information in connection with an offence under this Part". "Documents or records" is defined to include "any information which is recorded in a non-legible form but is capable of being reproduced in a legible form".

Please explain the meaning of "under the person's control" in the context of the Bill and provide examples of situations in which documents or records would be considered as being under a person's control.

Please also clarify whether the inspectors' power as described above would affect existing rights protected under the Basic Law and the Hong Kong Bill of Rights Ordinance (Cap. 383), specifically:

- (a) whether the exercise of such power would encroach on a person's (including any third party who is not in any way involved in allegedly committing any offence under the Bill) freedom and privacy of communication, which is protected under Article 30 of the Basic Law and Article 14 of the Hong Kong Bill of Rights. Please also provide detailed explanation on the following:
  - (i) whether the restriction or limitation pursues a legitimate aim;
  - (ii) whether the restriction or limitation is rationally connected to that legitimate aim;
  - (iii) whether the restriction or limitation is no more than is necessary to accomplish that legitimate aim; and
  - (iv) whether a reasonable balance has been struck between the societal benefits of the encroachment and the inroads made into the constitutionally protected rights of the person, in particular whether pursuit of the societal interest resulted in an unacceptably harsh burden on the person;
- (b) with reference to Article 35 of the Basic law, whether a person who is in possession, custody or control of documents or records protected by legal professional privilege would be required to produce such documents or records for inspection. Please consider providing an express provision in the Bill. Reference may be made to section 115(8) of the Merchant Shipping (Safety) Ordinance (Cap. 369) and section 91(8) of the Residential Properties (First-hand Sales) Ordinance (Cap. 621).

Furthermore, please explain the applicability of section 102 of Cap. 221 in connection with the disposal of documents or records seized by the inspectors and copies of such documents or records seized by inspectors under the Bill. In that regard, please clarify whether the definition of "property" under Cap. 221, which includes "goods, chattels, money, valuable securities, and every other matter or thing, whether real or personal", would include "documents or records".

It is appreciated that your reply in both English and Chinese could reach us as soon as practicable.

Yours sincerely,



(Joyce CHAN)  
Assistant Legal Adviser

c.c. DoJ (Attn: Ms Lonnie NG, Sr Govt Counsel (By Fax: 3918 4613)  
Miss Queenie WU, Govt Counsel (By Fax: 3918 4613))  
Legal Adviser  
Senior Assistant Legal Adviser 1  
Clerk to the Bills Committee