

立法會

Legislative Council

LC Paper No. LS 163/00-01

Paper for the House Committee Meeting of the Legislative Council on 5 October 2001

Legal Service Division Reports on Subsidiary Legislation tabled in the Legislative Council on 11 July 2001 and gazetted from 13 July 2001 to 21 September 2001

Purpose of Paper

The purpose of this paper is to explain to Members the reason for the large number of subsidiary legislation which is now presented to Members for consideration, and to remind members their power to amend subsidiary legislation.

Background

2. All items of subsidiary legislation currently submitted to Members are subject to section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) ("the Ordinance"). The section empowers the Council to amend an item of subsidiary legislation within certain limits. The subsidiary legislation currently submitted may be divided into two main groups:

- (a) Items of subsidiary legislation tabled on 11 July 2001 (**Appendix A**)
 - (i) These items of subsidiary legislation have not been considered by the House Committee as there has been no meeting of the House Committee since they were tabled. These items will be considered by Members at the House Committee meeting on 5 October 2001.
 - (ii) For Members' information, the Solicitors (Professional Indemnity) (Amendment) Rules 2001 (L.N. 162), which is one of the items of subsidiary legislation tabled on 11 July 2001, was considered by the LegCo Panel on Administration of Justice and Legal Services at its meeting on 18 September 2001. The Panel decided to recommend to the House Committee on 5 October 2001 to form a subcommittee to study the Amendment Rules in detail.

- (iii) Under section 34(2) and (3) of the Ordinance, the scrutiny period of these items is deemed to extend to and expire on the day after the second meeting of this Council. The scrutiny period could be further extended under the Ordinance by resolution of this Council to the next meeting.
 - (iv) Members may note that the Committee on Rules of Procedure will propose to the House Committee at its meeting on 5 October 2001 that the 4-day debate on the 2001 Policy Address be regarded as one Council meeting. If the proposal is adopted by the House Committee, its implication on the subsidiary legislation tabled between 20 June 2001 and 11 July 2001 is as follows. If the scrutiny period for these items of subsidiary legislation is extended by LegCo's resolution from 17 October 2001 to the next meeting, amendment is to be made by 31 October 2001 (i.e. the 3rd Council meeting under the proposal) instead of 24 October 2001 (the 3rd Council meeting in the normal course of event).
 - (v) Members may wish to note that two items of subsidiary legislation tabled on 11 July 2001, namely, the Securities (Miscellaneous) (Amendment) (No. 2) Rules 2001 (L.N. 163) and the Banking Ordinance (Amendment of Third Schedule) Notice 2001 (L.N. 164) will come into operation on 26 and 29 of October 2001 respectively. Given the above implication of the proposal on the 4-day debate on the 2001 Policy Address, if Members wish to amend the Amendment Rules and the Notice before they come into operation, they are advised to do so at the Council meeting to be held on 17 October 2001.
- (b) Items of subsidiary legislation gazetted from 13 July 2001 to 21 September 2001 (Appendix B)

These items have not been tabled as there has been no meeting of the Legislative Council since they were gazetted. These items will be tabled at the Council meeting to be held on 10 October 2001, and this Council may by resolution amend them at the meeting to be held on 7 November 2001 or the next meeting after that date if extended by resolution.

3. Members may obtain the gazette version of these items through the Research & Library Information System ("RLIS").

Amendment of subsidiary legislation by LegCo resolution

4. If as a result of the scrutiny of an item of subsidiary legislation it is found that changes should be made, Members may amend it by passing a resolution in this Council within the prescribed time limits.

5. Any such amendment to a piece of subsidiary legislation by resolution takes effect only from the date of gazettal of the resolution. Therefore the amendment does not affect anything done before then under the subsidiary legislation although it might have already taken effect.

6. Members may wish to note that section 34 of the Ordinance also specifies a limit in which amendments could be made by the Legislative Council, that is, the subsidiary legislation must be amended in such a manner consistent with the power to make such subsidiary legislation.

Conclusion

7. Members may consider whether it is necessary to set up a subcommittee to study any of the items of subsidiary legislation tabled on 11 July 2001 and those items set out at **Appendix B** which will be tabled at the Council meeting on 10 October 2001.

Encl

Prepared by

Fung Sau-kuen, Connie
Assistant Legal Adviser
Legislative Council Secretariat
24 September 2001

***Legal Service Division Report on
Subsidiary Legislation tabled on 11 July 2001***

<u>L.N. No</u>	<u>Item</u>
152	Specification of Arrangements (Government of the Republic of Estonia Concerning Air Services) (Double Taxation) Order
153	Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built Before 1 September 1984) (Amendment) (No. 2) Regulation 2001
154	Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built on or After 1 September 1984) (Amendment) (No. 2) Regulation 2001
155	Merchant Shipping (Safety) (Cargo Ship Safety Equipment Survey) (Amendment) Regulation 2001
156	Merchant Shipping (Safety) (GMDSS Radio Installations) (Amendment) Regulation 2001
157	Merchant Shipping (Safety) (Life-saving Appliances) Regulation
158	Merchant Shipping (Local Vessels) (Dwelling Vessels) Regulation
159	Merchant Shipping (Local Vessels) (Ferry Terminals) Regulation
160	Merchant Shipping (Seafarers) (Certificates of Proficiency in Survival Craft, Rescue Boats and Fast Rescue Boats) (Amendment) Rules 2001
161	Continuing Professional Development (Amendment) Rules 2001
162	Solicitors (Professional Indemnity) (Amendment) Rules 2001
163	Securities (Miscellaneous) (Amendment) (No. 2) Rules 2001
164	Banking Ordinance (Amendment of Third Schedule) Notice 2001
165	Fixed Penalty (Criminal Proceedings) (Amendment) Regulation 2001
166	Fixed Penalty (Traffic Contraventions) (Amendment) Regulation 2001
167	Fugitive Offenders (Indonesia) Order (Cap. 503 sub. leg.) (Commencement) Notice 2001

立法會

Legislative Council

Legal Service Division Report on Subsidiary Legislation Gazetted on 6 July 2001

Date of Tabling in LegCo : 11 July 2001

Amendment to be made by : 17 October 2001 (or the next meeting if extended by resolution)

Part I Merchant Shipping (Safety) (L.N.s 153 to 157 & 160)

The following items of subsidiary legislation make amendments to subsidiary legislation made under the Merchant Shipping (Safety) Ordinance (Cap. 369) and Merchant Shipping (Seafarers) Ordinance (Cap. 478) and also make consequential amendments to related subsidiary legislation to implement the International Convention for the Safety of Life at Sea ("SOLAS").

2. Members may refer to LegCo Brief Ref : MA 80/12/3 of 11 July 2001 from Economic Services Bureau for background information.
3. According to the LegCo Brief, the Administration has consulted the shipping industry through the Shipping Consultative Committee on the legislative proposals. The industry has no objection to the proposals. The Administration has also briefed the LegCo Panel on Economic Services on the proposals at its meeting on 16 January 2001. The Panel gave in-principle support to the proposals.
4. L.N.s 153 to 157 will come into operation on a day to be appointed by the Secretary for Economic Services by notice published in the Gazette. L.N. 160 will come into operation on a day to be appointed by the Seafarers' Authority by notice published in the Gazette.
5. The legal and drafting aspects of the following items of subsidiary legislation are in order.

Merchant Shipping (Safety) Ordinance (Cap. 369)

Merchant Shipping (Safety) (Life-saving Appliances) Regulation (L.N. 157)

6. This Regulation replaces the Merchant Shipping (Safety) (Life-Saving Appliances) (Ships Built Before 1 July 1986) Regulations (Cap. 369 sub. leg.) and the Merchant Shipping (Safety) (Life-Saving Appliances) (Ships Built On or After 1 July 1986) Regulations (Cap. 369 sub. leg.) to implement SOLAS (section 10).

7. The Regulation, subject to specified exceptions, applies to all Hong Kong ships wherever they may be and non-Hong Kong ships while they are within Hong Kong waters (section 3).

8. Ships to which the Regulation applies are required to be provided with the life-saving appliances and arrangements as described in SOLAS Chapter III (section 4).

9. For ships to which the Regulation applies which are constructed on or after 1 July 1998, the life-saving appliances and arrangements provided on board shall comply with the standards as described in the International Life-Saving Appliance (LSA) Code (section 5).

10. Ships not propelled by mechanical means are required to be provided with specified life-saving appliances and arrangements (section 6).

11. The Director of Marine may allow alternative apparatus to be fitted in a ship or exempt a ship from complying with all or any of the provisions of the Regulation under specified circumstances (section 7).

12. The manner of stowage and packing of pyrotechnic distress signals on board ships is specified (section 8).

13. A failure to comply with section 4, 5, 6 or 8 of the Regulation shall constitute an offence punishable with a fine of \$20,000 and imprisonment of 2 years. It shall be a defence for a person to prove that he has taken all reasonable steps to avoid commission of the offence (section 9).

14. The Regulation makes consequential amendments to related Regulations made under the Merchant Shipping (Safety) Ordinance (Cap. 369) (sections 11 to 20).

15. The Regulation provides for the requirements for rocket parachute flare (the Schedule).

Merchant Shipping (Safety) Ordinance (Cap. 369)

Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built Before 1 September 1984) (Amendment) (No. 2) Regulation 2001 (L.N. 153)

16. The main purpose of this Amendment Regulation is to amend the

Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built Before 1 September 1984) Regulations (Cap. 369 sub. leg.) consequential to the repeal of the Merchant Shipping (Safety) (Life-Saving Appliances) (Ships Built Before 1 July 1986) Regulations (Cap. 369 sub. leg.) (L.N. 157).

Merchant Shipping (Safety) Ordinance (Cap. 369)

Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built On or After 1 September 1984) (Amendment) (No. 2) Regulation 2001 (L.N. 154)

17. The main purpose of this Amendment Regulation is to amend the Merchant Shipping (Safety) (Cargo Ship Construction and Survey)(Ships Built On or After 1 September 1984) Regulations (Cap. 369 sub. leg.) consequential to the repeal of the Merchant Shipping (Safety) (Life-Saving Appliances) (Ships Built Before 1 July 1986) Regulations (Cap. 369 sub. leg.) (L.N. 157) and the Merchant Shipping (Safety) (Life-Saving Appliances) (Ships Built On or After 1 July 1986) Regulations (Cap. 369 sub. leg.) (L.N. 157).

Merchant Shipping (Safety) Ordinance (Cap. 369)

Merchant Shipping (Safety) (Cargo Ship Safety Equipment Survey) (Amendment) Regulation 2001 (L.N. 155)

18. The main purpose of this Amendment Regulation is to amend the Merchant Shipping (Safety) (Cargo Ship Safety Equipment Survey) Regulations (Cap. 369 sub. leg.) consequential to the repeal of the Merchant Shipping (Safety) (Life-Saving Appliances) (Ships Built Before 1 July 1986) Regulations (Cap. 369 sub. leg.) (L.N. 157) and the Merchant Shipping (Safety) (Life-Saving Appliances) (Ships Built On or After 1 July 1986) Regulations (Cap. 369 sub. leg.) (L.N. 157).

Merchant Shipping (Safety) Ordinance (Cap. 369)

Merchant Shipping (Safety) (GMDSS Radio Installations) (Amendment) Regulation 2001 (L.N. 156)

19. The main purpose of this Amendment Regulation is to amend the Merchant Shipping (Safety) (GMDSS Radio Installations) Regulations (Cap. 369 sub. leg.) consequential to the repeal of the Merchant Shipping (Safety) (Life-Saving Appliances) (Ships Built Before 1 July 1986) Regulations (Cap. 369 sub. leg.) (L.N. 157) and the Merchant Shipping (Safety) (Life-Saving Appliances) (Ships Built On or After 1 July 1986) Regulations (Cap. 369 sub. leg.) (L.N. 157).

Merchant Shipping (Seafarers) Ordinance (Cap. 478)
Merchant Shipping (Seafarers) (Certificates of Proficiency in Survival Craft, Rescue Boats and Fast Rescue Boats) (Amendment) Rules 2001 (L.N. 160)

20. The main purpose of these Amendment Rules is to amend the Merchant Shipping (Seafarers) (Certificates of Proficiency in Survival Craft, Rescue Boats) Rules (Cap. 478 sub. leg.) consequential to the repeal of the Merchant Shipping (Safety) (Life-Saving Appliances) (Ships Built On or After 1 July 1986) Regulations (Cap. 369 sub. leg.) (L.N. 157).

Part II Merchant Shipping (Local Vessels) (L.N.s 158 & 159)

21. The following two Regulations made under the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) aim to improve the safety, control and regulation of local vessels.

22. Members may refer to LegCo Brief Ref : ECON 2/3231/99 MA 140/4(2001) of 7 July 2001 from Economic Services Bureau for background information.

23. According to the LegCo Brief, the Provisional Local Vessel Advisory Committee and its relevant sub-committees/working group have been consulted during the drafting process of the Regulations. They gave support to the Regulations. The Administration has also briefed the LegCo Panel on Economic Services on the Regulations at its meeting on 28 May 2001. The Panel gave in-principle support to the Regulations.

24. These Regulations will come into operation on the day appointed for the commencement of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548).

25. The legal and drafting aspects of the Regulation are in order.

Merchant Shipping (Local Vessels) Ordinance (Cap. 548)
Merchant Shipping (Local Vessels) (Dwelling Vessels) Regulation (L.N. 158)

26. This Regulation provides for the regulation and control of dwelling vessels in the waters of Hong Kong following the repeal of the Shipping and Port Control (Dwelling Vessels) Regulations (Cap. 313 sub. leg.) ("the SPC(DV) Regulations") and the Shipping and Port Control (Dwelling Vessels) (Closed Areas) (Consolidation) Order (Cap. 313 sub. leg.) ("the Order").

27. The Regulation models largely on the provisions of the SPC(DV) Regulations and the Order. There are some major changes which are highlighted as follows—

- (a) Instead of declaring various areas of the waters of Hong Kong to be closed areas for dwelling vessels under the Order, the Regulation specifies clearly in the Schedules as to the areas of waters in Hong Kong which dwelling vessels may enter or remain in, namely Causeway Bay Typhoon Shelter and Cheung Chau Typhoon Shelter which are in fact the two areas that dwelling vessels are allowed to stay under the Order (Schedules 1 and 2).
- (b) The Regulation requires the Director of Marine to issue a detention notice as soon as practicable after he has seized or detained a dwelling vessel (section 16(6)-(9)).
- (c) The Regulation allows a claim for the release of a detained or seized vessel or for the release of any property on board the vessel before the Director of Marine sells the vessel (section 17).
- (d) The Regulation allows any person aggrieved by a decision of the Director of Marine made under the Regulation to appeal against such decision to the Administrative Appeals Board (section 19). The Administration has confirmed in its reply to our enquiry that a consequential amendment to the Administrative Appeals Board Ordinance (Cap. 442) will be made and brought into operation on the same date for the commencement of the Regulation (**Annex I**).

Merchant Shipping (Local Vessels) Ordinance (Cap. 548)

Merchant Shipping (Local Vessels) (Ferry Terminals) Regulation (L.N. 159)

28. Currently, provisions for the administration of both local vessels and non-local vessels within the ferry terminals (i.e. the Hong Kong-Macau Ferry Terminal and the China Ferry Terminal) are laid down in the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg.) ("the SPC(FT)R"). This Regulation seeks to maintain the control on local vessels, within the meaning of section 2 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) ("the Principal Ordinance") except those referred to in section 3(4) of the Principal Ordinance, when the SPC(FT)R no longer applies to these vessels upon commencement of the Principal Ordinance and its subsidiary legislation. The Regulation is closely modelled upon the SPC(FT)R.

29. We have clarified with the Administration about the application of the Regulation. Copies of the correspondence are attached at **Annex II** for members' reference.

Part III Legal Practitioners Ordinance (L.N.s 161 & 162)

Legal Practitioners Ordinance (Cap. 159)

Continuing Professional Development (Amendment) Rules 2001 (L.N. 161)

30. These Amendment Rules amend the definition of "practice year" in section 2 of the Continuing Professional Development Rules (Cap. 159 sub. leg.) ("the Rules") so that a practice year will run from 1 November of each year to 31 October of the following year. As a transitional arrangement, the practice year for the period ending 31 October 2001 will be the period between 1 January 2001 and 31 October 2001 and the CPD accreditation points to be accumulated for that period will be adjusted from 15 points to 12 1/2 points.

31. In reply to our enquiry, the Law Society of Hong Kong explains that the former CPD practice year coincided with the practice year for the operation of the practising certificates. By November each year, a solicitor to whom the Rules apply, when submits application for renewal of his practising certificate for the next practice year which commences on 1 January was also required to make a declaration that he had obtained the requisite number of CPD points or gave an undertaking to do so by the end of the former CPD practice year. Such undertaking was necessitated by the fact that at the time when the application for renewal was made (in November), the former CPD practice year which ended in December had not yet expired and the applicant solicitor still had time to complete his CPD points requirement without breaching the Rules. Problems arose when a solicitor, according to the Law Society of Hong Kong, having given an undertaking to complete the CPD points requirement by the end of the former CPD practice year, had been unable to honour it for various reasons. To avoid such problems, the former CPD practice year is amended to run from 1 November to 31 October (new CPD practice year) so that the new CPD practice year will have expired at the time the application for renewal of practising certificate is submitted in November and the solicitor will be in a position to declare whether he has complied with the Rules for that preceding new CPD practice year. No undertaking will then be necessary. At the request of the Law Society of Hong Kong, its reply is deposited at our office for members' reference.

Legal Practitioners Ordinance (Cap. 159)

Solicitors (Professional Indemnity) (Amendment) Rules 2001 (L.N. 162)

32. The main purpose of these Amendment Rules is to increase the contributions to the Professional Indemnity Fund. We are still awaiting reply from the Law Society of Hong Kong to our enquiries on certain aspects of the amendment Rules. We will further report on this item once we have received the reply from the Law Society of Hong Kong.

Part IV Fixed Penalty Tickets for Traffic Contraventions (L.N.s 165 & 166)

33. Fixed penalty tickets issued under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237) and the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) can be paid either by post, or in person at counters of the Sub-Treasury Offices or Magistrates' courts or District Offices. The following two Amendment Regulations (L.N.s 165 and 166) amend the Fixed Penalty (Traffic Contraventions) Ordinance and the Fixed Penalty (Criminal Proceedings) Ordinance by repealing the methods of payment in person at counters of the Sub-Treasury Offices or District Offices and allowing payment of fixed penalty tickets by electronic means and through Hongkong Post's "PayThruPost" service.

34. Members may refer to LegCo Brief Ref : TRAN 1/12/65(00) Pt. 11 of 5 July 2001 from Transport Bureau for background information.

35. According to the LegCo Brief, the Administration has consulted the LegCo Panel on Information Technology and Broadcasting on the Government strategy on 28 May 2001. The Panel noted that the Administration's target is to provide e-option for more public services with a view to achieving the overall E-Government target.

36. Both Amendment Regulations will come into operation on 1 November 2001.

37. The legal and drafting aspects of the Amendment Regulations are in order.

Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240)

Fixed Penalty (Criminal Proceedings) (Amendment) Regulation 2001 (L.N. 165)

38. The main purpose of this Amendment Regulation is to amend regulation 3 of the Fixed Penalty (Criminal Proceedings) Regulations (Cap. 240 sub. Leg.) ("the Principal Regulations") to enable payment of fixed penalty—

- (a) to be made in person at any Post Office (instead of the Treasury Central Collection and Payment Office, certain sub-treasuries and District Offices in the New Territories); and
- (b) to be effected through bank automated teller machines, Payment By Phone Service and the Internet.

39. Corresponding amendments are also made to the Schedule to the Principal Regulations.

**Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237)
Fixed Penalty (Traffic Contraventions) (Amendment) Regulation 2001
(L.N. 166)**

40. The main purpose of this Amendment Regulation is to amend regulation 3 of the Fixed Penalty (Traffic Contraventions) Regulations (Cap. 237 sub. Leg.) (“the Principal Regulations”) to enable payment of fixed penalty—

- (a) to be made in person at any Post Office (instead of the Treasury Central Collection and Payment Office, certain sub-treasuries and District Offices in the New Territories); and
- (b) to be effected through bank automated teller machines, Payment By Phone Service and the Internet.

41. Corresponding amendments are also made to the Schedule to the Principal Regulations.

Part V ***Miscellaneous (L.N.s 152, 163, 164 & 167)***

**Inland Revenue Ordinance (Cap. 112)
Specification of Arrangements (Government of the Republic of Estonia
Concerning Air Services) (Double Taxation) Order (L.N. 152)**

42. This Order declares under section 49 of the Inland Revenue Ordinance (Cap. 112) ("the Ordinance") that it is expedient for the purpose of affording relief from double taxation that the arrangement specified in Article 9 of the Agreement between the Government of the HKSAR of the People's Republic of China and the Government of the Republic of Estonia concerning Air Services done at Tallinn on 30 April 2001 should have effect in relation to tax under the Ordinance. Article 9 of the Agreement is contained in the Schedule to the Order.

43. Members may refer to LegCo Brief Ref : FIN CR 16/10/204146(01) (without date on it) from Finance Bureau for background information.

44. The legal and drafting aspects of the Order are in order.

**Securities Ordinance (Cap. 333)
Securities (Miscellaneous) (Amendment) (No. 2) Rules 2001 (L.N. 163)**

45. Section 80(1) of the Securities Ordinance (Cap. 333) ("the Ordinance") provides that a person shall not sell securities at or through the Unified Exchange unless, at the time he sells them he has or, where he is selling as agent, his principal has; or he reasonably and honestly believes that he has or, where he is selling as agent, that his principal has, a presently exercisable and unconditional right to vest the securities in the purchaser of them. Sections 80(4)(d) and 146(1) of the Ordinance

empower the Securities and Futures Commission ("the Commission") to prescribe regulations to exempt classes of transactions from the short selling prohibition embodied in section 80(1).

46. These Amendment Rules amend the Securities (Miscellaneous) Rules (Cap. 333 sub. leg.) by exempting sales of securities carried out by Stock Options Market Makers and Registered Traders of stock futures contracts for the purposes of hedging the risks of positions they have previously acquired on the Unified Exchange and the Commodity Exchange respectively from the operation of section 80(1).

47. Members may refer to LegCo Brief (without file reference on it) of 4 July 2001 from the Securities and Futures Commission for background information.

48. According to the LegCo Brief, the Commission has consulted market participants concerned and the Hong Kong Exchange and Clearing Limited. They welcome the amendments.

49. The Amendment Rules will come into operation on 26 October 2001.

50. The legal and drafting aspects of the Amendment Rules are in order.

Banking Ordinance (Cap. 155)

Banking Ordinance (Amendment of Third Schedule) Notice 2001 (L.N. 164)

51. This Notice amends the Third Schedule to the Banking Ordinance (Cap. 155) ("the Ordinance"). The object is to specifically exclude from an authorized institution's (the term is defined under section 2(1) of the Ordinance to mean a bank, a restricted licence bank or a deposit-taking company) capital base proposed or declared dividends that are recorded or required to be recorded as equity on its and its subsidiaries' balance sheets for the purpose of calculating the institution's capital adequacy ratio under section 98 of the Ordinance. The amendments also apply to the calculation of capital base under other provisions of the Ordinance, for example limitations on advances by an authorized institution are with reference to its capital base (section 81 of the Ordinance).

52. Members may refer to LegCo Brief Ref : G4/16/22C II of July 2001 from Financial Services Bureau for background information.

53. According to the LegCo Brief, the Administration has consulted the Hong Kong Association of Banks, the DTC Association and has taken into account their comments in preparing the Notice.

54. The Notice will come into operation on 29 October 2001.

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

56. Members may note that the Committee on Rules of Procedure will propose to the House Committee at its meeting to be held before the first Council meeting of the next session that the 4-day debate on the 2001 Policy Address be regarded as one Council meeting. If the proposal is adopted by the House Committee, its implication on the Amendment Rules (L.N. 163) and the Notice (L.N. 164) is as follows. If the scrutiny period for these two items is extended by LegCo's resolution from 17 October 2001 to the next meeting, amendment is to be made by 31 October 2001 (i.e. the 3rd meeting of the next session under the proposal) instead of 24 October 2001 (the 3rd meeting of the next session in the normal course of event). Therefore, if members wish to amend the Amendment Rules and the Notice before they come into operation on 26 and 29 of October respectively, they are advised to do so at the Council meeting to be held on 17 October 2001.

Fugitive Offenders (Indonesia) Order (Cap. 503 sub. leg.)
Fugitive Offenders (Indonesia) Order (Cap. 503 sub. leg.) (Commencement)
Notice 2001 (L.N. 167)

57. The Secretary for Security appoints 13 July 2001 as the day on which the Fugitive Offenders (Indonesia) Order (L.N. 273 of 1997) ("the Order") will come into operation.

58. We have asked the Administration about the reason for the Order to come into operation after a lapse of about four years since it was made in 1997. The Administration replies that Article 23(1) of the Agreement between the Government of Hong Kong and the Government of the Republic of Indonesia for the Surrender of Fugitive Offenders provides that the Agreement "shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of this Agreement have been complied with.". The Order was made in 1997. The Administration sent a notification to the Indonesian Consulate General that Hong Kong had complied with its requirements for entry into force of the Agreement on 9 July 1997. The notification from the Indonesian Consulate General was however only received on 13 June 2001, subsequent to the formal ratification of the Agreement by their Government on 8 May 2001. The Order should accordingly come into operation on 13 July 2001. Copies of the correspondence are attached at **Annex III** for members' reference.

Encl

Prepared by

Lam Ping-man, Stephen
Assistant Legal Adviser
Legislative Council Secretariat
12 August 2001

Annex I

LS/S/38/00-01
2869 9468
2877 5029

Economic Services Bureau
Port and Maritime Board
38/F, Two Exchange Square
Connaught Place
Central
Hong Kong

12 July 2001

BY FAX
Fax No. : 2523 0030
Total no. of page(s) : 1

(Attn : Miss Polly Choy
Assistant Secretary for Economic Services)

Dear Miss Choy,

**Merchant Shipping (Local Vessels)
(Dwelling Vessels) Regulation (L.N. 158 of 2001)**

We are scrutinising the legal and drafting aspects of the captioned Regulation. Would you confirm whether a consequential amendment will be made to the Administrative Appeals Board Ordinance (Cap. 442) to accommodate the appeal under section 19(1) of the Regulation?

It is appreciated that your reply in both languages could reach us at your earliest convenience.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

ECON 2/3231/99 Pt.2
LS/S/38/00-01

Our Tel : 2537 2842
Our Fax : 2523 0030

28 July 2001

Mr Stephen LAM
Assistant Legal Advisor
Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Fax: 2877 5029

Dear Mr LAM,

**Merchant Shipping (Local Vessels)
(Dwelling Vessels) Regulation (L.N. 158 of 2001)**

Thank you for your letter of 12 July.

According to section 3 of the Administrative Appeals Board Ordinance, Cap. 442 ("the Ordinance"), in addition to the legislation mentioned in Column 2 of the Schedule to the Ordinance, the Ordinance applies to "any other decision in respect of which an appeal lies to the Board". The Department of Justice has advised that this provision enables the appeal mechanism under section 19(1) of the Regulation to take effect without any amendments to the Ordinance. Notwithstanding, we plan to introduce an amendment to the Ordinance by adding the Regulation into Column 2 of the Schedule, with the purpose of making the relevant laws clear and unambiguous. We target to bring the amendment into effect on the same date for the commencement of the Regulation.

Yours sincerely,

(Miss Polly CHOY)
for Secretary for Economic Services

c.c.

D of M (Attn.: Mr F L CHEUK) - 2581 1765
D of J (Attn.: Ms Betty CHOI) - 2869 1302
D of J (Attn.: Mrs E WALLER) - 2869 0670

Internal

SES

LS/S/38/00-01
2869 9468
2877 5029

Economic Services Bureau
Port and Maritime Board
38/F, Two Exchange Square
Connaught Place
Central
Hong Kong

13 July 2001

BY FAX

Fax No. : 2523 0030
Total no. of page(s) : 1

(Attn : Miss Polly Choy
Assistant Secretary for Economic Services)

Dear Miss Choy,

**Merchant Shipping (Local Vessels)
(Ferry Terminals) Regulation (L.N. 159 of 2001)**

We are scrutinising the legal and drafting aspects of the captioned Regulation. We should be grateful if you would confirm whether, and if so when, consequential amendments will be made to the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg.) to reflect the proposed changes in the Regulation.

It is appreciated that your reply in both languages could reach us as soon as possible.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

MA 140/4
LS/S/38/00-01

Our Tel : 2537 2842
Our Fax : 2523 0030

30 July 2001

Mr Stephen LAM
Assistant Legal Advisor
Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Fax: 2877 5029

Dear Mr LAM,

**Merchant Shipping (Local Vessels)
(Ferry Terminals) Regulation (L.N. 159 of 2001)**

Thank you for your letter of 13 July.

As explained in our Legislative Council Brief dated 7 July on the Merchant Shipping (Local Vessels) (Dwelling Vessels) Regulation and the above new Regulation, the new Regulation draws on the present provisions applicable to local vessels in the Shipping and Port Control (Ferry Terminals) Regulations, Cap. 313 sub. leg. ("FTR") in relation to the use of the Hong Kong-Macau Ferry Terminal and the China Ferry Terminal. The purpose is to maintain the control on local vessels through the new Regulation when the FTR no longer applies to these vessels upon the commencement of the Merchant Shipping (Local Vessels) Ordinance, Cap. 548. I explain the legal provisions for this arrangement below.

Sections 7 and 8 in the Schedule of Cap. 548 have introduced the following consequential amendments to Cap. 313 -

- ♦ Section 8 terminates the application of Cap. 313 to "local vessels" by adding "(except local vessels)" after "all vessels" in section 3(1) of Cap. 313; and
- ♦ Section 7 defines "local vessel" as "a local vessel within the meaning of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) except a local vessel referred to in section 3(4) of that Ordinance". The local

vessel referred to in section 3(4) is "any local vessel certified, under the provisions of the Merchant Shipping (Safety) Ordinance, Cap. 369 as a passenger ship".

In other words, upon the commencement of Cap. 548, Cap. 548 and the new Regulation will apply to local vessels except those referred to in section 3(4) of that Ordinance, while Cap. 313 and the FTR will only apply to the vessels to which Cap. 548 is not applicable.

Because sections 7 and 8 of the Schedule to Cap. 548 have already separated the scope of application of Cap. 313 and Cap. 548 and their respective subsidiary legislation, consequential amendments to the FTR in respect of its application are unnecessary.

Yours sincerely,

(Miss Polly CHOY)
for Secretary for Economic Services

c.c.

D of M (Attn.: Mr F L CHEUK) - 2545 1535
D of J (Attn.: Ms Mabel CHEUNG) - 2845 2215
D of J (Attn.: Miss Rickie CHAN) - 2869 0670

LS/S/38/00-01
2869 9468
2877 5029

Security Bureau
6/F, Main and East Wings
Central
Hong Kong

(Attn : Ms Angelina Kwan
Assistant Secretary (Security) A2)

3 August 2001

BY FAX

Fax No. : 2524 3762
Total no. of page(s) : 1

Dear Ms Kwan,

**Fugitive Offenders (Indonesia) Order (Cap. 503 Sub. Leg.)
(Commencement) Notice 2001 (L.N. 167 of 2001)**

We are scrutinising the legal and drafting aspects of the Notice. It is noted that the Fugitive Offenders (Indonesia) Order (L.N. 273 of 1997) was made in 1997. Could you explain the reason for the Order to come into operation after a lapse of 4 years since it has been made?

It is appreciated that your reply, in both languages, could reach us by 8 August 2001.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

SBCR 16/1/2716/80 Pt.4

LS/S/38/00-01

Tel No. 25377171
Fax No. 25243762

7 August 2001

Mr. Stephen Lam
Assistant Legal Adviser,
Legislative Council Secretariat,
Legislative Council Building,
8 Jackson Road,
Central

Dear Mr. Lam,

Fugitive Offenders (Indonesia) Order (Cap. 503 Sub. Leg.)
(Commencement) Notice 2001 (L.N. 167 of 2001)

I refer to your letter of 3 August 2001.

Article 23 (1) of the Agreement between the Government of Hong Kong and the Government of the Republic of Indonesia for the Surrender of Fugitive Offenders provides that the Agreement “shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of this Agreement have been complied with.”

The Fugitive Offenders (Indonesia) Order was made in 1997. We sent a notification to the Indonesian Consulate General that Hong Kong had complied with its requirements for entry into force of the Agreement on 9 July 1997. The notification from the Indonesian Consulate General was however only received on 13 June 2001, subsequent to the formal ratification of the Agreement by their Government on 8 May 2001. The Fugitive Offenders (Indonesia) Order should accordingly come into operation on 13 July 2001.

Yours sincerely,
(Angelina Kwan)
for Secretary for Security

c.c. Department of Justice (Attn: Mr. John Hunter, DPGC (T&L))

28772130

立法會

Legislative Council

**Legal Service Division Further Report on
Solicitors (Professional Indemnity) (Amendment) Rules 2001
(L.N. 162 of 2001)
Subsidiary Legislation Gazetted on 6 July 2001**

Members may recall that the Legal Service Division made a report on the subsidiary legislation relating to Solicitors (Professional Indemnity) (Amendment) Rules 2001 ("the Amendment Rules") (L.N. 162 of 2001) on 12 August 2001 (LC Paper No. LS 143/00-01). The reply from the Law Society of Hong Kong ("the Law Society") of 31 August 2001 has clarified the enquiries in our letter of 3 August 2001 about the Amendment Rules. Copies of the correspondence are annexed at **Appendix I** for Members reference. The gist of the reply is as follows.

Rule 2(b) of the Amendment Rules

Rule 2(b) of the Amendment Rules repeals the definition of "relevant date" and substitutes a new definition of "relevant date". While paragraphs (a) and (b) are modelled on the existing definition of "relevant date", a new paragraph (c) is added to extend the definition of "relevant date" to mean "where the firm has ceased the Practice at the date referred to in paragraph (a) or (b) (as may be applicable), the date when the cause of action first accrued against the firm". The Law Society explains that the purpose of adding new paragraph (c) to the definition of "relevant date" is to enable the Claims Manager to calculate and collect the deductibles set out in paragraph 2 of Schedule 3 to the Solicitors (Professional Indemnity) Rules ("the Rules") when a firm has ceased practice. In most of the claims where the firms have ceased practice, proceedings are instituted after the cessation of practice. In those circumstances, proceedings are actually instituted against the individual partners who formerly traded under the firm's name. However, a situation can arise where a firm ceases practice after proceedings have been instituted. In such a case, difficulties may arise as to how the deductibles should be calculated. Disputes may also arise where the partners have moved to different firms or

where the firm has reconstituted its partnership. The new paragraph (c) is also intended to prevent attempts by firms to reconstitute their partnership in order to avoid paying the deductibles.

Rule 4 of the Amendment Rules

Rule 4 of the Amendment Rules amends rule 9 of the Rules to substitute "Practice" with "firm". The Department of Justice confirms that the amendment is necessary to synchronize the wording in rule 9 with the wording of the definition of "indemnified" as amended in rule 2 of the Rules. Copies of the correspondence are annexed at **Appendix II**.

Rule 5 of the Amendment Rules

Rule 5 of the Amendment Rules amend rule 10(3) of the Rules by adding the reference to rule 12. Rule 10 of the Rules relates to entitlement to Indemnity. Rule 12 of the Rules provides that Indemnity shall be provided exclusively out of the Fund. The Law Society explains that rule 12 is incorporated into rule 10(3) of the Rules to cover the possibility of a former solicitor claiming Indemnity from the Law Society or the Council.

Rule 6 of the Amendment Rules

Rule 6 of the Amendment Rules amends paragraph 2(1)(a)(1) of Schedule 1 to the Rules by increasing the contributions to the fund referred to in rule 3(1) of the Rules. The Law Society explains the justification for increasing the contributions as follows.

The Solicitors Professional Indemnity Scheme ("the Scheme") has a 3-year reinsurance programme which is due to expire on 30 September 2001. In view of the substantial increase in claims payments in recent years, Hong Kong Solicitors Indemnity Fund Ltd. ("the Company") commissioned the Scheme's brokers to conduct a benchmarking exercise in April 2000. The exercise showed that based on the Scheme's historical claims data, it was likely that reinsurance premium would increase by 400% after 30 September 2001.

The Company considered several options and a members' forum was held on 15 September 2000 to discuss the options available. All members were invited to attend the forum and express their views. The option chosen was to cancel the 3-year programme and re-write a 5-year programme which allowed a gradual increase in reinsurance premium over a period of 5 years. The 5-year programme has the effect of subsidising the Scheme in early years and capping the premium for the 5 years even if situation of claims was to deteriorate in the future. There is a reduction on premium and/or a profit-sharing arrangement should claims improve during the 5 years, depending on the underwriters involved. The 5-year programme commenced on 1 October 2000.

However, the cancel and re-write programme required the Company to increase the Fund's retention for the self-insured layer from HK\$1 million to HK\$1.5 million per claim from 1 October 2001 to 30 September 2005. Based on the study and projections prepared by Watson Wyatt, actuaries, the costs of the premium and the Fund's retention over the 5 years when projected were found to have exceeded the income which the Fund could have received from members' contributions based on the existing contribution assessment formula. Therefore, the formula set out in Schedule 1 paragraph 2 of the Rules is amended. The amendments were approved by the Company, the Council of the Law Society and the Chief Justice.

The contributions based on the proposed new formula are 2.5 times the existing contributions. This represents an increase of 150%. Members were fully informed of the increase and the reasons for the increase in the forum.

The formula to calculate the basic contribution to the Fund referred to in paragraph 2(1) of Schedule 1 to the Rules has not been changed since the inception of the self-insured Scheme in 1986.

Rule 7(a)(i) of the Amendment Rules

Rule 7(a)(i) of the Amendment Rules amends paragraph 1(2) of Schedule 3 of the Rules by making it clear that the Company will not provide Indemnity to the indemnified or a former solicitor under specified circumstances. The Law Society clarifies that the exclusions of indemnity set out in paragraph 1(2) of Schedule 3 to the Rules are applicable to a former solicitor as much as they are applicable to the indemnified. Paragraph 3 of Schedule 3 to the Rules

sets out the limits of indemnity offered by the Fund. These limits will come into play after the Claims Manager is satisfied that the exclusions in paragraph 1(2) of Schedule 3 do not apply and the former solicitor is entitled to indemnity under the Scheme.

Rule 7(c) of the Amendment Rules

Rule 7(c) of the Amendment Rules amends paragraph 3 of Schedule 3 (extent of former solicitors indemnity) by adding a new subparagraph that "[in] applying rule 16 for the purpose of this paragraph, the reference to "principal" in that rule shall be taken as a reference to "former solicitor".". The Law Society explains that rule 16 of the Rules provides that it is the Principals in the firm who should be liable severally to pay to the Company sums for which indemnity is not provided. Thus employees of the Principals are not liable. Rule 16 is already applicable to former solicitors by virtue of rule 10(3) (entitlement to Indemnity) of the Rules. In the case of former solicitors, it is the former solicitor, and not the Principals of the former solicitor who is personally liable. Hence, the additional subparagraph (3) in paragraph 3 of Schedule 3 of the Rules is to specify the personal liability of the former solicitor.

Rule 7(d)(i)(A) of the Amendment Rules

Rule 7(d)(i)(A) of the Amendment Rules amends paragraph 6(1) of Schedule 3 to the Rules by changing the reference from the maximum liability of the Fund for all claims arising from the same act or omission against any "Practice or any member of that Practice or both" entitled to Indemnity to "indemnified or former solicitor or any combination of persons". The Law Society explains that the Company has taken Counsel's advice on the definition of "Practice". The Company and the Council agreed with the Counsel's advice that the acts and omissions referred to in paragraph 6 are in fact committed by the indemnified and the former solicitor and should be so stated.

Rule 7(f) of the Amendment Rules

Paragraph 9 of Schedule 3 to the Rules provides that where a claim has been made before the receipt for the contribution paid by the indemnified is issued, the Scheme will provide indemnity to the indemnified and the

indemnified should reimburse the Company of the payment made plus interest. Due to the different definitions assigned to "indemnified" and "former solicitor" under rule 2 of the Rules, the reference to "former solicitor" is added. In other words, paragraph 9 of Schedule 3 applies to a former solicitor who does not fall within the definition of "indemnified".

Rule 7(a)(ii) and (iii)(B) of the Amendment Rules

Rule 7(a)(ii) and (iii)(B) of the Amendment Rules amend paragraph 1(2)(c)(iii) and (iiia) of Schedule 3 to the Rules by replacing "the principal" with "any person who was a principal at the relevant time". The Law Society clarifies that the intention, reading together with the amendment to paragraph 1 of Schedule 3 to the Rules by adding a definition of "a person was a principal at the relevant time", is to exclude liability in respect of claims brought about by the dishonesty of a person (1) who was a principal at the time of notification of circumstances giving rise to a claim; (2) who was a principal when the claim was made; (3) who was a principal at the time of the events giving rise to a claim. But the amendments also cater for a situation where the dishonest individual was an assistant solicitor at the time of the events giving rise to the claim, but had since become a principal at the time of notification or when the claim was made.

Rule 7(b) of the Amendment Rules

Rule 7(b) of the Amendment Rules amends paragraph 2 of Schedule 3 to the Rules to provide a further deductible for those firms against which more than one claim is made in any period of three consecutive indemnity years. The Law Society explains that since the inception of the self-insured Scheme in 1986 to the 1999/2000 indemnity year, the number of claims notifications has increased by 311%, whereas the number of members carrying on practice in the profession in the same period has only increased by 245%. As for the amount of claims payments, as at 30 June 2001, the total claims payments for the indemnity year 1987/88 is HK\$13,890,879.92, whereas the amount for indemnity year 1999/2000 including reserves is HK\$98,274,069.88, an increase of 607%. Upon further clarification, the term "reserves" is the estimated amount payable in respect of any claims including the estimated legal costs. At the members' forum held on 15 September 2000, suggestions were made by members that measures should be taken to alleviate claims, including

the possibility of raising the levels of the existing deductibles, and the introduction of a penalty deductible. The Company consulted its insurance brokers and considered the penalty deductibles introduced in other jurisdictions. The Company and the Council decided that the introduction of the penalty deductibles would be a useful deterrent against firms with frequent claims.

Rule 7(e)(iii) of the Amendment Rules

Rule 7(e)(iii) of the Amendment Rules amends paragraph 8 of Schedule 3 to the Rules to change the reference from "Practice" to "firm or indemnified". The Law Society explains that the reasoning for amending paragraph 6(1) of Schedule 3 to the Rules (rule 7(d)(i)A of the Amendment Rules) also applies to the present amendment.

Encl

Prepared by

Lam Ping-man, Stephen

Assistant Legal Adviser

Legislative Council Secretariat

12 September 2001

Appendix I

LS/S/38/00-01
2869 9468
2877 5029

The Law Society of Hong Kong
3/F, Wing On House
71 Des Voeux Road
Central
Hong Kong

3 August 2001

BY FAX

Fax No. : 2845 0387
Total no. of page(s) : 2

(Attn : Miss Vivian Lee
Assistant Director
Professional Indemnity Scheme)

Dear Miss Lee,

Solicitors (Professional Indemnity) (Amendment) Rules 2001 (L.N. 162 of 2001)

We are scrutinising the legal and drafting aspects of the Amendment Rules. We should be grateful for your clarification of the following points.

Rule 2(b) of the Amendment Rules

It is noted that paragraphs (a) and (b) of the definition of "relevant date" are modelled on the existing definition of "relevant date" in section 2(1) of the Solicitors (Professional Indemnity) Rules (Cap. 159 sub. leg.) ("the Rules").

What is the justification for adding a new paragraph (c) to the new definition of "relevant date"?

Under the current practice, how would you handle claims against a firm which has ceased Practice?

Rule 4 of the Amendment Rules

Why is it necessary to change "Practice" to "firm" in rule 9 of the Rules?

Rule 5 of the Amendment Rules

Why is it necessary to further apply rule 12 to former solicitor as if he were an indemnified in rule 10(3) of the Rules?

Rule 6 of the Amendment Rules

What is the justification for increasing the contributions to the fund referred to in rule 3(1) of the Rules?

Rule 7(a)(i), (c), (d)(i)(A) and (f) of the Amendment Rules

Why is it necessary to add the reference "former solicitor" in paragraph 1(2), paragraph 3, paragraph 6(1) and paragraph 9 of Schedule 3 to the Rules respectively? It is noted that paragraph 3 of Schedule 3 to the Rules has already provided for extent of former Solicitors Indemnity.

Rule 7(a)(ii) and (iii)(B) of the Amendment Rules

What is the reason for substituting "the principal" by "any person who was a principal at the relevant time" in paragraph 1(2)(c)(iii) and (iiia) of Schedule 3 to the Rules?

Rule 7(b) of the Amendment Rules

What is the justification for amending paragraph 2 of Schedule 3 to provide a further deductible for those items against which more than one claim is made in any period of three consecutive indemnity years?

Rule 7(e)(iii) of the Amendment Rules

Why is it necessary to substitute "Practice" by "firm or indemnified" in paragraph 8(6) of Schedule 3 to the Rules?

It is appreciated that your reply, in English and Chinese, could reach us by 8 August 2001.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

VL/mc/PI-9C
LS/S/38/00-01

31st August 2001

Mr. Stephen Lam **By Fax and By Post**
Assistant Legal Adviser
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mr. Lam,

Re: Solicitors (Professional Indemnity) (Amendment) Rules 2001 ("the Amendment Rules")

I refer to your letter of 3rd August 2001.

I would advise as follows:-

Rule 2(b) of the Amendment Rules

The purpose of the new paragraph (c) is to enable the Claims Manager to calculate and collect the deductibles set out in Schedule 3 paragraph 2 of the Solicitors (Professional Indemnity) Rules ("the Rules") when a firm has ceased practice.

I have been advised by the Claims Manager that in most of the claims where the firms had ceased practice, proceedings were instituted after the cessation of practice. In those circumstances, proceedings were actually instituted against the individual partners who formerly traded under the firm's name. However, a situation can arise where a firm ceases practice after proceedings were instituted. In such a case, difficulties may arise as to how the deductibles should be calculated. Disputes may also arise where the partners have moved to different firms or where the firm has reconstituted its partnership.

The new paragraph (c) is also intended to prevent attempts by firms to reconstitute their partnership in order to avoid paying the deductibles.

Rule 4 of the Amendment Rules

This rule was not included in our drafting instructions to the Law Drafting Division of the Department of Justice ("DOJ"). It was added in the Amendment Rules by the DOJ. I suspect the purpose of rule 4 is to synchronize the wording in rule 9 of the Rules with the amendments to the definition of 'indemnified' in rule 2 (a) of the Amendment Rules. I suggest you clarify the purpose of the amendment introduced under this rule with DOJ (Ref: Mr. John Wong, Senior Assistant Law Draftsman, Law Drafting Division, DOJ).

Rule 5 of the Amendment Rules

Rule 12 of the Rules provides that indemnity shall be provided exclusively out of the Fund. Rule 12 is incorporated in rule 10(3) of the Rules to cover the possibility of a former solicitor claiming indemnity from the Law Society or the Council.

Please also note that the definition of 'indemnified' is different from the definition of 'former solicitor' under rule 2 of the Rules.

Rule 6 of the Amendment Rules

The Solicitors Professional Indemnity Scheme ("the Scheme") had a 3-year reinsurance programme which was due to expire on 30th September 2001. In view of the substantial increase in claims payments in recent years, Hong Kong Solicitors Indemnity Fund Ltd. ("the Company") commissioned the Scheme's brokers to conduct a benchmarking exercise in April 2000. The exercise showed that based on the Scheme's historical claims data, it was likely that reinsurance premium would increase by 400% after 30th September 2001.

The Company considered several options and a members' forum was held on 15th September 2000 to discuss the options available. All members were invited to attend the forum and express their views. The option chosen was to cancel the 3-year programme and re-write a 5-year programme which allowed a gradual increase in reinsurance premium over a period of 5 years. The 5-year programme has the effect of subsidising the Scheme in early years and capping the premium for the 5 years even if claims were to deteriorate in the future. There is a reduction on premium and/or a profit-sharing arrangement should claims improve during the 5 years, depending on the underwriters involved. The 5-year programme commenced on 1st October 2000.

However, the cancel and re-write programme required the Company to increase the Fund's retention for the self-insured layer from HK\$1 million to HK\$1.5 million per claim from 1st October 2001 to 30th September 2005. Based on the study and projections prepared by Watson Wyatt, actuaries, the costs of the premium and the Fund's retention over the 5 years when projected were found to have exceeded the income which the Fund could have received from members' contributions based on the existing contribution assessment formula. Therefore, the formula set out in Schedule 1 rule 2 of the Rules is amended. The amendments were approved by the Company, the Council of the Law Society and the Chief Justice.

The contributions based on the proposed new formula are 2.5 times the existing contributions. This represents an increase of 150%. Members were fully informed of the increase and the reasons for the increase in the forum.

Rule 7(a)(i) of the Amendment Rules

The exclusions of indemnity set out in Schedule 3 paragraph 1(2) of the Rules are applicable to a former solicitor as much as they are applicable to the 'indemnified'.

Schedule 3 paragraph 3 of the Rules sets out the limits of indemnity offered by the Fund. These limits will come into play after the Claims Manager is satisfied that the exclusions in Schedule 3 paragraph 1(2) do not apply and the former solicitor is entitled to indemnity under the Scheme.

Rule 7(c) of the Amendment Rules

Rule 16 of the Rules provides that it is the Principals in the firm who should be liable severally to pay to the Company sums for which indemnity is not provided. Thus employees of the Principals are not liable. Rule 16 is applicable to former solicitors by virtue of rule 10(3) of the Rules. In the case of former solicitors, it is the former solicitor, and not the Principals of the former solicitor who is personally liable. Hence, the additional subparagraph (3) in Schedule 3 paragraph 3 of the Rules to specify the personal liability of the former solicitor.

Rule 7(d)(i)(A) of the Amendment Rules

The Company has taken Counsel's advice on the definition of 'Practice'. The Company and the Council agreed with Counsel's advice that the acts and omissions referred to in Schedule 3 paragraph 6 of the Rules are in fact committed by the indemnified and the former solicitor and should be so stated.

Rule 7(f) of the Amendment Rules

Schedule 3 paragraph 9 of the Rules provides that where a claim has been made before the receipt for the contribution paid by the indemnified is issued, the Scheme will provide indemnity to the indemnified and the indemnified should reimburse the Company of the payment made plus interest. Due to the different definitions assigned to 'indemnified' and 'former solicitor' under rule 2 of the Rules, the reference to 'former solicitor' is added. In other words, Schedule 3 paragraph 9 applies to a former solicitor who does not fall within the definition of 'indemnified'.

Rules 7(a)(ii) and 7(a)(iii)(B) of the Amendment Rules

Rules 7(a)(ii) and 7(a)(iii)(B) of the Amendment Rules should be read in conjunction with rule 7(a)(v) of the Amendment Rules.

The intention is to exclude liability in respect of claims brought about by the dishonesty of a person (1) who was a principal at the time of notification of circumstances giving rise to a claim; (2) who was a principal when the claim was made; (3) who was a principal at the time of the events giving rise to a claim. But the amendments also cater for a situation where the dishonest individual was an assistant solicitor at the time of the events giving rise to the claim, but had since become a principal at the time of notification or when the claim was made.

Rule 7(b) of the Amendment Rules

Since the inception of the self-insured Scheme in 1986 to the 1999/2000 indemnity year, the number of claims notifications has increased by 311%, whereas the number of members carrying on practice in the profession in the same period has only increased by 245%.

As for the amount of claims payments, as at 30th June 2001, the total claims payments for the indemnity year 1987/88 is HK\$13,890,879.92, whereas the amount for indemnity year 1999/2000 including reserves is HK\$98,274,069.88, an increase of 607%.

In the members' forum held on 15th September 2000, suggestions were made by members that measures should be taken to alleviate claims, including the possibility of raising the levels of the existing deductibles, and the introduction of a penalty deductible.

The Company consulted its insurance brokers and considered the penalty deductibles

introduced in other jurisdictions.

The Company and the Council decided that the introduction of the penalty deductibles would be a useful deterrent to firms with frequent claims.

Rule 7(e)(iii) of the Amendment Rules

The same reasoning in 7(d)(i)(A) of the Amendment Rules applies to this rule.

Yours sincerely,

Vivien Lee
Assistant Director
Professional Indemnity Scheme

Appendix II

LS/S/38/00-01
2869 9468
2877 5029

Department of Justice
Law Drafting Division
8/F, High Block
Queensway Government Offices
66 Queensway
Hong Kong

5 September 2001

BY FAX

Fax No. : 2869 1302
Total no. of page(s) : 1

(Attn : Mr John Wong
Senior Government Counsel)

Dear John,

**Solicitors (Professional Indemnity) (Amendment) Rules 2001
(L.N. 162 of 2001)**

We are scrutinizing the legal and drafting aspects of the Amendment Rules. We would be grateful for your confirmation whether the amendment to rule 9 of the Solicitors (Professional Indemnity) Rules is to synchronize the wording in rule 9 with the wording of the definition of "indemnified" as amended in rule 2.

It is appreciated that your reply in both languages could reach us by **7 September 2001**.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

6 September 2001

Mr. Stephen Lam
Assistant Legal Adviser
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mr. Lam,

Solicitors (Professional Indemnity)(Amendment) Rules 2001
(L.N. 162 of 2001)

Thank you for your letter dated 5 September 2001 and my reply to your letter is as follows –

"The amendment to rule 9 of the Solicitors (Professional Indemnity) Rules (Cap. 159 sub. leg.) is to synchronize the wording in rule 9 with the wording of the definition of "indemnified" as amended by rule 2 of the Amendments Rules.

對《律師（專業彌償）規則》（第 159 章，附屬法例）第 9 條所作出的修訂，目的是使第 9 條中的用詞，與經修訂規則第 2 條修訂的"獲彌償保障者"定義的用詞一致。"

Yours sincerely,

(John WONG)
Senior Government Counsel

c.c. The Law Society of Hong Kong
(Attn.: Ms. Heidi Chu
Assistant Director, Regulation and Guidance) 2845 0387

DMA# 46959

Appendix B

Legal Service Division Reports on Items of subsidiary legislation gazetted from 13 July 2001 to 21 September 2001 (to be tabled on 10 October 2001)

<u>L.N. No</u>	<u>Item</u>
170	Import and Export (Fees) (Amendment) Regulation 2001 (L.N. 128 of 2001) (Commencement) Notice 2001
171	Import and Export (Strategic Commodities) Regulations (Amendment of Schedules 1 and 2) Order 2001 (L.N. 132 of 2001) (Commencement) Notice 2001
177	Revenue (No. 2) Ordinance 2001 (15 of 2001) (Commencement) Notice 2001
178	Revenue (No. 3) Ordinance 2001 (22 of 2001) (Commencement) Notice 2001
179	Immigration (Amendment) Ordinance 2001 (17 of 2001) (Commencement) Notice 2001
180	Tax Reserve Certificates (Rate of Interest) (No. 8) Notice 2001
181	Clubs (Safety of Premises) (Exclusion) (Amendment) (No. 2) Order 2001
182	Tax Reserve Certificates (Rate of Interest) (No. 9) Notice 2001
183	Drug Addiction Treatment Centre (Lai Sun Correctional Institution) Order
184	Legal Tender Notes Issue Ordinance (Amendment of Schedule) Notice 2001
185	Administrative Appeals Board (Witnesses' Allowances) Rules (Cap. 442 sub. leg.) (Commencement) Notice 2001
186	Municipal Services Appeals Board (Witnesses' Allowances) Regulation (Cap. 220 sub. leg.) (Commencement) Notice 2001
187	Chief Executive Election Ordinance (Cap. 569) (Commencement) Notice 2001
188	Revenue (No. 2) Ordinance 2001 (15 of 2001) (Commencement) (No. 2) Notice 2001

立法會

Legislative Council

Legal Service Division Report on Subsidiary Legislation Gazetted on 13 July 2001

Date of Tabling in LegCo : 10 October 2001

Amendment to be made by : 7 November 2001 (or 14 November 2001 if extended by resolution)

Import and Export Ordinance (Cap. 60)

**Import and Export (Fees) (Amendment) Regulation 2001 (L.N. 128 of 2001)
(Commencement) Notice 2001 (L.N. 170)**

This Notice appoints 13 July 2001 as the day on which the Import and Export (Fees) (Amendment) Regulation 2001 is to come into operation.

The purpose of the Amendment Regulation is to allow applications for textiles-related licences and certificates of origin and lodgements of production notification, where they are made on paper, to be paid for in cash or through the Easy Pay System, in addition to the existing method of payment in the form of postage stamps only.

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

Import and Export Ordinance (Cap. 60)

Import and Export (Strategic Commodities) Regulations (Amendment of Schedules 1 and 2) Order 2001 (L.N. 132 of 2001) (Commencement) Notice 2001 (L.N. 171)

The Notice appoints 13 July 2001 as the day on which the Import and Export (Strategic Commodities) Regulations (Amendment of Schedules 1 and 2) Order 2001 (L.N. 132 of 2001) is to come into operation.

The Order amends Schedules 1 (List of Strategic Commodities) and 2 (list of articles in transit and of air transshipment cargo) to reflect the major changes made by the Wassenaar Arrangement, Missile Technology Control Regime, Australia Group and Nuclear Suppliers Group to their respective control lists.

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

Prepared by

Ho Ying-chu, Anita
Assistant Legal Adviser
Legislative Council Secretariat
18 July 2001

LS/S/39/00-01

立法會
Legislative Council

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 20 July 2001**

Date of Tabling in LegCo : 10 October 2001

Amendment to be made by : 7 November 2001 (or 14 November 2001 if extended by resolution)

Revenue (No. 2) Ordinance 2001

Revenue (No. 2) Ordinance 2001 (15 of 2001) (Commencement) Notice 2001 (L.N. 177)

This Notice appoints 1 October 2001 as the day on which section 5 of the ordinance shall come into operation.

2. Members will recall that the ordinance, which was passed in LegCo on 20 June 2001, gives effect to some of the Budget proposals. Section 5 of the ordinance provides for the increase of air passenger departure tax from \$50 to \$80.

Revenue (No. 3) Ordinance 2001

Revenue (No. 3) Ordinance 2001 (22 of 2001) (Commencement) Notice 2001 (L.N. 178)

3. The Notice appoints 1 September 2001 as the day on which the ordinance shall come into operation.

4. Members will recall that the ordinance, which was passed in LegCo on 12 July 2001, gives effect to the Budget proposals on the rate of levy payable under the Securities and Futures Commission Ordinance (Cap. 24) and the proportion of the levy to be retained by the Stock Exchange Company and on the rate of stamp duty payable on contract notes for the sale or purchase of Hong Kong stock and certain related transfers.

5. It is noted that during the scrutiny of the bill by the Bills Committee, the Administration has indicated that the bill, when passed, would commence not earlier than one month after its gazettal.

Immigration Ordinance (Cap. 115)
Immigration (Amendment) Ordinance 2001 (17 of 2001) (Commencement)
Notice 2001 (L.N. 179)

6. The Notice appoints 26 July 2001 as the day on which the amending ordinance shall come into operation.

7. Members will recall that the amending ordinance, which was passed in LegCo on 27 June 2001, empowers the Director of Immigration to request an applicant for a Certificate of Entitlement and the claimed parent to undergo a genetic test conducted in such manner as the Director may specify to establish the claimed parentage.

8. No LegCo Brief has been received on any of the above notices at the date of report. The notices are in order legally and from the drafting point of view.

Prepared by

CHEUNG Ping-kam
Assistant Legal Adviser
Legislative Council Secretariat
20 July 2001

立法會
Legislative Council

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 3 August 2001**

Date of Tabling in LegCo : 10 October 2001

Amendment to be made by : 7 November 2001 (or 14 November 2001 if extended by resolution)

Tax Reserve Certificates (Fourth Series) Rules (Cap. 289 sub. leg.)
Tax Reserve Certificates (Rate of Interest) (No. 8) Notice 2001 (L.N. 180)

This Notice fixes at 2.250% per annum the rate of interest payable on tax reserve certificates issued on or after 6 August 2001.

Prepared by

Wong Sze-man, Bernice
Assistant Legal Adviser
Legislative Council Secretariat
3 August 2001

立法會 *Legislative Council*

Legal Service Division Report on Subsidiary Legislation Gazetted on 31 August 2001

Date of Tabling in LegCo : 10 October 2001

Amendment to be made by : 7 November 2001 (or 14 November 2001 if extended by resolution)

Clubs (Safety of Premises) Ordinance (Cap. 376) Clubs (Safety of Premises) (Exclusion) (Amendment) (No. 2) Order 2001 (L.N. 181)

Under section 3 of the Clubs (Safety of Premises) Ordinance (Cap. 376) (the Ordinance), the Secretary for Home Affairs is empowered to exclude by order published in the Gazette any club-house or type or description of club-house from the application of the Ordinance. Pursuant to such power, 89 club-houses situated in Government premises have been excluded and listed in the Schedule to the Club (Safety of Premises)(Exclusion) Order (Cap. 376 sub. leg.) (the Exclusion Order).

Now this Order of 23 August 2001 amends item 5 of the Schedule to the Exclusion Order in the following manner:

	paragraph no.	repealing	substituting/adding
in	(24)	B1, B2 & 10/F, Block II, Housing Authority Headquarters Building, 33 Fat Kwong Street, Homantin, Kowloon	L3 & L5, Block 4, Housing Authority Headquarters, 33 Fat Kwong Street, Homantin, Kowloon
in	(38)	Marine East Division Officers' Mess	Marine Outer Waters District Officers' Mess
add	(90)	-	Fire Safety Club Flat 1, Additional Quarters, Kwun Tong Fire Station, 426 Kwun Tong Road, Kowloon

The amendments are respectively occasioned by a relocation of the club premises, a change in the name of the relevant club and the establishment of a new club at new premises. There is no fiscal implication or change of policy.

Tax Reserve Certificates (Fourth Series) Rules (Cap. 289 sub. leg.)
Tax Reserve Certificates (Rate of Interest) (No. 9) Notice 2001 (L.N. 182)

By this Notice made under rule 7(2)(h) of the Tax Reserve Certificates (Fourth Series) Rules (Cap. 289 sub. leg.), the Secretary for the Treasury has fixed the rate of interest for tax reserve certificates issued on or after 3 September 2001 to be 1.8667% per annum (the new rate). Consequentially, item 119 in the Tax Reserve Certificates (Rate of Interest) (Consolidation) Notice (Cap. 289 sub. leg.) is amended so that it is clear that the rate specified in that item applies to the period before 3 September 2001. The new rate is added as item 120 which is to apply on or after 3 September 2001

Prepared by

KAU Kin-wah
Assistant Legal Adviser
Legislative Council Secretariat
3 September 2001

立法會
Legislative Council

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 7 September 2001**

Date of Tabling in LegCo : 10 October 2001

Amendment to be made by : 7 November 2001 (or 14 November 2001 if extended by resolution)

**Drug Addiction Treatment Centres Ordinance (Cap. 244)
Drug Addiction Treatment Centre (Lai Sun Correctional Institution) Order
(L.N. 183)**

The Secretary for Security has appointed the Lai Sun Correctional Institution situated on the island of Hei Ling Chau as a drug addiction treatment centre in addition to its being a prison. This Order has come into operation on 10 September 2001.

The legal and drafting aspects of this Order are in order.

Prepared by

Ho Ying-chu, Anita
Assistant Legal Adviser
Legislative Council Secretariat
13 September 2001

LS/S/43/00-01

立法會 *Legislative Council*

Legal Service Division Report on Subsidiary Legislation Gazetted on 21 September 2001

Date of Tabling in LegCo : 10 October 2001

Amendment to be made by : 7 November 2001 (or 14 November 2001 if extended by resolution)

Part I **Legal Tender Notes Issue**

Legal Tender Notes Issue Ordinance (Cap. 65) **Legal Tender Notes Issue Ordinance (Amendment of Schedule) Notice 2001 (L.N. 184)**

By this Notice, the Financial Secretary with the approval of the Chief Executive in Council, amends the Schedule to the Legal Tender Notes Issue Ordinance (Cap. 65) to specify the Bank of China (Hong Kong) Limited ("BOC(HK)") as a note-issuing bank within the meaning of that Ordinance in place of the Bank of China. The Notice would come into operation on 1 October 2001.

2. Under the Bank of China (Hong Kong) Limited (Merger) Ordinance (25 of 2001)("the Ordinance"), the business, existing property and liabilities of Bank of China Hong Kong Branch, the Hong Kong branches of seven Mainland incorporated banks, Hua Chiao Commercial Bank Limited and the Shenzhen branches of The Kwangtung Provincial Bank and Sin Hua Bank Limited would be transferred to and vested in Po Sang Bank Limited, which name would be changed to "Bank of China (Hong Kong) Limited" at the time appointed pursuant to section 3 of the Ordinance.

3. Under section 6(1) of the Ordinance, Bank of China shall cease to be a note-issuing bank and BOC(HK) shall become a note-issuing bank, in each case with effect from the appointed time, subject to the Financial Secretary (with the approval of the Chief Executive in Council) by a written notice authorizing BOC(HK) to issue bank notes and by notice in the Gazette amending the Schedule to the Legal Tender Notes Issue Ordinance (Cap. 65).

4. Section 6(2) of the Ordinance provides that all legal tender notes issued by Bank of China before the appointed time shall be deemed to have been issued by BOC(HK) who shall be liable to pay the bearer on demand at its office in Hong Kong. Subject to the terms and conditions imposed by the Financial Secretary under section 3 of the Legal Tender Notes Issue Ordinance, BOC(HK) has the power (a) to produce, store, distribute and issue bank notes in the name of Bank of China, using the same designs and in the same denominations as Bank of China was authorized to issue immediately before the appointed time, and (b) to destroy any legal tender notes issued or deemed to be issued by it. All certificates of indebtedness issued to Bank of China under section 4 of the Exchange Fund Ordinance (Cap. 66) and all indebtedness owed to Bank of China thereunder shall be transferred to BOC(HK).

5. On the day the Notice was gazetted, solicitors for Po Sang Bank Limited gave notice in the Gazette pursuant to section 3 of the Ordinance that the appointed time would be the commencement of 1 October 2001. The notice of appointed time is not subsidiary legislation.

6. Members may refer to LegCo Brief File Reference G4/33/1C III issued by the Financial Services Bureau (undated) for detailed information. Paragraph 8 of the Brief sets out certain requirements of a note-issuing bank under Article 111 of the Basic Law and the Legal Tender Notes Issue Ordinance. The Administration's assessment of BOC(HK) as a note-issuing bank is at paragraph 9 of the Brief.

Part II Commencement Notice

Administrative Appeals Board (Witnesses' Allowances) Rules (Cap. 442 sub. leg.) Administrative Appeals Board (Witnesses' Allowances) Rules (Cap. 442 sub. leg.) (Commencement) Notice 2001 (L.N. 185)

7. This Notice appoints 21 September 2001 as the day on which the Administrative Appeals Board (Witnesses' Allowances) Rules (Cap. 442 sub. leg.) shall come into operation.

8. The Rules provide for the payment of allowances to witnesses summoned to appear before the Administrative Appeals Board to give evidence or to produce documents.

Municipal Services Appeals Board (Witnesses' Allowances) Regulation (Cap. 220 sub. leg.) Municipal Services Appeals Board (Witnesses' Allowances) Regulation (Cap. 220 sub. leg.) (Commencement) Notice 2001 (L.N. 186)

9. This Notice appoints 21 September 2001 as the day on which the Municipal Services Appeals Board (Witnesses' Allowances) Regulation (Cap. 220 sub. leg.) shall come into operation.

10. The Regulation provides for the payment of allowances to witnesses summoned to appear before the Municipal Services Appeals Board to give evidence or to produce documents.

**Chief Executive Election Ordinance (Cap. 569)
Chief Executive Election Ordinance (Cap. 569) (Commencement) Notice 2001
(L.N. 187)**

11. This Notice appoints 21 September 2001 as the day on which the Chief Executive Election Ordinance (Cap. 569) shall come into operation.

12. The Ordinance provides for the election of the Chief Executive and matters related to or consequential upon the election.

**Revenue (No. 2) Ordinance 2001 (15 of 2001)
Revenue (No. 2) Ordinance 2001 (15 of 2001) (Commencement) (No. 2) Notice
2001 (L.N. 188)**

13. This Notice appoints 1 October 2001 as the day on which sections 3, 4 and 6 of the Revenue (No. 2) Ordinance 2001 (15 of 2001) shall come into operation.

14. Sections 3, 4 and 6 of the Ordinance amend the Air Passenger Departure Tax Ordinance (Cap. 140) to impose air passenger departure tax on every passenger 12 years of age or above intending to depart from Hong Kong at the Heliport at the Hong Kong-Macau Ferry Terminal. The Director-General of Civil Aviation is also empowered to specify heliports by notice in the Gazette.

15. Under section 5 of the Ordinance, air passenger departure tax would be increased from \$50 to \$80 with effect from 1 October 2001. The remaining provision of the Ordinance has come into operation on the day the Ordinance was published.

Prepared by

Wong Sze-man, Bernice
Assistant Legal Adviser
Legislative Council Secretariat
24 September 2001