

立法會
Legislative Council

LC Paper No. LS 111/00-01

**Paper for the House Committee Meeting
of the Legislative Council
on 8 June 2001**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 1 June 2001**

Date of Tabling in LegCo : 6 June 2001

Amendment to be made by : 4 July 2001 (or 11 July 2001 if extended by resolution)

Part I Air Pollution Control (Legal Notices No. 101 to 103)

**Air Pollution Control Ordinance (Cap. 311)
Air Pollution Control (Vehicle Design Standards) (Emission) (Amendment)
Regulation 2001 (L.N. 101)**

Air Pollution Control (Vehicle Design Standards) (Emission) (Amendment) (No. 2) Regulation 2001 (L.N. 102)

Both L.N. 101 and L.N. 102 seek to amend the Air Pollution Control (Vehicle Design Standards) (Emission) Regulations (Cap. 311 sub. leg.). Members may refer to LegCo Brief File References EFB 9/55/01/135 and EFB 9/55/01/111 issued by the Environment and Food Bureau in May 2001.

2. L.N. 101 will come into operation on 1 August 2001. It :
- (a) requires taxis first registered on or after 1 August 2001 to be equipped with a positive-ignition engine and constructed to operate on unleaded petrol or liquefied petroleum gas only (i.e. a taxi equipped with a compression-ignition engine will not be registered);
 - (b) requires taxis constructed to operate on liquefied petroleum gas only ("LPG taxis") to be subject to the emission standards specified in the new Schedule 10A;

- (c) exempts LPG taxis from the requirement to be equipped with an on-board diagnostic system.

3. Under section 25 of the Road Traffic Ordinance (Cap. 374), the Commissioner for Transport may refuse to license a motor vehicle if the vehicle or any equipment thereof does not comply with any requirement imposed by regulations made under section 43(1) of the Air Pollution Control Ordinance (Cap. 311) in relation to the prohibition or control of the emission of air pollutants from motor vehicles. Since August 2000, exemption is being granted to LPG taxis by the Environmental Protection Department as a temporary administrative arrangement to facilitate the registration of LPG taxis under the Road Traffic Ordinance.

4. According to the Brief, the Administration believes that the changes introduced will not disrupt the operation of the taxi trade because no diesel taxis have been imported and registered in Hong Kong since March 2000. The existing LPG taxi models also conform to the proposed emission standards.

5. L.N. 102 :

- (a) imposes more stringent vehicle design standards to the emission of air pollutants on certain goods vehicles, light buses and buses having a design weight of more than 3.5 tonnes and first registered on or after 1 October 2001, except light buses equipped with a compression-ignition engine and having a design weight of more than 3.5 tonnes but not more than 4 tonnes;
- (b) imposes more stringent vehicle design standards to the emission of air pollutants on certain private cars, taxis, goods vehicles and light buses having a design weight of not more than 3.5 tonnes and first registered on or after 1 January 2002;
- (c) requires certain motor vehicles equipped with a positive-ignition engine, having a design weight of not more than 3.5 tonnes and first registered on or after 1 January 2002, to install an on-board diagnostic system.

6. Those provisions of L.N. 102 giving effect to the policy in paragraph (a) will come into operation on 1 October 2001 and the remaining provisions, on 1 January 2002. According to the Brief, the more stringent vehicle design standards to the emission of air pollutants are Euro III emission standards, and where appropriate, comparable Japanese and American standards. Newly registered diesel light buses between 3.5 and 4 tonnes are exempted from complying with the new standards pending the Administration's decision on the proposal of introducing alternative-fuel light buses. Detailed reasons are set out in paragraph 4 of Annex B to the LegCo Brief.

7. An information paper has been issued to Members of the LegCo Panel on Environmental Affairs in May 2001. The Legal Service Division is still scrutinizing the two Amendment Regulations and will make a further report to Members should there be technical difficulties.

Air Pollution Control Ordinance (Cap. 311)
Air Pollution Control (Dry-Cleaning Machines) (Vapour Recovery) Regulation (L.N. 103)

8. The Regulation introduces requirements for dry-cleaning machines to reduce the amount of perchloroethylene-laden vapour being vented to the air from these machines. The Regulation prohibits the sale, lease or use of certain dry-cleaning machines and provides penal provisions for contravention. In effect, only the following dry-cleaning machines may be used :

- (a) a machine approved by the Air Pollution Control Authority;
- (b) a vented type dry-cleaning machine within 5 years immediately following the commencement of the Regulation;
- (c) a non-vented dry-cleaning machine within 7 years immediately following the commencement of the Regulation, and after that period if it meets certain prescribed requirements.

9. The Regulation will come into operation on 1 November 2001. After the grace period expires, a competent examiner would sign a certificate in respect of an existing non-vented dry-cleaning machine and register it with the Air Pollution Control Authority together with a test report issued by an accredited laboratory. The certificate, endorsed by the Authority, is required to be displayed in a conspicuous position on that machine. The Regulation specifies the procedures for testing perchloroethylene concentration that an accredited laboratory has to follow. It also requires the Authority to keep a register of the model of approved non-vented dry-cleaning machines for inspection by the public.

10. Members may refer to LegCo Brief File Ref.: EFB 9/55/01/122(2001) Pt 5 issued by the Environment and Food Bureau in May 2001 for background information. The LegCo Panel on Environmental Affairs has discussed the Regulation at the meeting on 2 January 2001. A report on the modification, compliance checking and surveys of existing dry-cleaning machines prepared by the Hong Kong Productivity Council and a summary of overseas health reports on perchloroethylene are circulated to Panel Members after that meeting.

11. The Legal Service Division is still scrutinizing the Regulation and will make a further report to Members should there be technical difficulties.

Part II Merchant Shipping (Legal Notices No. 104 to 110)

Merchant Shipping (Seafarers) Ordinance (Cap. 478)

Merchant Shipping (Seafarers) (Ro-Ro Passenger Ships—Training) (Amendment) Regulation 2001 (L.N. 104)

Merchant Shipping (Seafarers) (Passenger Ships other than Ro-Ro Passenger Ships—Training) Regulation (L.N. 105)

12. The purposes of L.N. 104 are :
- (a) to extend the application of the Merchant Shipping (Seafarers) (Ro-Ro Passenger Ships-Training) Regulation (Cap. 478 sub. Leg.) ("the Regulation") to ro-ro passenger ships (defined in the Regulation as a passenger ship provided with cargo or vehicle spaces in which cargo or vehicles can be loaded or unloaded in a horizontal direction) which are not Hong Kong ships while they are within the waters of Hong Kong;
 - (b) to amend the Regulation so that seafarers (except masters) of ro-ro passenger ships can either undertake refresher training or provide evidence of having achieved the required standard of competence in order to satisfy the training requirements of seafarers; and
 - (c) to give effect in part to the 1997 amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 which came into operation on 1 January 1999.
13. L.N. 105 is a new Regulation. It applies to all passenger ships, other than ro-ro passenger ships, which are Hong Kong ships engaged on international voyages or which are not Hong Kong ships but are within the waters of Hong Kong (section 3). The provisions in this Regulation mainly model on the Regulation for ro-ro passenger ships.
14. The combined effect of these two Regulations is that seafarers on passenger ships (irrespective of whether it is a ro-ro passenger ship or not) will have to meet the specified training and qualification requirements in the Regulations. It is an offence for an employer or master of a passenger ship to permit an unqualified seafarer to be assigned any duties on board.

Merchant Shipping (Safety) Ordinance (Cap. 369)

Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built Before 1 September 1984) (Amendment) Regulation 2001 (L.N. 106)

Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built on or After 1 September 1984) (Amendment) Regulation 2001 (L.N. 107)

Merchant Shipping (Safety) (Passenger Ship Construction) (Ships Built Before 1 September 1984) (Amendment) Regulation 2001 (L.N. 108)

Merchant Shipping (Safety) (Passenger Ship Construction and Survey) (Ships Built on or After 1 September 1984) (Amendment) Regulation 2001 (L.N. 109)

15. The amendments proposed in these four Amendment Regulations aim to improve visibility from the navigation bridge of cargo ships and passenger ships built before and after 1 September 1984 to conform with the new provisions of the International Convention for the Safety of Life at Sea, 1974. Opportunity is also taken to make some minor technical amendments to the relevant existing Regulations.

Merchant Shipping (Safety) Ordinance (Cap. 369)

Merchant Shipping (Safety) (Musters and Training) (Amendment) Regulation 2001 (L.N. 110)

16. The main purpose of this Amendment Regulation is to give effect to the amendments adopted by the International Convention for the Safety of Life at Sea 1974. It makes new provisions or amends provisions concerning musters, abandon ship drills, fire drills and on-board training. Opportunity is also taken to make some minor technical amendments to this Regulation.

17. All the above Regulations (L.N. 104 to L.N. 110) will come into operation on 13 July 2001. No LegCo Brief has been issued on these Regulations. For details and background information, members may refer to an information paper (CB(1)460/00-01(07)) issued by the Economic Services Bureau to the Panel on Economic Services for its meeting on 16 January 2001. A copy of the information paper is at **Annex A**. During the Panel meeting, the Administration informed the members that it had consulted the Shipping Consultative Committee which comprised representatives of both ship owners and shipping personnel on the legislative proposals. The Chairman of the Panel concluded that members supported in principle these proposals. (Members may refer to the minutes of that meeting - Paper No. (CB(1)628/00-01) for details) .

18. The Legal Service Division is still scrutinizing the above subsidiary legislation on this Part and will make a further report if there are legal and drafting problems.

Part III Freight Containers (Legal Notices No. 111 to 114)

Freight Containers (Safety) Ordinance (Cap. 506)

Freight Containers (Safety) (Applications for Approval of Containers) Regulation (L.N. 111)

+ Freight Containers (Safety) (Fees) Regulation (L.N. 112)

Freight Containers (Safety) (Arrangements for Authorized Persons) Order (L.N. 113)

Freight Containers (Safety) (Examination Procedure) Order (L.N. 114)

19. L.N. 111 to L.N. 114 are made under the Freight Containers (Safety) Ordinance (Cap. 506) ("the principal Ordinance"), which was passed by the former Legislative Council on 23 April 1997. The principal Ordinance establishes a regime to ensure the structural safety of containers used for the transport of cargo in Hong Kong and puts in place laws that will enable the implementation of the requirements in relation to containers provided under the International Convention to Safe Containers 1972 ("the Convention"). The Convention was drawn up under the aegis of the International Maritime Organisation to standardize requirements for the testing, inspection and approval of containers and to prescribe procedures for their maintenance, examination and control. The principal Ordinance has not yet been brought into operation pending the making of subsidiary legislation necessary for the implementation of the Convention and the container safety regime.

20. The Administration has now made the necessary subsidiary legislation published as L.N. 111 to L.N. 114. L.N. 111 provides for matters concerning applications for approval of containers, including the procedures for application for approval of an individual new container, a modified container, a container design type and a modified design type, and duties of an applicant to whom approval has been granted.

21. L.N. 112 specifies the fee payable for an application for approval of a proposed examination procedure in relation to a container to be \$5,500. The Director of Marine may approve an examination procedure if he considers it would be effective in determining whether the container has any defect which would result in prejudice to the health or safety of any person. According to the Administration, the proposed \$5,500 is set to recover the full cost of providing the service of assessment of the examination procedure of a particular container design irrespective of the number of containers concerned. Once a design is approved, containers manufactured in accordance with the same design would not need to go through an examination procedure again.

22. L.N. 113 prescribes the arrangements in relation to the appointment of authorized persons to determine applications for the issue of approval in respect of individual containers and container design types. It sets out the conditions of eligibility for appointment as an authorized person, functions of an authorized person, records to be maintained by an authorized person and the circumstances under which the Director of Marine may revoke the appointment of an authorized person.

+ Introduction of a new fee

23. L.N. 114 provides for the details of the examination procedure for containers in accordance with an examination procedure approved by the Director of Marine. Such details include the frequency of examination, requirement for a competent person (defined as a person who has sufficient knowledge and experience of the structure of containers) to carry out the examination, manner of carrying out the examination, factors to be considered during the examination and duties of a competent person after completing an examination.

24. The above 4 items of subsidiary legislation will come into operation on a day to be appointed by the Secretary for Economic Services by notice published in the Gazette.

25. No LegCo Brief has been issued on the above subsidiary legislation. Members may refer to an information paper (LC Paper CB(1)320/00-01(04)) issued by the Economic Services Bureau in December 2000 for the meeting of the LegCo Panel on Economic Services on 19 December 2000. A copy of the information paper is at **Annex B**. According to the information paper, the shipping industry has been consulted and they have no objection to the proposals in the above subsidiary legislation. At the Panel meeting, a member queried the proposed fee of \$5,500 for giving approval for an examination procedure. The Administration has since provided the cost computation which is at **Annex C**.

26. We are seeking clarification from the Administration on certain technical matters. A further report will be issued if there are technical difficulties.

Part IV Telecommunications (Legal Notices No. 115 and 116)

**Telecommunications Ordinance (Cap. 106)
Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation (L.N. 115)**

Telecommunications (Designation of Frequency Bands Subject to Payment of Spectrum Utilization Fee) Order (L.N. 116)

27. The Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation ("the Regulation") and the Telecommunications (Designation of Frequency Bands Subject to Payment of Spectrum Utilization Fee) Order ("the Order") are made under section 32I(1) and (2) of the Telecommunications Ordinance, as amended by the Telecommunications (Amendment) Ordinance 2001 passed by the legislative Council on 16 May 2001. The Regulation provides for matters relating to the licensing of third generation mobile services ("3G"). Four sets of frequency bands have been designated as the frequency bands for 3G mobile services and these frequency bands are set out in the Order.

28. The Regulation prescribes auction as the method for determining the spectrum utilization fees to be paid for the frequency bands designated by the Order. A main auction will be held when there are more than four bidders to determine the annual royalty-based spectrum utilization fee to be paid by the successful bidders. All the successful bidders will be subject to the same royalty percentage, which will be or near the highest price willing to be paid by the weakest successful licensee ("the fourth leaver rule"). If there are four bidders or less, there will not be any main auction and the spectrum will be allocated at the reserve price set by the Secretary for Information Technology and Broadcasting.

29. The Regulation also prescribes two cash auctions to remove connected bidders among the successful bidders and to determine the respective priority rights of the successful bidders in relation to the allocation of the four sets of frequency bands respectively.

30. Both the Regulation and the Order will come into operation on 4 July 2001. Members may refer to the LegCo Brief (Ref.: ITBB CR 7/23/10(01) Pt. 17) dated 31 May 2001 issued by the Information Technology and Broadcasting Bureau for background information.

31. Members may wish to note that a Subcommittee has been formed to examine the drafts of the Regulation and the Order. The Subcommittee has met with the industry and considered the proposed auction design and process. Members of the Subcommittee have also expressed their views on the fourth leaver rule proposed by the Government. While one member finds the fourth leaver rule acceptable, the majority of members have expressed support for the rule whereby the royalty percentage for 3G licences would be determined by the current bid offered by the last fourth bidder when the fifth bidder withdraws from the auction ("the fifth leaver rule"). The Administration is considering whether it would amend the Regulation in the light of the majority view of the Subcommittee on the fifth leaver rule. Subject to Members' views, the Subcommittee will proceed to examine the Regulation and Order now gazetted.

Part V **Intellectual Property (Legal Notices No. 119, 126 and 127)**

*** Prevention of Copyright Piracy Ordinance (Cap. 544)**
Prevention of Copyright Piracy Ordinance (Amendment of Schedule 2) Order
2001 (L.N. 119)

32. Under section 39 of the Prevention of Copyright Piracy Ordinance (Cap. 544), the Secretary for Commerce and Industry may amend the Schedule to the

* Decrease of fee

Ordinance. This Order amends Schedule 2 to the Ordinance to reduce the fee payable for an application for renewal of a licence for manufacturing optical discs from \$5,500 to \$1,270 (a reduction of more than 75%). The cost computation is on a full cost recovery basis. The new fee will take effect from 13 July 2001.

33. Members may refer to LegCo Brief (Ref.: CIB 03/39/2) issued by Commerce and Industry Bureau in May 2001 for background information.

Copyright Ordinance (Cap. 528)

Registration of Copyright Licensing Bodies Regulation (L.N. 126)

Copyright Ordinance (Cap. 528) (Commencement) Notice 2001 (L.N. 127)

34. The Copyright Ordinance (Cap. 528) (the Ordinance) was enacted on 27 June 1997. Sections 145 to 149 and paragraph 5 of Schedule 4 of the Ordinance are not yet in operation. These provisions relate to the registration of copyright licensing bodies. The Director of Intellectual Property is the Registrar of Copyright Licensing Bodies and he is required to maintain a register of these bodies (section 146). By the Commencement Notice (L.N. 127), the Secretary for Commerce and Industry appoints 13 July 2001 as the day on which these provisions are to come into operation.

35. Under section 152 of the Ordinance, the Secretary for Commerce and Industry may by regulation prescribe the fees for the application for registration and for renewal of registration of copyright licensing bodies. By L.N. 126, the Secretary specifies that the fee for the application for registration as a copyright licensing body is \$1,895 and the annual renewal fee is \$950. The proposed fees are set in accordance with the full-cost recovery principle. The Regulation will also commence on 13 July 2001.

36. The draft Regulation was submitted to the Panel on Commerce and Industry on 9 April 2001. Members raised various concerns. These include whether there should be a compulsory registration scheme instead of a voluntary one, the number of complaint cases lodged to the Copyright Tribunal involving royalty charges imposed by the licensing bodies, and the role of the Copyright Tribunal. Members may refer to the minutes of that meeting (CB(1) 1433/00-01) for details.

37. For background information, members may refer to the LegCo Brief (File Ref.: CIB 07/09/5/2) issued by the Commerce and Industry Bureau in May 2001.

38. The Legal Service Division is seeking clarification from the Administration on certain legal and drafting aspects. A further report will be issued if there are technical difficulties.

Part VI **Rules made by the Securities and Futures Commission**
(Legal Notices No. 120 and 121)

Commodities Trading Ordinance (Cap. 250)
Commodities Trading (Trading Limits and Position Limits) (Amendment) (No. 3)
Rules 2001 (L.N. 120)

39. These Amendment Rules are made by the Securities and Futures Commission under section 59 of the Commodities Trading Ordinance (Cap. 250). The Rules amend the Schedule to the Commodities Trading (Trading Limits and Position Limits) (Rules) (Cap. 250 sub. leg.) by repealing three existing stock futures contracts, increasing the trading and position limits of 21 existing stock futures contracts and adding 23 new stock futures contracts. Trading or holding a position in those futures contracts set out in the Schedule in excess of the limits specified therein is an offence under the Ordinance and the maximum penalty for such offence is a fine of \$10,000 and imprisonment for 6 months.

40. Members may refer to LegCo Brief (without file reference) issued by the Securities and Futures Commission on 1 June 2001 for background information. According to the Brief, the Amendment Rules are made as a result of standardization of contract specifications and selection criteria. The repeal of the existing stock futures contracts should not give rise to any cause for concern regarding disposal of investors' existing positions as trading in these contracts have not yet commenced.

41. The Amendment Rules will come into operation on 13 July 2001. The legal and drafting aspects of these Rules are in order.

Securities Ordinance (Cap. 333)
Securities (Exchange—Traded Stock Options) (Amendment) Rules 2001
(L.N. 121)

42. These Amendment Rules are made by the Securities and Futures Commission under section 146(1)(p) of the Securities Ordinance (Cap.333). The Rules amend the Schedule to the Securities (Exchange-Traded Stock Options) Rules (Cap. 333 sub. leg.) by repealing 19 existing stock options classes and adding 10 new stock options classes. The Schedule prescribes limits on the number of stock options contracts traded on the Unified Exchange that may be held or controlled by any person.

43. Members may refer to LegCo Brief (without file reference) issued by the Securities and Futures Commission on 1 June 2001 for background information. According to the Brief, the Amendment Rules are made as a result of consolidation of the two sets of criteria for selecting underlying stocks for stock futures contracts and stock options contracts. The repeal of the stock options classes should not give rise to any cause for concern regarding disposal of investors' existing positions as trading in these contracts have not yet commenced.

50. The new TM would apply to the existing designated areas when it comes into operation. It would apply to the new designated areas when the Notice takes effect on 1 December 2001. Since the control procedures detailed in the new TM remain the same, no legal consequences would follow as a result of the different commencement dates for the new TM and the Notice.

51. The LegCo Panel on Environmental Affairs has discussed the Notice at its meeting on 8 May 2001. The legal and drafting aspects of the Notice and the new TM are in order.

Part VIII **Others (Legal Notices No. 117, 118, 122, 124 and 125)**

Fire Safety (Commercial Premises) Ordinance (Cap. 502)

**Fire Safety (Commercial Premises) Ordinance (Amendment of Schedule 4)
Order 2001 (L.N. 117)**

52. The purpose of this Order is to extend the application of the Fire Safety (Commercial Premises) Ordinance (Cap. 502) ("the Ordinance") to commercial buildings the plans of the building works of which were first submitted to the Buildings Authority for approval on or before 1 March 1987, or which were constructed on or before 1 March 1987. "Commercial building" is defined in the Ordinance to mean the whole of a non-domestic building which contains any number of units therein comprising one or more levels including basements or underground parking areas, and which was constructed to be used or is being used for the purposes of an office, business, trade or any entertainment. However, the whole of a non-domestic building constructed to be used or being used exclusively for specific purposes, such as hotel, school, cinema, etc. and a building which was partly constructed to be used or is being partly used for domestic or industrial purposes are not regarded as commercial buildings for the purposes of the Ordinance.

53. The Order represents the implementation of the second phase of the fire safety improvement programme to cover pre-1987 commercial buildings. The first phase of the improvement programme, which covers pre-1973 commercial buildings, started on 1 June 1998. The effect of this Order is that owners and occupiers of pre-1987 commercial buildings are required to comply with certain fire safety measures specified in the Ordinance and the relevant enforcement authority may serve on the owner or occupier of such buildings a fire safety improvement direction. Failure to comply with a fire safety improvement direction without reasonable excuse is an offence punishable by a fine at level 4 (\$25,000) and a daily fine of \$2,500 during which the failure continues.

54. Members may refer to LegCo Brief (Ref.: SBCR 3/2361/97 Pt.5) issued by the Security Bureau in May 2001 for background information.

55. This Order will come into operation on 1 October 2001. The legal and drafting aspects of the Order are in order.

Import and Export (General) Regulations (Cap. 60 sub. leg.)
Import and Export (General) Regulations (Amendment of Fourth Schedule)
Order 2001 (L.N. 118)

56. This Order amends the Fourth Schedule to the Import and Export (General) Regulations (Cap. 60 sub. leg.) to reflect the current value limit and the stamping requirements for quota-free textiles samples exported to the United States of America ("the US"). The effect of this Order is that textiles samples of Hong Kong origin which comply with the revised value limit and stamping requirements may be exported to the US by a registered textiles trader without an export licence.

57. Members may refer to LegCo Brief (Ref.: CIB 14/46/12/1) dated 1 June 2001 issued by the Commerce and Industry Bureau for background information.

58. This Order will come into operation on 23 July 2001. The legal and drafting aspects of the Order are in order.

Dogs and Cats Ordinance (Cap. 167)
Dangerous Dogs Regulation (Exemption) Notice (L.N. 122)

59. Section 9(1) of the Dangerous Dogs Regulation (Cap. 167 sub. leg.) prohibits a person to cause, suffer or permit a large dog (a dog having body weight of 20 kg or above) to enter or remain in a public place unless it is securely held on a leash or tied to a fixed object on a leash.

60. The purpose of this Notice is to exempt the person from such requirements subject to compliance with specified conditions. Mainly, the large dog must have passed an examination as to its temperament and obedience conducted by or on behalf of the Director of Agriculture, Fisheries and Conservation. The medal issued by the Director signifying passing of the examination must be attached to the dog's collar or harness, and the person is at all times present within such distance from the dog that it is reasonably practicable for the person to readily bring the dog under his control.

61. In making an exemption, the Director must be satisfied that public and animal safety will not be endangered by such exemption. Under section 17 of the Dogs and Cats Ordinance, a person who contravenes a condition in the Notice commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 3 months. The Notice also empowers an officer authorized by the Director to serve on the keeper of the large dog a notice that the exemption ceases to apply if a person contravenes any condition specified.

62. The legal and drafting aspects of the Notice are in order.

**Tax Reserve Certificates (Fourth Series) Rules (Cap. 289 sub. leg.)
Tax Reserve Certificates (Rate of Interest) (No. 6) Notice 2001 (L.N. 124)**

63. This Notice fixes at 2.5750% per annum the rate of interest payable on tax reserve certificates issued on or after 4 June 2001. The legal and drafting aspects of the Notice are in order.

**University of Hong Kong (Amendment) (No. 2) Statutes 2001
Statutes of the University of Hong Kong (Amendment) (No. 2) Statutes 2001
(L.N. 125)**

64. The Statutes of the University of Hong Kong contained in the Schedule to the University of Hong Kong Ordinance (Cap. 1053) is amended (a) to allow the University to confer or award certain new degrees and academic distinctions, and (b) to change the Chinese title of the Dean of Student Affairs. The legal and drafting aspects of the Amendment Statutes are in order.

Encl

Prepared by

Wong Sze-man, Bernice (Legal Notices No. 101 to 103 and 120 to 125)

Ho Ying-chu, Anita (Legal Notices No. 104 to 110, 119, 126 and 127)

Fung Sau-kuen, Connie (Legal Notices No. 111 to 118)

Assistant Legal Advisers

Legislative Council Secretariat

7 June 2001

LS/S/32/00-01

For discussion

**Legislative Council Panel on Economic Services
Meeting on 16 January 2001**

Legislative Proposals to Promote International Maritime Safety

INTRODUCTION

This paper consult Members on the following legislative proposals to promote international maritime safety –

- (a) Amendments to subsidiary legislation under the Merchant Shipping (Safety) Ordinance, Cap. 369;
- (b) A new subsidiary legislation and amendments to the existing subsidiary legislation under the Merchant Shipping (Seafarers) Ordinance, Cap 478; and
- (c) A new subsidiary legislation, namely Merchant Shipping (Port State Control) Regulation, to be made under the Merchant Shipping (Safety) Ordinance, Cap 369; Merchant Shipping (Seafarers) Ordinance, Cap 478 and Merchant Shipping (Prevention and Control of Pollution) Ordinance, Cap 413.

(A) Amendments to subsidiary legislation under the Merchant Shipping Safety Ordinance, Cap 369

2. The International Maritime Organisation (IMO) is the specialised agency under the United Nations responsible for improving maritime safety and preventing pollution from ships. It was first established in 1948 as the Inter-Governmental Maritime Consultative Organisation, with the adoption of its present name in 1982 when the above Convention was amended. The Central People's Government of the People's Republic of China is among the 158 Member States of the IMO while Hong Kong, China is an Associate Member.

3. Safety standards prescribed by the IMO are set out in international conventions. The International Convention for the Safety of Life at Sea ("SOLAS") is generally regarded as the most important of all international treaties concerning the safety of merchant ships. Its major objective is to specify minimum safety standards for the construction, equipment and operation of ships. Flag states are responsible for ensuring that ships under their flag comply with these requirements. A number of certificates are prescribed in SOLAS as proof that this has been done. Contracting governments are empowered under control provisions in SOLAS to inspect ships of other Contracting States if there are clear grounds for believing that the ship and its equipment do not substantially comply with the SOLAS requirements.

4. The provisions in SOLAS are implemented through the Merchant Shipping (Safety) Ordinance, Cap 369 in Hong Kong. The legislative proposals we seek to introduce are to implement the 1994 amendments to Chapter V of SOLAS concerning safety of navigation, 1995 and 1996 amendments to Chapter III concerning life-saving appliances and arrangements, and 1996 amendments to Chapter II concerning construction safety. Although the IMO adopted the 1994 amendment, the IMO had to wait for at least 50% of its member countries to endorse the amendment. During such time, there were other suggested amendments. It was not until late 1998 that member countries endorsed all the amendment proposal. These amendments are technical in nature.

(B) Subsidiary legislation under the Merchant Shipping (Seafarers) Ordinance, Cap 478

5. Another convention promulgated by the IMO is the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers adopted by the IMO in 1978 ("STCW") which establishes the basic requirements on training, certification and watchkeeping for seafarers at the international level. STCW is implemented in Hong Kong through the Merchant Shipping (Seafarers) Ordinance, Cap 478 and its subsidiary legislation.

6. In June 1997, the IMO adopted amendments to Chapter V of STCW concerning training and qualification requirements for personnel on tankers, ro-ro passenger ships and passenger ships other than ro-ro passenger ships. We seek to implement these amendments through

domestic legislation by means of a new **Merchant Shipping (Seafarers) (Passenger Ships other than Ro-Ro Passenger Ships Training) Regulation** and amendments to the **Merchant Shipping (Seafarers) (Ro-Ro Passenger Ships Training) Regulation** as proposed.

(C) **Merchant Shipping (Port State Control) Regulation**

7. Some requirements on port state control inspection are promulgated by IMO Conventions including SOLAS, the International Convention on Load Line (“LL”), STCW, and the International Convention for the Prevention of Pollution from Ships (“MARPOL”). The first two conventions are implemented domestically through the Merchant Shipping (Safety) Ordinance, Cap. 369; and STCW and MARPOL are implemented through the Merchant Shipping (Seafarers) Ordinance, Cap. 478 and Merchant Shipping (Prevention of Oil Pollution) Ordinance, Cap. 413 respectively. In 1994, SOLAS and MARPOL were amended to introduce new port state control requirements relating to ship safety and pollution prevention respectively. The amendments have not yet been reflected in the laws of Hong Kong.

8. In addition to the IMO Conventions, Hong Kong has the responsibility to implement port state control requirements under the Memorandum of Understanding on Port State Control in the Asia Pacific Region (“Tokyo MOU”), a regional agreement adopted by signatory parties including Hong Kong and Mainland China. We however have not yet implemented the provisions therein in our domestic law.

9. To update the domestic legislations to the latest requirement under the amended SOLAS and MARPOL and to adopt provisions under the Tokyo MOU, we propose to make a new **Merchant Shipping (Port State Control) Regulation** under the Merchant Shipping (Safety) Ordinance, Cap 369; Merchant Shipping (Seafarers) Ordinance, Cap 478 and Merchant Shipping (Prevention and Control of Pollution) Ordinance, Cap 413. The new regulation will supplement these Ordinances for the implementation of port state control requirements under the IMO conventions and the Tokyo MOU.

10. A summary of the above legislative proposals is set out in the table at **Annex**.

CONSULTATION

11. We have consulted the shipping industry through the Shipping Consultative Committee on the legislative proposals. The industry has no objection to the proposals.

IMPLEMENTATION

12. We plan to introduce into the Legislative Council the proposal in paragraph 1(a) above in March 2001, and the proposals in paragraphs 1(b) and 1(c) above in May 2001.

Economic Service Bureau
PMB 72/70/93 Pt.12
January 2001

**Summary of Legislative Proposals to
Promote International Maritime Safety**

(A) Amendments to subsidiary legislation under the Merchant Shipping (Safety) Ordinance, Cap 369

Major purpose : To give effect to the 1994 amendments to Chapter V of SOLAS concerning safety of navigation, 1995 and 1996 amendments to Chapter III on life-saving appliances and arrangements and 1996 amendments to Chapter II concerning construction safety.

Amendments :

- (a) To include details of public address system, and procedures for locating and rescuing passengers trapped in staterooms;
- (b) To include the requirements for audibility of general emergency alarm on passenger ships and for automatic turn-off of entertainment sound systems when the general emergency alarm system is activated;
- (c) To include requirements for drills on passenger ships, for the crew to be familiar with his duties during emergencies before a voyage begins, items to be included in ship abandon and fire drills, and arrangements for launching free-fall lift boat; and
- (d) To include requirements for drills as necessary for the personnel involved in marine evacuation systems.

(B) Subsidiary legislation under the Merchant Shipping (Seafarers) Ordinance, Cap. 478

Major purpose : To give effect to the 1997 amendments to Chapter V of STCW concerning training and qualification requirements for personnel on ro-ro passenger ships and other passenger ships.

(a) Provisions under the new Merchant Shipping (Seafarers) (Passenger Ships other than Ro-Ro Passenger Ships Training) Regulation

- (i) Training for seafarers including masters, officers, chief masters, engineer officers and other personnel to be appropriate to their capacities and the duties and responsibilities assigned to them; and
- (ii) Duty of an employer and master to ensure that a seafarer has satisfactorily completed the training and to obtain from provider of the training documentary evidence on the seafarer's completion of the training.

(b) Amendments to the Merchant Shipping (Seafarers) (Ro-Ro Passenger Ships Training) Regulation

To allow seafarers of ro-ro passenger ships to, besides undertaking refresher training, provide evidence that they have achieved the required standard of competence to satisfy the training requirements of seafarers.

(C) Merchant Shipping (Port State Control) Regulation

Major purpose : To supplement provisions in the Merchant Shipping (Safety) Ordinance, Cap. 369, Merchant Shipping (Seafarers) Ordinance, Cap. 478 and Merchant Shipping (Prevention and Control of Pollution) Ordinance, Cap. 413 for the implementation of port state control under IMO Conventions and the Tokyo MOU.

Major provisions :

- (a) ships to which the Regulation applies;
- (b) appointment of port state control surveyors by the Director of Marine;
- (c) inspection procedure and circumstances for more detailed inspection to be carried out by surveyors;

- (d) power of the Director of Marine to issue instructions to surveyors;
- (e) circumstances and arrangements for detention of ships, stoppage of operation, suspension of ship inspections and denial of entry of ships to Hong Kong waters; and
- (f) right of appeal and compensation in respect of a detention order.

For information

**Legislative Council Panel on Economic Services
Meeting on 19 December 2000**

**Legislative Proposals to Streamline Ship Registration and Improve
Freight Container Handling, Stacking and Transportation Safety**

INTRODUCTION

This paper informs Members of –

- (a) Proposals in the Merchant Shipping (Registration) (Amendment) Bill (the "amendment bill") and the Merchant Shipping (Registration) (Fees and Charges) (Amendment) Regulation (the "amendment regulation") which seek to streamline the ship registration process. We plan to introduce the amendments into Legislative Council on 14 March 2001; and
- (b) Proposals in the subsidiary legislation made under the Freight Containers (Safety) Ordinance which seek to improve the safety of freight handling, stacking and transportation. We plan to introduce the amendments into Legislative Council in January 2001.

**(A) Merchant Shipping (Registration) (Amendment) Bill and
Merchant Shipping (Registration) (Fees and Charges)
(Amendment) Regulation**

2. Since April 1999, a number of improvement measures have been introduced to enhance the attractiveness of the Hong Kong Shipping Register (HKSR). These measures included simplifying the fee structure and reducing fees for ship registration and other related services,

streamlining registration procedures to make the HKSR more attractive and user-friendly, and implementing the Flag State Quality Control (FSQC) system to replace the previous mandatory flag state survey. Along with the introduction of these improvement measures, an ambitious promotional programme, including promotional visits to leading shipping companies in Hong Kong, Mainland China and other countries, was launched to market the HKSR to the industry simultaneously. These efforts have collectively resulted in rapid growth of the fleet registered in the HKSR over the past 18 months, reaching 10 million gross registered tonnage (GRT) on 18 October 2000. This has been achieved one and a half years earlier than the target date of April 2002 stated by the Financial Secretary in his 1999/2000 budget speech. An event to commemorate this achievement, to be officiated by the Chief Executive, is scheduled to be held in early January 2001.

3. The proposals under the amendment bill are technical in nature. They seek to further streamline the registration process for ships registering under the HKSR. Copies of title documents (i.e. sale certificate or bill of sale) would be made acceptable for provisional ship registration. This will resolve the existing difficulties caused by the requirement for original documents. Such requirement often delays processing of ship registration since delivery of the original documents from the place of ship sale overseas (Europe and North America in most cases) to Hong Kong can take several days, thus slowing down the registration process and affecting the commercial activity of the ship concerned.

4. The acceptance of copies of title documents for provisional registration will require consequential changes to the ship registration process –

- ◆ New requirement for confirmation by the ship mortgagee that he is aware that copy instead of original document has been used for the provisional registration;
- ◆ Reduction of the period of provisional registration from three months to one month, after reviewing the usual time lag between initial registration and availability of the original title documents; and
- ◆ Reduction of the annual tonnage charge for ships provisionally registered from 1/4 to 1/12 of the annual tonnage charge

(which is \$1 500 for a 1 000 net registered tons (NRT) ship or for the first 1 000 NRT of a ship. The charge is \$3.5 for each additional NRT over 1 000 up to 15 000 and \$3 for each additional NRT over 15 000, subject to a maximum charge of \$100 000) in the Schedule to the Merchant Shipping (Fees and Charges) Regulation, which is proportional to the scope of reduction in the provisional registration period.

Consultation

5. The proposals in the amendment bill originate from the shipping industry. The Shipping Consultative Committee has been consulted. The industry supports the proposals.

Implementation

6. We plan to introduce the amendment bill and the amendment regulation into Legislative Council on 14 March 2001. Subject to scrutiny and passage by Members, the amendment bill and amendment regulation will be implemented in mid-2001.

(B) Subsidiary legislation under the Freight Container (Safety) Ordinance

7. The International Convention to Safe Containers 1972 (the Convention) was drawn up under the aegis of the International Maritime Organisation (IMO) to standardise requirements for the testing, inspection and approval of containers; and to prescribe procedures for their maintenance, examination and control so as to ensure safety in their handling, stacking and transportation. To implement the Convention in Hong Kong, the Freight Container (Safety) Ordinance ("the Ordinance") was enacted on 23 April 1997. Further regulations/orders are required to implement the Ordinance. This will be achieved by the subsidiary legislation we propose to introduce in January 2001 -

(a) Freight Containers (Safety) (Arrangements for Authorised Persons) Order

8. Sections 4-7 of the Ordinance specify that a container in use should have a valid approval issued by or under the authority of a foreign government which has acceded to the Convention, or by the Director of

Marine or a person appointed by the Director of Marine for that purpose. This Order sets out the details concerning this appointed person. It lays down the conditions under which a person is eligible for appointment as an authorised person, functions of an authorised person, records to be maintained by an authorised person and conditions under which appointment of an authorised person would be revoked. The person is normally a full member of the International Association of Classification Societies.¹

(b) Freight Containers (Safety) (Examination Procedure) Order

9. Section 4 of the Ordinance stipulates that a container in use should meet the examination requirements of Section 12 in accordance with an examination procedure approved by the Director of Marine. This Order sets out the details of the examination procedure to satisfy the requirements, including the frequency of examination, requirement for a competent person to carry out the examination, manner of carrying out the examination, factors to be considered during and procedure of an examination, duties of a competent person after completing an examination, criteria for setting the date of the next examination, procedure to follow when a container is found to be defective, and requirements for keeping record of an examination by a container owner.

(c) Freight Container (Safety) (Applications for Approval of Containers) Regulation

10. This regulation sets out the provisions concerning applications for approval of containers, including details for approval of an individual new container, a modified container, a design type and a modified design type; and duties of an applicant to whom an approval has been granted.

¹ Classification societies have dual function with regard to safety at sea. They set standards by issuing rules and guidance notes stipulating technical requirements for ship and other maritime-related equipment including freight containers, and perform surveys and inspections on ships to ensure that the ship and the equipment on board comply with the respective rules as well as requirements under relevant international conventions. The following seven classification societies are presently authorised to carry out statutory surveys for Hong Kong registered ships -

- (1) American Bureau of Shipping;
- (2) Bureau Veritas;
- (3) China Classification Society;
- (4) Det Norske Veritas;
- (5) Germanischer Lloyd;
- (6) Lloyd's Register of Shipping; and
- (7) Nippon Kaiji Kyokai.

(d) Freight Container (Safety) (Fees) Regulation

11. This regulation specifies the new fee to be paid by an applicant for approval of an examination procedure. The proposed fee of \$5,500 is set to recover the full cost of providing the service.

Consultation

12. The shipping industry including shipping lines, freight forwarders, leasing companies, storage depot operators, terminal operators and stevedore companies have been consulted. They have no objection to the proposals in the orders / regulations.

Implementation

13. We plan to gazette the orders / regulations and table them to Legislative Council in January 2001.

Economic Services Bureau
December 2000

COST COMPUTATION

Marine Department

FREIGHT CONTAINERS (SAFETY) (FEES) REGULATION

**(Made under section 27(2)(i) of the Freight Containers (Safety) Ordinance
(Cap. 506)**

**Prescribed fee for an application for approval of a proposed examination
procedure in relation to a container under section 13 of the Ordinance**

**Cost at 2000-01 Price Level
(for processing one application)**

	\$
Staff Cost	5,045
Departmental Expenses	54
Accommodation Costs	163
Central Administrative Overheads	<u>240</u>
Total Cost	<u>5,502</u>
Proposed Fee (\$)	<u>5,500</u>