

**立法會**  
***Legislative Council***

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**Paper for the House Committee Meeting  
on 6 July 2018**

**Legal Service Division Report on  
Conservation of Antarctic Marine Living Resources Bill**

**I. SUMMARY**

- 1. The Bill**                      The Bill mainly seeks to provide for the implementation of the Convention on the Conservation of Antarctic Marine Living Resources ("Convention"), including conservation measures adopted under the Convention, and to provide for related matters. The Secretary for Food and Health would be empowered to make regulations to provide for the implementation details.
- 2. Public Consultation**      According to the Administration, it has organized meetings and engagement forums with trading companies, importers, wholesalers, retailers, representatives of seafood trade and catering associations, environmental groups and a Government advisory body (the Fish Marketing Advisory Board) from January to March 2018. All the consulted parties welcomed, and have given certain views on, the implementation of the Convention.
- 3. Consultation with LegCo Panel**      As advised by the Clerk to the Panel on Food Safety and Environmental Hygiene ("Panel"), the Panel was consulted on 10 April 2018. Members generally supported the legislative proposal but expressed certain concerns.
- 4. Conclusion**                The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In the light of the concerns expressed by members of the Panel, Members may consider whether a Bills Committee should be formed to study the Bill in detail.

## II. REPORT

The date of First Reading of the Bill is 4 July 2018. Members may refer to the Legislative Council ("LegCo") Brief (File Ref: FH CR 1/2576/18) issued by the Food and Health Bureau and the Agriculture, Fisheries and Conservation Department in June 2018 for further details.

### Object of the Bill

2. The Bill mainly seeks to provide for the implementation of the Convention on the Conservation of Antarctic Marine Living Resources ("Convention"), including conservation measures adopted under the Convention, and to provide for related matters. The Secretary for Food and Health ("SFH") would be empowered to make regulations to provide for the implementation details.

### Background

3. The Convention entered into force in 1982 with the objective of conserving Antarctic marine living resources, including regulating activities associated with the rational utilization and management of those resources. According to paragraphs 2 and 3 of the LegCo Brief, the People's Republic of China acceded to the Convention in 2006. Some Contracting Parties to the Convention have shown concerns about the lack of regulation of trading of toothfish<sup>1</sup> in Hong Kong, and requested the Hong Kong Special Administrative Region ("HKSAR") to consider implementing the Catch Documentation Scheme for toothfish which is one of the conservation measures adopted under the Convention. Subsequently, the Central People's Government ("CPG") agreed in principle to extend the application of the Convention to HKSAR after consulting the HKSAR Government. After consulting CPG and further clarifying with the Secretariat of the Commission for the Conservation of Antarctic Marine Living Resources ("Commission"), the Administration seeks to introduce a bill to implement the Convention and six of its conservation measures which are relevant to Hong Kong.<sup>2</sup>

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<sup>1</sup> Toothfish is one of the major organisms protected under the Convention. It comprises two species, namely Antarctic toothfish, *Dissostichus mawsoni* and Patagonian toothfish, *Dissostichus eleginoides*.

<sup>2</sup> Members may refer to Annex B to the LegCo Brief for a summary of the six conservation measures which are relevant to Hong Kong.

## **Provisions of the Bill**

4. The Bill contains five Parts. The major provisions of the Bill are summarized below.

### Definition of "Conservation Measure"

5. Under clause 2 of the Bill, "Conservation Measure" means a measure for the conservation of Antarctic marine living resources that is adopted and as revised, or as repealed and substituted, from time to time by the Commission under Article IX of the Convention.

### Status of the Commission

6. Clause 3 in Part 1 of the Bill seeks to provide that the Commission has legal personality in Hong Kong, and enjoys in Hong Kong the necessary legal capacity to perform its function and achieve the purposes of the Convention.

### Regulation-making powers

7. Part 2 (clauses 4 to 7) of the Bill mainly seeks to set out the regulation-making powers of SFH for implementing the Convention and conservation measures ("CMs")<sup>3</sup>, and for prescribing related fees.

### *Applications of the regulations to be made*

8. Under clause 4(2), the regulations to be made by SFH under clause 4 may be expressed to apply to:

- (a) Hong Kong vessels, wherever they may be, and other vessels within Hong Kong waters; and
- (b) Hong Kong persons<sup>4</sup> and Hong Kong companies, wherever they may be, as well as other persons (including companies and bodies corporate that are not Hong Kong companies) acting in Hong Kong.

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<sup>3</sup> According to paragraph 6 of and Annex C to the LegCo Brief, the Administration intends to make two regulations relating to (a) the Toothfish Catch Documentation Scheme and (b) port inspection and control.

<sup>4</sup> Under clause 2, "Hong Kong person" means a natural person who is both a Hong Kong permanent resident and a Chinese national.

*Adoption of the direct reference approach*

9. Under clause 4(3), SFH may adopt the "direct reference approach" in the regulations to be made, i.e. an approach of making direct reference to a provision in the Convention, or in a CM, that applies to Hong Kong in making regulations under the Bill in future.

*Matters to be provided for in regulations to be made relating to Antarctic marine organisms etc.*

10. Under clause 5(1)(a), regulations to be made under clause 4 may regulate, control, prohibit or provide for the registration, licensing or reporting of:

- (i) the movement into or out of Hong Kong of Antarctic marine organisms ("AMOs"), which are defined in clause 2 to mean organisms (live or dead) that belong to any species of living organisms that is found in the Convention Area<sup>5</sup>, including any part (whether raw, processed or preserved) of the organisms;
- (ii) the entry of any vessel into Hong Kong waters; and
- (iii) any activity which involves or relates to AMOs.

*Offences and penalties which may be provided under the regulations*

11. Under clause 5(3), regulations to be made under clause 4 may provide that the contravention of a regulation is to constitute an offence punishable by:

- (a) a fine not exceeding level 6 (i.e. HK\$100,000) and imprisonment for a term not exceeding one year; and
- (b) for a continuing offence, a further fine not exceeding HK\$10,000 for each day during which the offence continues.

Forms, appointment of authorized officers and delegation of functions

12. Part 3 (clauses 8 to 11) mainly seeks to provide that the Director of Agriculture, Fisheries and Conservation ("DAFC") may specify forms to be used for a matter provided for in the Bill, appoint authorized officers and delegate to public officers DAFC's functions under the Bill.

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<sup>5</sup> "Convention Area" is defined in clause 2 as the area south of 60° south latitude and the area between that latitude and a line joining several stated points along parallels of latitude and meridians of longitude.

Powers of authorized officers and disposal of things seized etc.

13. Part 4 (clauses 12 to 26) mainly seeks to provide for:
- (a) the powers of authorized officers, including the powers to enter and search any place or transport; to stop, search, detain and arrest a person; to seize, remove and detain things; to take samples and carry out tests; and to require identification;
  - (b) the provisions relating to the sale, disposal, return and forfeiture of things seized and compensation for the seizure or detention; and
  - (c) the power to obtain vessel information (including the particulars of its owner) from the Director of Marine and exchange information, as reasonably required, with the Secretariat of the Commission or the competent authority of any place.

Miscellaneous – offences, defences and immunity

14. Part 5 (clauses 27 to 33) seeks to provide for miscellaneous matters, including the following matters:
- (a) a person who wilfully obstructs or resists an authorized officer or a person assisting an authorized officer would commit an offence and be liable on conviction to a fine at level 6 (i.e. HK\$100,000) and to imprisonment for six months;
  - (b) a person who, without reasonable excuse, fails to comply with a requirement or instruction made by an authorized officer would commit an offence and be liable on conviction to the same penalties as in paragraph (a);
  - (c) a person who knowingly provides false information etc. would commit an offence and be liable on conviction to a fine at level 5 (i.e. HK\$50,000) and to imprisonment for three months;
  - (d) liability of directors etc., partners, employers and principals;
  - (e) defences for employers, principals and employees; and
  - (f) public officers' immunity from civil liability.

## **Commencement**

15. The Bill, if passed, would come into operation on a day to be appointed by SFH by notice published in the Gazette.

## **Public Consultation**

16. According to paragraph 10 of the LegCo Brief, the Administration has organized meetings and engagement forums with trading companies, importers, wholesalers, retailers, representatives of seafood trade and catering associations, environmental groups and a Government advisory body (the Fish Marketing Advisory Board) from January to March 2018. All the consulted parties welcomed the implementation of the Convention. The trade considered that the proposed control scheme would not cause significant burden on their operations. They have requested the Administration to deploy adequate resources for efficient law enforcement, and that the licence application and other related procedures should be simple and user-friendly. They have also requested the Administration to organize education and publicity programmes for the trade as well as the public in general.

## **Consultation with LegCo Panel**

17. As advised by the Clerk to the Panel on Food Safety and Environmental Hygiene ("Panel"), the Administration briefed the Panel on 10 April 2018 on the legislative proposal. Members generally supported the proposal, but expressed concerns on certain issues, including whether the Administration had any plan to extend the scope of the enacted ordinance, if the Bill is passed, to regulate the trading of other marine resources and the impact of the new licensing regime on the trade.

## **Conclusion**

18. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In the light of the concerns expressed by members of the Panel, Members may consider whether a Bills Committee should be formed to study the Bill in detail.

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