

立法會
Legislative Council

LC Paper No. LS 29/00-01

**Paper for the House Committee Meeting of the
Legislative Council
on 1 December 2000**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 24 November 2000**

Date of Tabling in LegCo : 29 November 2000

Amendment to be made by : 20 December 2000 (or 10 January 2001 if extended by resolution)

Part I ***Control of dangerous drugs***

Dangerous Drugs Ordinance (Cap. 134)

Dangerous Drugs Ordinance (Amendment of First Schedule) (No. 2) Order 2000 (L.N. 329)

This Order amends the First Schedule to the Dangerous Drugs Ordinance (Cap. 134) ("the Ordinance") by adding a substance, namely, ketamine, to Part I of that Schedule. The effect of this is that the import and export of ketamine, like other dangerous drugs, will require a licence from the Director of Health and the illicit trafficking, manufacture, supply or possession of ketamine is an offence under the Ordinance and will lead to severe penalties. Under the Ordinance, any person who traffics in or manufactures a dangerous drug is liable to a maximum penalty of a fine of \$5,000,000 and life imprisonment. The maximum penalty for possession of a dangerous drug is a fine of \$1,000,000 and imprisonment for 7 years.

2. Members may refer to the LegCo Brief (Ref.: NCR 2/1/8 Pt. 17) dated 22 November 2000 issued by the Security Bureau for background information. According to the Administration, the Action Committee Against Narcotics and the Pharmacy and Poisons Board have been consulted and they agreed with the proposed amendment.

3. This Order will come into operation on 15 December 2000. The legal and drafting aspects of the Order are in order.

Part II ***Revision of fees and charges***

4. L.Ns. 330 to 341 are subsidiary legislation relating to revision of fees and charges. Rule 31(1) of the Rules of Procedure would apply if Members wish to

amend the subsidiary legislation by proposing fees below the existing level, i.e. the amendment would probably be to dispose of or charge any part of the revenue or other public moneys of Hong Kong and the written consent of the Chief Executive to the proposal is required. Members may repeal the proposed subsidiary legislation to preserve the existing level of fees without any implications of charging effect.

5. L.Ns. 330 to 341 will come into operation on 12 January 2001. L.Ns. 330 to 331 and 333 to 334 are Amendment Regulations made by the Secretary for Treasury under section 29A of the Interpretation and General Clauses Ordinance (Cap. 1) to increase the relevant prescribed fees. Under section 29A of Cap. 1, where the amount of any fee is for the time being specified in, or otherwise fixed or determined by, subsidiary legislation made by the Chief Executive in Council, the Financial Secretary may by similar subsidiary legislation vary the amount of fees. By virtue of section 3 of the same Ordinance, the Financial Secretary is defined to include the Secretary for the Treasury.

A. *L.Ns. 330 and 333*

Dutiable Commodities Ordinance (Cap. 109)

Dutiable Commodities (Amendment) (No. 2) Regulation 2000 (L.N. 330)

Pawnbrokers Ordinance (Cap. 166)

Pawnbrokers (Amendment) Regulation 2000 (L.N. 333)

6. L.N. 330 increases by 20% the fee payable for a temporary liquor licence from \$240 to \$290. The fee was last revised in May 1995.

7. L.N. 333 increases by 15% the fee payable for the grant or renewal of a pawnbroker licence from \$4,000 to \$4,600. The fee was last revised in August 1986.

8. Members may refer to LegCo Brief (Ref.: SBCR 4/2801/85) issued by the Security Bureau in November 2000 for background information. According to the Administration, the proposed fee increases would achieve full cost recovery within a period of 3 to 7 years.

9. Both Amendment Regulations will come into operation on 12 January 2001. The LegCo Panel on Security of the last term was consulted on the proposed revision of fees on 15 June 2000 and members of the Panel raised no objection to the proposed fee revision. The legal and drafting aspects of these two Amendment Regulations are in order.

B. *L.Ns. 331 and 332*

Firearms and Ammunition Ordinance (Cap. 238)

Firearms and Ammunition (Amendment) (No. 2) Regulation 2000 (L.N. 331)

Firearms and Ammunition (Storage Fees) (Amendment) Order 2000 (L.N. 332)

10. L.N. 331 increases by 15% to 20% the fees payable under the Firearms and Ammunition Regulations (Cap. 238 sub. leg.) for the issue or renewal of licences for possession of arms and ammunition, the grant of exemption from the requirement to obtain a licence for such possession, the amendment of a licence or a licence condition and the replacement of a licence or an exemption. It also decreases by 15% the fee payable for the issue or renewal of an arms dealer's licence in certain circumstances to reflect the reduced full cost of providing the service at 2000-01 prices. These fees were last revised in May 1995.

11. L.N. 332 increases by 15% to 20% the fees payable under the Firearms and Ammunition Ordinance (Cap. 238) for the storage of arms, imitation firearms or ammunition and for the storage of arms and ammunition awaiting transhipment. These fees were last revised in May 1995.

12. Members may refer to LegCo Brief (Ref.: SBCR 4/2801/85) issued by the Security Bureau in November 2000 for background information. Annex E of the LegCo Brief contains the cost computations and Annex F sets out a comparison of the existing and proposed fees. According to the Administration, the proposed fee increases would achieve full-cost recovery within 3 to 7 years.

13. L.Ns. 331 and 332 will come into operation on 12 January 2001. The LegCo Panel on Security of the last term was consulted on the proposed revision of fees on 15 June 2000. Members of the Panel raised no objection to the proposed fee revision. The legal and drafting aspects of L.Ns. 331 and 332 are in order

C. L.Ns. 334 and 336 - 340

Bills of Sale Ordinance (Cap. 20)

Bills of Sale (Fees) (Amendment) Regulation 2000 (L.N. 334)

Hong Kong Court of Final Appeal Ordinance (Cap. 484)

Hong Kong Court of Final Appeal Fees (Amendment) Rules 2000 (L.N. 336)

High Court Ordinance (Cap. 4)

High Court Fees (Amendment) Rules 2000 (L.N. 337)

District Court Ordinance (Cap. 336)

District Court Civil Procedure (Fees) (Amendment) (No. 2) Rules 2000 (L.N. 338)

Coroners Ordinance (Cap. 504)

Coroners (Fees) (Amendment) Rules 2000 (L.N. 339)

Small Claims Tribunal Ordinance (Cap. 338)

Small Claims Tribunal (Fees) (Amendment) Rules 2000

(L.N. 340)

14. L.Ns. 334, 336 to 340 increase the fees and charges for the services provided by various courts or tribunals. All the proposed increases will come into operation on 12 January 2001.

15. L.N. 334 increases by 7% to 11% the fees payable to the Registrar of the High Court under the Bills of Sale Ordinance (Cap. 20) in relation to the registration of bills of sale with the High Court. The fees were last revised in 1994.

16. L.N. 336 increases by 8.5% the fees payable under the Hong Kong Court of Final Appeal Ordinance (Cap. 484) for commencement of an appeal proceedings in the Hong Kong Court of Final Appeal. It also increases by 11% to 12.5% the fees payable for search for documents and the supply of copies of documents in the Registry. The existing fees were set in July 1997.

17. L.N. 337 increases by 7% to 12.5% the various fees payable in respect of all proceedings taken in any action or matter in the High Court. The proposed increases relate to fees for the commencement of a legal cause or matter in the High Court, setting down a case for trial, filing applications for probate or letters of administration and applications for resealing of the same, execution of judgments, search for documents and supply of copies and translations of documents in the Registry. The fees were last revised in 1994.

18. L.N. 338 increases by 8% to 12.5% the various fees payable in respect of all proceedings taken in any action or matter in the District Court. The proposed increases relate to fees for the commencement of a legal cause or matter in the District Court, setting down a case for trial, execution of judgments, search for documents and supply of copies and translations of documents in the Registry. The fees were last revised in 1994.

19. L.N. 339 increases by 9% to 12.5% the fees payable for the supply of copies of documents required or permitted to be supplied under the Coroners Ordinance (Cap. 504), search for documents in the Coroner's Office and certification of documents. The fees were last revised in 1994.

20. L.N. 340 increases by 7.5% to 10% the fees payable in respect of all proceedings taken in the Small Claims Tribunal. The proposed increases relate to fees for the filing of claims and summonses, search for documents and supply of copies of documents in the Registry and bailiff's expenses. These fees were last revised in 1994.

21. Members may refer to LegCo Brief (Ref.: FIN 44/5/4 Pt. 15) issued by the Finance Bureau in November 2000 for background information. Annex G of the LegCo Brief contains the cost computations and Annex H sets out a comparison of the

existing and proposed fees. According to the Administration, the proposed fee increases would achieve full-cost recovery at 2000-01 prices.

22. The LegCo Panel on Financial Affairs of the last term was consulted on the proposed revision of fees on 15 June 2000. A member of the Panel queried the need to increase the fees for services provided by the Probate Registry of the High Court relating to the processing of estates as the Probate Registry should have already achieved full-cost recovery in its services through charging the scale fee which is linked to the net value of the estates. An extract of the minutes of that meeting and the Administration's response to the member's query are at Enclosures I and II respectively. The legal and drafting aspects of the above subsidiary legislation are in order.

D. L.Ns. 335 and 341

Public Finance Ordinance (Cap. 2)

Fees for Official Signatures and Miscellaneous Services (Amendment) Notice 2000 (L.N. 335)

23. This Notice increases by 10% the fees payable for providing certifications, alterations and duplicates of official documents by a public officer to the public from \$140 to \$155. These fees were last revised in October 1994.

24. Members may refer to the LegCo Brief (Ref.: F 1/4 Pt. 4) issued by the Finance Bureau in November 2000 for background information. Annex B of the LegCo Brief sets out the cost computations. According to the Administration, the proposed fee increases would achieve full-cost recovery in 2 years' time.

25. This Notice will come into operation on 12 January 2001. The Administration consulted the LegCo Panel on Financial Affairs of the last term on the proposed revision of fees on 15 June 2000. Members of the Panel did not raise objection to the proposed revision. The legal and drafting aspects of the Notice are in order.

Legal Practitioners Ordinance (Cap. 159)

Legal Practitioners (Fees) (Amendment) (No. 2) Rules 2000 (L.N. 341)

26. These Rules increase by 8.5% to 9% the fees payable to the Registrar of the High Court in respect of admission of solicitors and barristers and registration of notaries public. With effect from 12 January 2001, the fees payable for entry of the name of a solicitor and the name of a barrister on the roll of solicitors and the roll of barristers respectively will be increased from \$330 to \$360. As for registration of a notary public and application for admission as a solicitor or barrister, the relevant fees will be increased from \$1,045 to \$1,135. These fees were last revised in 1994.

27. Members may refer to the LegCo Brief (Ref.: LP 272/05C) issued by

the Department of Justice in November 2000 for background information. Annex B of the LegCo Brief sets out the cost computations. According to the Administration, the proposed fee increases would achieve full-cost recovery.

28. The Administration consulted the LegCo Panel on Administration of Justice and Legal Services of the last term on the proposed revision of fees on 20 June 2000. An extract of the minutes of that meeting is at Enclosure III. The legal and drafting aspects of the Rules are in order.

Part III - Mandatory Provident Fund Schemes

Mandatory Provident Fund Schemes Ordinance (Cap. 485)

Mandatory Provident Fund Schemes (Compensation Claims) Rules (L.N. 342)

Mandatory Provident Fund Schemes (Winding Up) Rules (L.N. 343)

29. The Mandatory Provident Fund Schemes (Compensation Claims) Rules (L.N. 342) provide for the requirements and procedures in respect of an application by the Mandatory Provident Fund Schemes Authority ("MPFA") to the Court of First Instance ("the Court") under section 17B of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("the Ordinance") for determining matters relating to alleged losses of accrued benefits under registered mandatory provident fund ("MPF") schemes that are attributable to misfeasance or illegal conduct on the part of the trustee of the schemes or some other persons concerned with the administration of the schemes.

30. The Mandatory Provident Fund Schemes (Winding Up) Rules (L.N. 343) provide for the requirements and procedures in respect of an application by the MPFA to the Court under section 34A of the Ordinance for the winding up of a registered MPF scheme.

31. Members may refer to the LegCo Brief (Ref.: G6/9/27C(2000)II & G6/9/30C(2000)II) dated 23 November 2000 issued by the Financial Services Bureau for background information. According to the Administration, the Law Society of Hong Kong and the Hong Kong Society of Accountants have been consulted on the Mandatory Provident Fund Schemes (Winding Up) Rules and those professional bodies are content with the Rules.

32. Both Rules deal with procedural matters and are technical in nature. They will come into operation on 1 December 2000. The legal and drafting aspects of the two Rules are in order.

Encl.

Prepared by

Fung Sau-kuen, Connie

Assistant Legal Adviser

Legislative Council Secretariat

27 November 2000

Extract

立法會
Legislative Council

LC Paper No. CB(1) 1968/99-00

(These minutes have been seen by the
Administration and cleared by the
Chairman)

Ref : CB1/PL/FA/1

Legislative Council
Panel on Financial Affairs

Minutes of Special Meeting held on
Thursday, 15 June 2000 at 4:30 pm
in the Chamber of the Legislative Council Building

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II Revision of Government fees and charges under the purview of the
Finance Bureau

(LC Paper No. CB(1) 1834/99-00(02))

5. The Deputy Secretary for Treasury (DS/Tsy) briefed members on the proposals of revising Government fees and charges which did not directly affect people's livelihood or general business activities under the purview of the Finance Bureau. DS/Tsy said that the Administration had proposed phased annual increases in fees ranging from 4% to 20% with reference to the existing cost recovery rates of the fee items. The fee items for revision and the proposed rates of increase were detailed in the information paper.

6. Responding to enquiry about the high level of charge of \$15 per page for photocopying the Bills of Quantities in a tender exercise vis-à-vis that of \$3 to \$5 normally charged by other departments in providing photocopying service, the Principal Assistant Secretary for the Treasury (PAS/Tsy) explained that the photocopying service was provided to tenderers of the lowest three bids who had failed to provide the required number of duplicate copies of a Bill of Quantities in a tender exercise. Due to the importance of and stringent security requirement in handling tender documents, detailed vetting and checking of the photocopies by senior level officers were needed. The high level of charge was attributed to the staff costs

incurred for providing the service. PAS/Tsy advised that 11 tenderers had been provided with the service in 1999 and an average of 40 photocopies was made each time. He added that the Administration had proposed to achieve full-cost recovery for the service by raising the fee level from the current \$15 per page to \$25 in four consecutive years through mild increases of \$2 to \$3 per annum.

7. Mr Albert HO Chun-yan queried the need to increase fees for services provided by the Probate Registry relating to the processing of estates as proposed under the Second Schedule of the High Court Fees Rules in Appendix I to the information paper. He expected that the Probate Registry should have already achieved full-cost recovery in its services through charging the scale fee linking to the net value of an estate which it processed. He remarked that although the proposed increases in fees were mild, the revision was not justified.

8. As regards fees related to application for divorce, Mr Albert HO Chun-yan expressed reservation over the proposed increase in fees under the Matrimonial Causes (Fees) Rules in Appendix I to the information paper. He was of the view that the fees should not be increased as some applicants who were suffering from financial hardship were not eligible for legal aid. He further opined that revision of judiciary fees relating to Family Court should not follow that of other courts.

9. In response, DS/Tsy explained that owing to the diverse nature of the services provided by the various courts and the large number of fee items involved, the Judiciary had since 1989 calculated the cost of its services provided on a global basis where costs were calculated at the departmental level instead of at the individual service level. As such, there was cross subsidization in the costs of judicial services. Costs for and income from various judicial services were taken into account in the calculation of the cost recovery rate of the Judiciary. As a result, regardless of the real costs and income of individual fee item, each had to be revised in line with other items. The global costing approach had been put in place for over ten years and it would be outside the scope of the present fee revision exercise to review the system.

10. Upon request of the Chairman, the Administration agreed to provide further information to address Mr HO's concerns.

(Post-meeting note: The Administration had provided further information addressing Mr HO's concerns. The information was circulated to members vide LC Paper No. CB(1) 1930/99-00 dated 26 June 2000.)

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Enclosure II

Tel No: 2810 3729

Fax: No: 2179 5848

Our Ref.: FINCR5/2321/85 Pt. 19

Your Ref.: CB1/PL/FA

23 June 2000

Clerk to Panel on Financial Affairs

(Attn: Ms Leung Siu-kum)

Legislative Council Secretariat

3th Floor, Citibank Tower

3 Garden Road, Central

Hong Kong

Dear Ms Leung,

**LegCo Panel on Financial Affairs
Follow-up to special meeting on 15 June 2000**

Thank you for your letter of 19 June. My replies to the two questions posed by Hon Albert Ho Chun-yan on the proposed increase in the fees connected with services provided by the Probate Registry and Family Court are as follows -

- (a) As explained in our paper on revision of Government fees and charges submitted to the Panel for discussion on 15 June, owing to the diverse nature of the services provided by the various courts and the large number of fee items involved, the Judiciary has since 1989 calculated the cost of its services provided on a global basis. The Probate Registry, being part of the Judiciary Administration, is included in the calculation of the overall cost recovery rate. In the fee revision proposal submitted to the Panel, we have proposed no increase in the scale fee on the estate processed by the Probate Registry (Annex A) as such scale fee is linked with the net value of the estate. However, by virtue of the global costing approach, we have taken into account the income from the scale fee in the calculation of the cost recovery rate for the Judiciary. Therefore, if the fees for other services of the Probate Registry are not increased, it would have an adverse impact on the rate of fee increase for the other judicial services.

- (b) The filing fee related to a divorce application is \$630 while that for setting down for trial is \$630 (undefended cause) or \$1,045 (defended cause). We propose to increase these fees by 8.5%, ranging from \$53 to \$88. We think that the additional amounts are within the affordability of applicants who are not eligible for legal aid.

Yours sincerely,

(Allen Leung)
for Secretary for the Treasury

c.c. JA (Attn: Mr K K Chan) Fax: 2596 0512

**High Court Fees Rules
Probate Jurisdiction**

Item 2 of the Second Schedule of the High Court Fees Rules, which has **not** been included in Appendix I to the information paper is reproduced as follows -

Grants of probate or letters of administration or resealing of the same:
If the estate is sworn under the net value of -

Estate Value (\$)	Fee (\$)
10,000	160
20,000	320
50,000	640
100,000	800
200,000	1,200
300,000	1,600
400,000	2,400
600,000	3,200
800,000	4,000
1,000,000	4,800

and \$400 for every additional \$100,000 or part thereof.

Extract

立法會

Legislative Council

LC Paper No. CB(2)2572/99-00

(These minutes have been seen
by the Administration and
cleared with the Chairman)

Ref : CB2/PL/AJLS

Legislative Council

Panel on Administration of Justice and Legal Services

Minutes of meeting

**held on Tuesday, 20 June 2000 at 4:30 pm
in Conference Room A of the Legislative Council Building**

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III. Revision of judiciary fees and charges

(LC Paper No. CB(2)2359/99-00(02) - Paper provided by the Administration)

3. Senior Assistant Solicitor General (SASG) briefly introduced the Administration's paper on the Judiciary's proposal to increase the fees for all judicial services, including those prescribed under the Legal Practitioners (Fees) Rules (LP(F)R), by 8.5 % on average in order to achieve full cost recovery. There were five types of fees under the (LP(F)R) which had been identified for revision. The Administration would like to seek the Panel's views on the fees proposed for revision as set out in Annex II (i.e. those relating to requests made to the Registrar of the High Court for entry on the roll of solicitors and barristers, for registration of a notary public, for application for admission as a solicitor and a barrister) as well as the level of fee revision for the identified fees.

4. The Chairman asked whether the two legal professional bodies had been consulted on the proposed fee increases. The Administration replied in the negative. The Chairman said that she had received no protest from the bodies in this respect after the relevant papers were circulated to them.

5. The Chairman expressed reservation about the fee revisions. She said that in her opinion, the identified fees were chargeable for services which involved relatively

simple tasks. This, coupled with the present situation of an economic downturn and deflation, created doubts as to whether the proposed fee increases were justified.

6. In response, SASG said that it was the Government's policy that fees should in general be set at levels sufficient to recover the full costs of providing the services. In view of the large number of fees collected by the Judiciary, the Administration considered it appropriate that these fees should be revised on a global costing basis with a view to achieving an overall breakeven. He added that most of the fees specified in Annex II of the paper were last revised in 1994. The Administration felt that the global costing method of assessing fees should enable fees to be more easily payable by individuals generally. He drew members' attention to Annex I of the paper which set out a cost and cost-recovery computation prepared by the Judiciary in respect of the services provided by the Judiciary for the year 2000-2001. The computation revealed that there would be a shortfall, and an increase by 8.5% of the fees was required to achieve full cost recovery.

7. Referring to Annex II of the Administration's paper, Mr TSANG Yok-sing said that the revised level of fees was calculated on the basis of an estimated number of transactions per annum in respect of the services provided. He enquired what would be the effect on cost and therefore the rate of fees charged on the users if the actual number of transactions turned out to be significantly greater or less than the estimated number.

8. SASG said that he could not provide a breakdown of the time and manpower in providing the services. However, he could ask the Judiciary to provide the information should members wish to have more details.

9 .In summing up, the Chairman said that while the proposed increases were not hefty, in view of the concerns expressed by some members, the Administration should provide explanations as to why fee revision for the various judicial services should be conducted on a global costing basis instead of on an individual item basis. The Administration should also consider whether other ways of calculating judiciary fees should be adopted for the purpose of recovering the full costs of providing the services in future exercises.

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