

立法會
Legislative Council

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 28 June 2002**

Date of tabling in LegCo : 3 July 2002

Amendment to be made by : 16 October 2002 (or 6 November 2002 if extended by resolution)

PART I SUBSIDIARY LEGISLATION MADE BY THE SECRETARY FOR THE TREASURY

Tax Reserve Certificates (Fourth Series) Rules (Cap. 289 sub. leg.)

Tax Reserve Certificates (Rate of Interest) (No. 7) Notice 2002 (L.N. 109)

This Notice fixes the rate of interest payable on tax reserve certificates issued on or after 2 July 2002 at 0.1908% per annum.

Inland Revenue Ordinance (Cap. 112)

Rate of Deductible Interest Notice (L.N. 110)

2. Section 16(1)(a) of the Inland Revenue Ordinance (Cap. 112) ("the Ordinance") allows, where the conditions set out in section 16(2) are satisfied, the deduction of sums payable by way of interest upon any money borrowed by a taxpayer for the purpose of producing profits chargeable to profits tax. In the case of a public utility company specified in Schedule 3 to the Ordinance, the condition is that the money has been borrowed at a rate of interest not exceeding the rate specified by the Financial Secretary by notice in the Gazette. The three utility companies specified in Schedule 3 are The Hong Kong Electric Company, Limited, China Light and Power Company, Limited and The Hong Kong and China Gas Company, Limited.

3. According to the Interpretation and General Clauses Ordinance (Cap. 1), the Financial Secretary means the Financial Secretary of the HKSAR and the Secretary for the Treasury. The existing interest rate of 6.75% was specified in L.N. 80 of 1989 and has been in effect since 20 March 1989. According to the Administration, it was fixed by reference to the Hong Kong dollar savings account interest rate prevailing at

the time. However, with the final phase of interest deregulation covering Hong Kong dollar savings accounts having become effective on 3 July 2001, interest rates of licensed banks are henceforth determined by competitive market forces. This Notice specifies, for the purpose of section 16(2)(b) of the Ordinance, a new rate based on the highest rate of interest on Hong Kong dollar savings account offered by the three note-issuing banks in Hong Kong.

4. Members may refer to LegCo Brief Ref: FIN CR 21/02 of June 2002 from Finance Bureau for background information.

5. This Notice will come into operation on 1 December 2002.

6. No difficulties relating to the legal and drafting aspects of the above items of subsidiary legislation have been identified.

PART II MISCELLANEOUS ITEMS

Interpretation and General Clauses Ordinance (Cap. 1)

Interpretation and General Clauses Ordinance (Replacement of Schedule 6) Order 2002 (L.N. 107)

7. Section 62(1) of the Interpretation and General Clauses Ordinance (Cap. 1) ("the Ordinance") provides, among other things, that where any Ordinance confers a power or imposes a duty upon the Chief Executive to make any subsidiary legislation or appointment, give any directions, issue any order, authorize any thing or matter to be done, grant any exemption, remit any fee or penalty, or exercise any other power or perform any other duty, the exercise of such power or the performance of such duty may be signified under the hand of any public officer specified in Schedule 6 to the Ordinance.

8. The Chief Executive in Council is empowered under section 62(3) of the Ordinance to amend Schedule 6 by order published in the Gazette.

9. The implementation of the accountability system for principal officials has been accompanied by the re-organization of a number of policy bureaux. In order to reflect the change in the portfolios of some of the bureau secretaries, there have been changes to the post titles of the bureau secretaries who have taken charge of the relevant re-organized bureaux. As a result of these changes, there is a need to amend the list of public officers specified in Schedule 6 to the Ordinance.

10. This Order repeals and replaces Schedule 6 to the Ordinance for the purpose of including newly appointed public officers in the list of public officers empowered to signify the exercise of statutory powers and the performance of statutory duties by the Chief Executive.

11. A comparison table in relation to the public officers mentioned in new Schedule 6 and repealed Schedule 6 is as follows:—

<u>New Schedule 6</u>	<u>Repealed Schedule 6</u>
Chief Secretary for Administration 政務司司長	Chief Secretary for Administration 政務司司長
Financial Secretary 財政司司長	Financial Secretary 財政司司長
Secretary for Justice 律政司司長	Secretary for Justice 律政司司長
Secretary for the Civil Service 公務員事務局局長	Secretary for the Civil Service 公務員事務局局長
Secretary for Commerce, Industry and Technology 工商及科技局局長	Secretary for Commerce and Industry 工商局局長 Secretary for Information Technology and Broadcasting 資訊科技及廣播局局長
Secretary for Constitutional Affairs 政制事務局局長	Secretary for Constitutional Affairs 政制事務局局長
Secretary for Economic Development and Labour 經濟發展及勞工局局長	Secretary for Economic Services 經濟局局長 Secretary for Education and Manpower 教育統籌局局長
Secretary for Education and Manpower 教育統籌局局長	Secretary for Education and Manpower 教育統籌局局長
Secretary for the Environment, Transport and Works 環境運輸及工務局局長	Secretary for Transport 運輸局局長 Secretary for Works 工務局局長
Secretary for Financial Services and the Treasury 財經事務及庫務局局長	Secretary for Financial Services 財經事務局局長 Secretary for the Treasury 庫務局局長

<u>New Schedule 6</u>	<u>Repealed Schedule 6</u>
Secretary for Health, Welfare and Food 衛生福利及食物局局長	Secretary for Health and Welfare 衛生福利局局長
Secretary for Home Affairs 民政事務局局長	Secretary for Home Affairs 民政事務局局長
Secretary for Housing, Planning and Lands 房屋及規劃地政局局長	Secretary for Planning and Lands 規劃地政局局長
Secretary for Security 保安局局長	Secretary for Security 保安局局長
Permanent Secretary 常任秘書長	—
Director of Administration 行政署長	Director of Administration 行政署長
Director of Home Affairs 民政事務總署署長	Director of Home Affairs 民政事務總署署長
Deputy Secretary 副秘書長	Deputy Secretary 副司長
Deputy Director of Administration 副行政署長	Deputy Director of Administration 副行政署長
Principal Assistant Secretary 首席助理秘書長	Principal Assistant Secretary 首席助理司長
Assistant Director of Administration 助理行政署長	Assistant Director of Administration 助理行政署長

12. The content of the Order is similar to that of the draft Order attached to the paper issued on 27 May 2002 to the Subcommittee to Study the Proposed Accountability System for Principal Officials and Related Issues (LC Paper No. CB(2)2068/01-02(02)), except for the difference in nomenclature of certain Secretaries due to the change of allocation of policy areas to them resulted from the discussion with the Subcommittee.

13. Members may refer to LegCo Brief Ref: F19/5 (2002) dated 26 June 2002 from the Constitutional Affairs Bureau for background information.

14. This Order came into operation on 1 July 2002.

High Court Ordinance (Cap. 4)

Rules of the High Court (Amendment) Rules 2002

(L.N. 108)

15. The purpose of these Rules is to amend the Rules of the High Court (Cap. 4 sub. leg.) to effect the following changes—

Requirements before the amendments	Amendments
O.5, r.6(2) provides that a body corporate may not begin or carry on any proceedings in the High Court otherwise than by a solicitor except where leave is given by a Registrar for it to be represented by one of its directors. O.5, r.6(3)(a) provides that an application by a body corporate for leave to be represented by one of its directors shall be made ex parte to a Registrar and supported by an affidavit, made by the director and filed with the application, stating and verifying the reasons why leave should be given for the body corporate to be represented by the director, and in particular setting out such facts and matters as demonstrate that the body corporate could not, for lack of resources or for other good reasons, otherwise be heard in the proceedings.	Rules 1 and 3 of the Rules amend O.5, r.6(3)(a) and O.12. r.1(2A)(a) respectively by dispensing with the requirement in both provisions for setting out in the affidavit such facts and matters as demonstrate that the body corporate could not, for lack of resources or other good reasons, be heard in the proceedings otherwise than by its director. According to the Explanatory Note to the Rules, the purpose of the amendments is to give the Registrar of the High Court greater flexibility in considering the application.
O.12, r.1(2) provides that the defendant to an action begun by writ who is a body corporate may acknowledge service of the writ and give notice of intention to defend the action either by a solicitor or by a person duly authorized to act on the defendant's behalf but, except as expressly provided by or under any enactment or where leave is given by a Registrar for	

Requirements before the amendments	Amendments
<p>such defendant to be represented by one of its directors, such defendant may not take any further step in the action otherwise than by a solicitor. O.12, r.1(2A)(a) provides that an application by a body corporate for leave to be represented by one of its directors shall be made ex parte to a Registrar and supported by an affidavit, made by the director and filed with the application, stating and verifying the reasons why leave should be given for the body corporate to be represented by the director, and in particular setting out such facts and matters as demonstrate that the body corporate could not, for lack of resources or other good reasons, otherwise be heard in the proceeding.</p>	
<p>O.9 provides for the requirements of petitions by which civil proceedings in the Court of First Instance are begun.</p>	<p>Rule 2 of the Rules amend O.9 by adding a new provision to allow a respondent to proceedings begun by petition to defend the proceedings by a solicitor or in person. But where the respondent is a body corporate, it may not defend such proceedings otherwise than by a solicitor, except where leave is given for it to be represented by one of its directors.</p>
<p>O.29, r.11(2) provides that no order shall be made by the Court of First Instance for the respondent to make an interim payment in an action for personal injuries if it appears to the Court that the respondent is not a person falling within one of the specified categories, one of them being, namely a person who is insured in respect of the plaintiff's claim.</p>	<p>Rule 4 of the Rules amend O.29, r.11 by providing that the class of persons against whom an order for interim payment may be made shall, in addition to a person who is insured in respect of the plaintiff's claim, also include a person whose liability will be met by a specified insurer or the Motor Insurers' Bureau of Hong Kong.</p>

Requirements before the amendments	Amendments
<p>O.48 provides for examination of judgment debtor. O.48, r.3 provides that the Registrar or officer conducting the examination shall take down, or cause to be taken down, in writing the statement made by the judgment debtor or other person at the examination, read it to him and ask him to sign it; and if he refuses the officer shall sign it.</p> <p>O.49B provides for execution and enforcement of judgment for money by imprisonment. O.49B, r.1A empowers the Court of First Instance to examine a judgment debtor.</p>	<p>Rule 5 of the Rules amends O.48, r.3 by updating the means of recording the evidence.</p> <p>Rule 6 of the Rules amends O.49B by adding a new provision to allow the Court to record such evidence by means similar to those mentioned in the preceding paragraph.</p>
<p>O.52, r.3(1) provides that where leave has been granted to make an application for an order of committal, the application shall be made by motion to a judge.</p>	<p>Rule 7 of the Rules amends O.52, r.3 by adding a new provision to require the applicant to state in the notice of motion the grounds in respect of which leave for making such an application has been granted. A consequential amendment is also made to O.52, r.6(3) to provide that except with the leave of the Court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the notice of motion.</p>

16. No difficulties relating to the legal and drafting aspects of the above items of subsidiary legislation have been identified.

Prepared by

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