

立法會
Legislative Council

LC Paper No. LS 46/02-03

**Paper for the House Committee Meeting
on 24 January 2003**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 17 January 2003**

Date of tabling in LegCo : 22 January 2003

Amendment to be made by : 19 February 2003 (or 12 March 2003 if extended by resolution)

**PART I AMENDMENT TO SUBSIDIARY LEGISLATION MADE UNDER
THE INSURANCE COMPANIES ORDINANCE**

Insurance Companies Ordinance (Cap. 41)

**Insurance Companies Ordinance (Amendment of Part 1 of Third Schedule)
Regulation 2003 (L.N. 2)**

**Insurance Companies Ordinance (Amendment of Part 8 of Third Schedule)
Regulation 2003 (L.N. 3)**

Under section 59(1)(c) of the Insurance Companies Ordinance (Cap. 41) ("the Ordinance"), the Chief Executive in Council is empowered to amend Part 1 of the Third Schedule to the Ordinance. By an Amendment Regulation published in the Gazette as L.N. 2 of 2003, the Chief Executive in Council has added a definition of the term "Hong Kong long term insurance business" to Part 1 of the Third Schedule. Some consequential amendments are also made to the Schedule.

2. By an Amendment Regulation published in the Gazette as L.N. 3 of 2003, the Insurance Authority (IA), with the approval of the Secretary for Financial Services and the Treasury, has amended Part 8 of the Third Schedule to the Ordinance. The purpose of the Amendment Regulation is to require an authorized insurer to submit annually to the IA a revenue account, a valuation summary, a valuation balance sheet and other supplementary information in relation to its "Hong Kong long term insurance business". The relevant accounts have to be audited and submitted in the form specified for the purpose.

3. Members may refer to the LegCo Brief (File Ref.: C2/2/42C(2002) III) issued by the Office of the Commissioner of Insurance of the Financial Services and the Treasury Bureau dated 16 January 2003 for details. According to the Administration, the insurers have been submitting the relevant information to the IA on a voluntary basis.

The Hong Kong Federation of Insurers and the Hong Kong Society of Accountants have been consulted and they supported the amendments. The two Amendment Regulations have not been submitted to the Financial Affairs Panel for discussion.

4. They will come into operation on 3 April 2003.
5. No difficulties relating to the legal and drafting aspects of the Regulations have been identified.

PART II SUBSIDIARY LEGISLATION MADE UNDER THE TELECOMMUNICATIONS ORDINANCE

Telecommunications Ordinance (Cap. 106) Telecommunications (Telecommunications Apparatus) (Exemption From Licensing) Order (L.N. 4)

6. Under sections 8 and 9 of the Telecommunications Ordinance (Cap. 106), the establishment and maintenance of telecommunications, possession, use, sale, import and export of radiocommunications apparatus are subject to licensing. Section 39 of the Ordinance provides that the Chief Executive in Council may by order exempt any person from any of the provisions in the Ordinance.

7. To reflect technological advancement and market developments, this Order repeals and replaces seven existing exemption orders. The Order provides for exemption from the licensing requirement for certain radiocommunications apparatus (such as cordless telephones), non-radiocommunications apparatus (such as telephones and fax terminals) and some hybrid telecommunication apparatus (telecommunication apparatus that may be used in a combination of manners relating to both non-radiocommunications and radiocommunications apparatus).

8. Further, it also provides for exemption from the licensing requirement for private use of radiocommunications apparatus for communications between a taxi and the taxi control service centre. Section 7 provides for exemption from the licensing requirement for import or export of radiocommunications apparatus already exempted under other sections of the Order if the apparatus is for personal use.

9. Members may refer to the LegCo Brief issued by the Information Technology and Broadcasting Branch of the Commerce, Industry and Technology Bureau (File Ref.: ITBB CR 7/5/14/2(02)) dated 17 January 2003 for background information. According to paragraph 8 of the LegCo Brief, the Office of the Telecommunications Authority has taken into account the latest technological application and market situation through its regular contact with industry. The Panel on Information Technology and Broadcasting has not been consulted on this Order.

10. The Order will come into operation on a day to be appointed by the Telecommunications Authority by notice published in the Gazette.

PART III SUBSIDIARY LEGISLATION MADE UNDER THE LEGAL PRACTITIONERS ORDINANCE

Legal Practitioners Ordinance (Cap. 159)

Barristers (Admission) Rules (L.N. 5)

Legal Practitioners (Fees) (Amendment) Rules 2002 (L.N. 6)

Practising Certificate (Barristers) (Amendment) Rules 2002 (L.N. 7)

Barristers (Advanced Legal Education Requirement) Rules (L.N. 8)

Barristers (Qualification for Admission and Pupillage) Rules (L.N. 9)

Introduction

11. The Legal Practitioners (Amendment) Ordinance 2000 (No. 42 of 2000) ("the Amendment Ordinance") was passed by this Council at the end of June 2000. The major amendments to the Ordinance in relation to barristers include the following -

- (a) That the court may admit a barrister if he has complied with the requirements, pass the Barristers Qualification Examination and pay the fees prescribed by the Council of the Hong Kong Bar Association ("Bar Council");
- (b) That a category of "employed barrister" will be issued with an employed barrister's certificate and be allowed to instruct a practising barrister on behalf of his employer for the purpose of obtaining a legal opinion without the intermediary of a solicitor; and
- (c) That the Bar Council is empowered to make certain rules such as to provide for any continuing legal education or training that must be undertaken by barristers and pupils.

12. The five sets of Rules are made under the Ordinance. The Barristers (Admission) Rules, the Legal Practitioners (Fees) (Amendment) Rules 2002 and the Practising Certificate (Barristers) (Amendment) Rules 2002 are made by the Chief Justice and will come into operation on a day to be appointed by the Chief Justice by notice published in the Gazette. The Barristers (Advanced Legal Education Requirement) Rules and the Barristers (Qualification for Admission and Pupillage) Rules are made by the Bar Council with the prior approval of the Chief Justice. They will come into operation on a day to be appointed by the Bar Council by notice in the Gazette.

13. The Bar Association briefed the Panel on Administration of Justice and Legal Services at its meeting on 24 June 2002 on these Rules. The Panel noted that the Bar Association had accepted the comments made by the Department of Justice in respect of the two Rules made by it.

14. At the meeting, members did not raise any objection to the Rules apart from seeking clarifications on the implementation aspects of some of the Rules. Members may refer to the minutes of that meeting for details (LC Paper No. CB(2)118/02-03).

15. We are still scrutinizing the Rules and will report to the House Committee if any difficulties in relation to the drafting and legal aspects of the Rules are identified.

Barristers (Admission) Rules (L.N. 5)

16. The current Admission and Registration Rules (Cap. 159 sub. leg.) cover both solicitors and barristers. Under the new Barristers (Admission) Rules, the procedure for admission of barristers is now separated from those relating to solicitors. Consequential amendments are also made to the Admission and Registration Rules and the Legal Practitioners (Fees) Rules (Cap. 159 sub. leg.).

Legal Practitioners (Fees) (Amendment) Rules 2002 (L.N. 6)

17. These Rules prescribe that the fee payable for an employed barrister's certificate is to be \$1,600. The fee is the same as that currently prescribed for a practising certificate for a practising barrister under the Legal Practitioners (Fees) Rules.

Practising Certificate (Barristers) (Amendment) Rules 2002 (L.N. 7)

18. These Rules specify the form of an application to be used by an employed barrister and the form of an employed barrister's certificate.

Barristers (Advanced Legal Education Requirement) Rules (L.N. 8)

19. The purpose of these Rules is to empower the Bar Council to set up a compulsory Advanced Legal Education ("ALE") Programme for pupil barristers and to provide for related matters.

20. In order to complete the Programme, a pupil must obtain a total of 14 ALE points by his attendance at ALE courses. If a pupil fails to complete the Programme, the Bar Council may defer issuing a practising certificate. A person aggrieved by a decision made by the Bar Council in respect of the operation of the Programme may apply to the Bar Council for a review of the decision within 1 month after being informed of the decision.

Barristers (Qualification for Admission and Pupillage) Rules (L.N. 9)

21. These Rules provide for the qualification required for admission as barristers, requirements of pupillage and other consequential matters.

22. Section 4 sets out the qualification for admission of barristers. In addition to holders of the Postgraduate Certificate in Laws and solicitors admitted in Hong Kong who have been in practice for more than 3 years and legal officers employed by the Hong Kong Government, overseas lawyers of good standing who have practised for more than 3 years in a jurisdiction of admission will also be eligible for admission as a barrister upon passing the Barristers Qualification Examinations prescribed by the Bar Council. All applicants for admission will first have to complete 6 months of approved pupillage or (in certain cases) a reduced period of approved pupillage before admission as a barrister.

23. An overseas lawyer will only be eligible to sit the Barristers Qualification Examination if he holds a certificate of eligibility for admission issued by the Bar Council.

24. The Rules also set out the requirements of approved pupillage, the circumstances in which a person is ineligible to become a pupil and circumstances for termination and suspension of pupillage. Provision is made for reduction of the period of approved pupillage in appropriate cases. A person aggrieved by a decision of the Bar Council may seek a review. If a person is still dissatisfied after such review by the Bar Council, he may appeal to the Court of Appeal within one month.

25. The fees payable for specific applications and forms to be used for specific applications are set out in the Schedules.

PART IV AMENDMENT TO SUBSIDIARY LEGISLATION MADE UNDER THE IMPORT AND EXPORT ORDINANCE

Import and Export Ordinance (Cap. 60)

Import and Export (General) Regulations (Amendment of Seventh Schedule) Notice 2003 (L.N. 10)

26. The newly amended Import and Export (General) Regulations (Cap. 60 sub. leg.) (L.N. 179 of 2002) are regulations on the implementation in Hong Kong of an international certification scheme for rough diamonds known as the Kimberley Process Certification Scheme. Under the Regulations, no person shall, import rough diamonds from, or export rough diamonds to, a country or place other than a specified country or place specified in the Seventh Schedule. The Seventh Schedule was left blank when the Import and Export (General) Regulations were made. This Notice sets out the specified countries or places in the Seventh Schedule.

PART V SUBSIDIARY LEGISLATION MADE UNDER SECURITIES AND FUTURES ORDINANCE

Securities and Futures Ordinance (Cap. 571)

Securities and Futures (Insurance) Rules (L.N. 11)

27. These Rules are made by the Securities and Futures Commission (SFC) under section 116(5) of the Securities and Futures Ordinance (Cap. 571) (SFO). Section 116(5) empowers SFC to make rules for the purposes of section 116(3)(c)(ii) to provide for insurance coverage for specified amounts to be taken out and maintained by the licensed corporations in relation to specified risks, the terms of such insurance and other matters relating thereto.

28. The Rules empower the SFC to approve a master insurance policy in respect of each regulated activity for specified licensed corporations. Specified licensed corporations are licensed corporations that are not subject to any condition prohibiting

the holding of client assets. The insurance is to cover specified risks. They are risks arising out of the loss of client assets that are received or held by a specified licensed corporation (or its associated entity) in relation to its carrying on of a regulated activity in Hong Kong attributable to various fraudulent and dishonest conduct specified in Schedule 1 to the Rules of the employees of licensed corporations and their associated entities or service bureaux, and robbery or theft of client assets in the custody of the licensed corporation or its associated entities. Service bureau means a person to whom the duty to perform any function ancillary to the carrying on of a regulated activity has been delegated by a specified licensed corporation.

29. The specified amount to be insured is \$15,000,000 for each of the regulated activities of dealings in securities, dealings in futures contracts and securities margin financing. For corporations licensed to carry on two or more regulated activities and taking out a single policy of insurance to cover the specified risks, the amount to be insured is \$25,000,000. The insured amount covers the aggregate amount of all claims made within the relevant period of insurance and is subject to a deductible amount not exceeding \$3,000,000.

30. If the SFC has approved a master policy for a regulated activity for a period of insurance, a licensed corporation must take out and maintain insurance for an amount not less than the specified amount under the approved master policy or any other insurance policy with one or more insurer that has a credit rating as specified in Schedule 3 to the Rules at the date of the commencement of the policy. If the SFC has approved a master policy for the regulated activity of dealings in securities or dealings in futures contracts, corporations that are participants of the relevant exchange and licensed for the relevant regulated activity must take out and maintain insurance under the approved master policy in accordance with the requirements under the Rules; and no alternative insurance arrangement is allowed.

31. An earlier draft of the Rules has been published for public consultation and studied by the Subcommittee on Draft Subsidiary Legislation to be made under the Securities and Futures Ordinance (the Subcommittee). According to the Administration, the current version of the Rules reflects the consensus of the Industry Work Group (IWG) convened by the SFC. The IWG comprises members from the industry and relevant experts in the insurance field. A draft of the Rules has also been circulated to members of the Subcommittee in December 2002. Members may wish to refer to the LegCo Brief issued by the Financial Services Branch of the Financial Services and the Treasury Bureau on 17 January 2003 for background and further information. The Rules will come into operation upon the commencement of the SFO.

32. No difficulties relating to the legal aspect of the Rules have been identified. The Legal Service Division has observed some differences in the rendition in Chinese of the same English expressions and is seeking clarification from the Administration. A further report will be made if necessary.

PART VI COMMENCEMENT AND APPOINTED DAY NOTICES

Securities and Futures Ordinance (Cap. 571)

Securities and Futures Ordinance (Cap. 571) (Commencement) Notice 2003 (L.N. 12)

Securities and Futures Ordinance (Cap. 571) (Appointment of Day - Repeal of Ordinances) Notice (L.N. 13)

Securities and Futures Ordinance (Cap. 571) (Appointed Day - Unified Exchange Compensation Fund) Notice (L.N. 14)

Securities and Futures Ordinance (Cap. 571) (Appointed Day - Futures Exchange Compensation Fund) Notice (L.N. 15)

Introduction

33. The Securities and Futures Ordinance (Cap. 571) (SFO) was enacted in March 2002 after the Bill had been scrutinized in detail by a Bills Committee. Since then 38 sets of subsidiary legislation have been gazetted. All are made to become operative upon the commencement of the SFO. The Administration has announced that the SFO will come into operation on 1 April 2003. These Notices are made to implement that decision.

Securities and Futures Ordinance (Cap. 571) (Commencement) Notice 2003 (L.N. 12)

34. By this Notice made under section 1(2) of the SFO, the Secretary for Financial Services and the Treasury (SFST) has appointed 1 April 2003 as the day on which the SFO is to come into effect. The whole of the SFO as well as the 38 sets of subsidiary legislation will become operative on that day. The Administration is of the view that all subsidiary legislation necessary for the coming into effect of the SFO has been made. Complementary administrative measures and requisite publication will be done prior to 1 April.

Securities and Futures Ordinance (Cap. 571) (Appointment of Day - Repeal of Ordinances) Notice (L.N. 13)

35. The SFO is enacted to implement a new regulatory regime for the financial markets of Hong Kong. The existing regulatory regime operating under the ten current Ordinances¹ will cease upon the commencement of the SFO. Section 406 of the SFO stipulates that the ten Ordinances will be repealed on a day to be appointed by the SFST.

¹ The ten Ordinances are:

Securities and Futures Commission Ordinance (Cap. 24);
Commodities Trading Ordinance (Cap. 250) ;
Securities Ordinance (Cap. 333);
Protection of Investors Ordinance (Cap. 335);
Stock Exchanges Unification Ordinance (Cap. 361);
Securities (Insider Dealing) Ordinance (Cap. 395);
Securities (Disclosure of Interests) Ordinance (Cap. 396);
Securities and Futures (Clearing Houses) Ordinance (Cap. 420);
Leveraged Foreign Exchange Trading Ordinance (Cap. 451); and
Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555).

By this Notice, the SFST has appointed 1 April 2003 as the day for the repeal of each of those Ordinances. The repeal is provided in section 406(2) to be subject to other provisions of Part XVII of the SFO and the transitional provisions contained in Part 1 of Schedule 10 to the SFO.

Securities and Futures Ordinance (Cap. 571) (Appointed Day - Unified Exchange Compensation Fund) Notice (L.N. 14) & Securities and Futures Ordinance (Cap. 571) (Appointed Day - Futures Exchange Compensation Fund) Notice (L.N. 15)

36. The SFO has set up an Investor Compensation Fund (ICF) under Part XII. The ICF will replace the existing Unified Exchange Compensation Fund and the existing Futures Exchange Compensation Fund. The two existing Funds will cease to cover claims made and defaults occurred after an appointed day. Sections 74(13) and 75(13) of Part 1 of Schedule 10 to the SFO respectively stipulate that the date shall be appointed by the SFST.

37. By the respective Notices, the SFST has appointed 1 April 2003 to be the appointed date for the purposes of section 74 and section 75 respectively. In relation to claims made and defaults occurred before the appointed date, the two existing Funds will continue to operate according to the relevant transitional provisions contained in Part 1 of Schedule 10 to the SFO.

LegCo Brief

38. Members may wish to refer to the LegCo Brief issued by the Financial Services Branch of the Financial Services and the Treasury Bureau on 17 January 2003 for further information.

Conclusion

39. The Notices will inaugurate the new regulatory regime for the financial markets in Hong Kong. No difficulties in respect of the legal and drafting aspects of the Notices have been observed.

Banking Ordinance (Cap. 155)

Banking (Amendment) Ordinance 2002 (6 of 2002) (Commencement) Notice 2003 (L.N. 16)

40. By this Notice made under section 1(2) of the Banking (Amendment) Ordinance (6 of 2002) (the Amendment Ordinance), the SFST has appointed 1 April 2003 as the date for the Amendment Ordinance to come into operation.

41. The Amendment Ordinance was enacted in March 2002 immediately after the Securities and Futures Ordinance (Cap. 571) (SFO). It complements the SFO with provisions enabling the Monetary Authority to be the frontline regulator of the financial institutions carrying on the regulated activities within the meaning of the SFO. It was

scrutinized by the same Bills Committee that had studied the Securities and Futures Bill. The Administration is of the view that the Monetary Authority has made all the necessary preparation for the commencement. Members may wish to refer to the LegCo Brief issued by the Financial Services Branch of the Financial Services and the Treasury Bureau on 17 January 2003 for further information.

42. No difficulties in respect of the legal and drafting aspects of the Notice have been observed.

**Legal Practitioners Ordinance (Cap. 159)
Solicitors (Group Practice) Rules (L.N. 122 of 2002) (Commencement) Notice 2003
(L.N. 17)**

43. The Solicitors (Group Practice) Rules (L.N. 122 of 2002) seek to regulate arrangements whereby 2 or more solicitors of firms of solicitors, each of whom is carrying on the business of practising as a solicitor or as solicitors, conduct their business together in mutual cooperation but without being in partnership. Such arrangements are referred to in the Rules as "group practice".

44. A Subcommittee was formed to examine the Rules. The Subcommittee reported its deliberations to the House Committee on 1 November 2002 (LC Paper No. CB(2)218/02-03) and recommended that the Rules be supported.

45. By this Notice, the President of the Council of The Law Society of Hong Kong appoints 1 February 2003 as the day on which the Rules shall come into operation.

Prepared by

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