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**Paper for the House Committee Meeting
on 13 May 2005**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 6 May 2005**

Date of Tabling in LegCo : 11 May 2005

Amendment to be made by : 8 June 2005 (29 June 2005 if extended by resolution)

PART I COUNTRY PARKS AND SPECIAL AREAS

Country Parks Ordinance (Cap. 208)

*** Country Parks and Special Areas (Amendment) Regulation 2005 (L.N. 63)**

Hong Kong Wetland Park (Special Area) Order 2005 (L.N. 64)

The Country Parks and Special Areas (Amendment) Regulation 2005 (L.N. 63) amends the Principal Regulations to—

- (a) prohibit a person from driving a vehicle into or leaving a vehicle parked in a car park designated by the Country and Marine Parks Authority when the car park is closed to the public;
- (b) prescribe the fee for parking a vehicle in a designed car park in the Hong Kong Wetland Park;
- (c) specify the Hong Kong Wetland Park as a specified zone (see L.N. 64);
- (d) empower the Country and Marine Parks Authority to determine the opening hours of a specified zone;
- (e) require a person who enters a specified zone to pay an admission fee; and

* New fees

- (f) prescribe the fee for entering a specified zone.
2. The Hong Kong Wetland Park (Special Area) Order 2005 (L.N. 64) designates the area of Government land known as the Hong Kong Wetland Park as a special area for the purposes of the Country Parks Ordinance (Cap. 208).
3. For L.N.s 63 and 64, members may refer to LegCo Brief (File Ref.: EDB 22/25/9) of 3 May 2005 issued by Tourism Commission, Economic Development and Labour Bureau for background information. Members may refer to Annex C to the LegCo Brief for a table on the proposed fees and charges for the Hong Kong Wetland Park.
4. According to the LegCo Brief, the Country and Marine Parks Board, the Advisory Council on the Environment, the former Wetland Advisory Committee, the Ping Shan Rural Committee and the Yuen Long District Council have been consulted, and have no objection to the proposed designation of the Hong Kong Wetland Park as a special area and the proposed admission fees.
5. The LegCo Panel on Economic Services was briefed by the Administration on 28 February 2005 on the progress of the Hong Kong Wetland Park project and the proposed amendments to subsidiary legislation under the Country Parks Ordinance. Members expressed concerns on the following issues—
- (a) the future operation, management and promotion of the Hong Kong Wetland Park;
 - (b) the admission fees for the Hong Kong Wetland Park; and
 - (c) the conflicting policy objectives of promoting eco-tourism vis-a-vis enhancing the conservation value of the Hong Kong Wetland Park.
6. L.N.s 63 and 64 will come into operation on 1 October 2005.

PART II AMENDMENTS TO SUBSIDIARY LEGISLATION UNDER THE ROAD TRAFFIC ORDINANCE

Road Traffic Ordinance (Cap. 374)

Road Traffic (Safety Equipment) (Amendment) Regulation 2005 (L.N. 65)

7. L.N. 65 amends the Road Traffic (Safety Equipment Regulations (Cap. 374 sub. leg. F) (“the Safety Equipment Regulations”) to update the specifications and standards for protective helmets and seat belts, and to provide that where the Commissioner for Transport (“the Commissioner”) approves a type of protective helmets as approved protective helmets, the Commissioner has to publish his approval

by notice in the Gazette. According to the Administration, such notice will be published as a general notice instead of a legal notice subject to the scrutiny of the Legislative Council. The Legal Service Division is asking the Administration whether an express provision should be included in L.N. 65 to stipulate clearly the nature of the relevant notice.

Road Traffic (Traffic Control) (Amendment) Regulation 2005 (L.N. 66)

8. Under regulation 53(2) of the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg. G) (“the Traffic Control Regulations”), a driver of a vehicle (except a public service vehicle licensed to carry standing passengers) on a road shall not permit a passenger to travel in the vehicle unless the passenger is seated in a properly constructed seat secured to the bodywork of the vehicle.

9. L.N. 66 amends the Traffic Control Regulations to empower the Commissioner to exempt a float in a parade from the requirement of regulation 53(2) of the Traffic Control Regulations and to impose conditions on the exemption. A float, in relation to a parade, is defined as a vehicle decorated for the purpose of the parade, or a vehicle fitted with a platform for holding performances, or displaying decoration, for the purpose of the parade. L.N. 66 also amends regulation 59(1) of, and Schedule 1 to the Traffic Control Regulations to reflect the changes regarding traffic signs.

Road Traffic (Registration and Licensing of Vehicles) (Amendment) (No. 2) Regulation 2005 (L.N. 67)

10. Regulation 53(1)(a) of Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg. E) (“the Registration and Licensing of Vehicles Regulations”) provides that the Commissioner may issue a movement permit to the owner of a vehicle which is not licensed and which is not normally used on a road and is driven on a road only for the purpose of proceeding from one site to another. Regulation 53(3) provides that every movement permit is subject to the condition that where the vehicle to which the movement permit relates is being moved on a road, no load is allowed to be carried on the vehicle, other than such equipment, spares or fuel as are normally carried on such vehicle.

11. L.N. 67 amends the Registration and Licensing of Vehicles Regulations to provide that every movement permit shall be subject to a condition as to speed limit and to make the condition specified in regulation 53(3) of the said Regulations apply to a vehicle operating under a movement permit only when the Commissioner imposes such a condition on the permit. The Chinese text for “site” referred to in regulation 53(1)(a) of the Registration and Licensing of Vehicles Regulations is also amended from “地盤” to “地點”. According to the Administration, the purpose of this amendment is to widen the scope of application of that regulation 53(1)(a).

Road Traffic (Construction and Maintenance of Vehicles) (Amendment) Regulation 2005 (L.N. 68)

12. The main purpose of L.N. 68 is to amend regulation 3(b) of the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374 sub. leg. A) to replace the reference to “地盤” by “地點”. This amendment is consequential upon the amendment made to regulation 53(1)(a) of the Registration and Licensing of Vehicles Regulations by L.N. 67.

13. Members may refer to the LegCo Brief (File Ref.: ETWB(T) 1/12/41, 1/12/44, 1/12/137) issued by the Environment, Transport and Works Bureau on 4 May 2005 for background information on the above items of subsidiary legislation. According to the Brief, the amendments to the Registration and Licensing of Vehicles Regulations and the Traffic Control Regulations relating respectively to movement permits and exemption of float vehicles are introduced mainly to cater for the forthcoming opening of the Hong Kong Disneyland where float parades will be one of the major regular events.

14. L.N. 66 (insofar as it relates to exemption of floats) and the other three items of subsidiary legislation will come into operation on 30 June 2005. The amendments in L.N. 66 relating to traffic signs will come into operation on a day to be appointed by the Secretary for the Environment, Transport and Works by notice published in the Gazette. According to the LegCo Brief, the commencement of these amendments will depend on the progress of the traffic sign replacement programme.

15. According to paragraph 15 of the LegCo Brief, the Administration has consulted the Transport Advisory Committee and members of the Committee supported the proposed amendments. The Hong Kong Motorcycle Chamber of Commerce, the Hong Kong Motorcycle Association, the Motor Traders Association of Hong Kong, major protective helmet distributors and retailers have been consulted on the proposed updating of the standards of helmets and seat belts, and they all indicated support.

16. At the meeting on 22 April 2005, the Panel on Transport noted an information paper provided by the Administration which sets out the amendments to the Safety Equipment Regulations, the Traffic Control Regulations and the Registration and Licensing of Vehicles Regulations. The Panel has not discussed the policy aspects of those amendments.

17. Apart from the issue raised in respect of L.N. 65 mentioned in paragraph 7 above, the Legal Service Division is seeking clarification from the Administration on certain technical issues relating to L.N. 66, including the scope of the term “parade” and the need to provide for penalties for breach of a condition of an exemption granted in respect of a vehicle used as a float in a parade. A further report will be made if necessary.

PART III MISCELLANEOUS

International Organizations (Privileges and Immunities) Ordinance (Cap. 558) International Organizations (Privileges and Immunities) (World Trade Organization) Order (L.N. 62)

18. This Order declares that certain provisions of the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations by resolution adopted on 21 November 1947 (“the 1947 Convention”) relating to the privileges and immunities (“P&Is”) enjoyed by the specialized agencies, and the representatives of members of the specialized agencies are to be extended to the World Trade Organization (“WTO”), its officials and the representatives of its members. The provisions as extended shall have the force of law in Hong Kong.

19. Members may refer to the LegCo Brief (File Ref.: CR WT 204/2/8) dated 3 May 2005 issued by the Commerce, Industry and Technology Bureau for background information.

20. There was no public consultation.

21. The LegCo Panel on Commerce and Industry (“the Panel”) was briefed about the legislative proposals on 15 February and 15 March 2005. While agreeing with the need and urgency of this legislative exercise because Hong Kong would host the Sixth Ministerial Conference of the WTO in December 2005, members were concerned whether the scope of the P&Is for WTO officials and representatives of WTO members would be too excessive, in particular in regard to exemption from criminal liability. Some members considered that certain acts which attracted criminal sanction, such as speeding or reckless driving, should not be immune from legal actions because they could not see how such immunity, if accorded, would be regarded as “necessary” for the exercise of functions in connection with the WTO. The Administration assured members that the P&Is were not conferred for the personal benefit of the WTO officials and representatives but for their exercise of WTO-related functions. The Panel did not have sight of the Order at the Panel meetings concerned but the Administration has set out all the articles/sections of the 1947 Convention and highlighted the ones that would be included in the Order for the Panel's information.

22. The Order will come into operation on 7 July 2005.

23. Having regard to the nature of the matters contained in the Order and members of the Panel did not have details of the Order during the briefings by the Administration, members may consider forming a Subcommittee to study the Order in detail. Meanwhile, the Legal Service Division will continue with the scrutiny of the legal and drafting aspects of the Order.

**Securities and Futures Ordinance (Cap. 571)
Securities and Futures (Contracts Limits and Reportable Positions) (Amendment)
Rules 2005 (L.N. 69)**

24. Under section 35(1) of the Securities and Futures Ordinance (Cap. 571), the Securities and Futures Commission (“the Commission”) may prescribe limits on the number of futures contracts that may be held or controlled by any person. The Commission may also prescribe the reportable positions in respect of such contracts.

25. Such limits and reportable positions are established and fixed for the futures contracts specified in Schedule 1 to the Securities and Futures (Contracts Limits and Reportable Positions) Rules (Cap. 571 sub. leg. Y). The purpose of these Rules is to add FTSE/Xinhua China 25 Index futures and options contracts to that Schedule.

26. Members may refer to the LegCo Brief (No File Reference number indicated) dated 29 April 2005 issued by The Securities and Futures Commission for background information.

27. There was no consultation with the public or LegCo Panel on Financial Affairs.

28. The Rules will come into operation on 1 July 2005.

**Banking Ordinance (Cap. 155)
Banking (Specification of Class of Exempted Charges) Notice (L.N. 70)**

29. Under section 106(1) of the Banking Ordinance (Cap. 155) (“the Ordinance”), an authorized institution incorporated in Hong Kong is prohibited from creating charges over its assets the value of which, in aggregate, exceed 5% of the value of its total assets, except with the approval of the Monetary Authority (“MA”). Under section 106(2) of the Ordinance, the MA may by notice in the Gazette specify certain charges or classes of charges to which section 106(1) shall not apply.

30. The purpose of this Notice is to—

- (a) specify that charges created by an authorized institution incorporated in Hong Kong in favour of “Euroclear Bank S.A. (acting as operator of the Euroclear System)” or “Clearstream Banking S.A.” need not be included in determining whether or not the aggregate value of all charges created over its total assets exceeds the limit set by section 106(1) of the Ordinance; and

- (b) repeal the exempted charges specified in 1993 in relation to charges created in favour of “Morgan Guaranty Trust Company of New York (acting as operator of the Euroclear System)” and “Cedel S.A.”.

31. The amendments are necessary because though the standard requirement for participating institutions to grant liens to the clearing systems, namely “Morgan Guaranty Trust Company of New York (acting as operator of the Euroclear System)” and “Cedel S.A.” (acting as operator of another system without a specified name) has not changed since 1993, there have been changes in the name and entity of these two clearing houses. Morgan Guaranty Trust Company of New York has transferred its role as operator of the Euroclear System to Euroclear Bank S.A. while Cedel S.A. was restructured and its name was changed to Clearstream Banking S.A. To reflect these changes, the specific exemption under section 106(2) of the Ordinance should be given to “Euroclear Bank S.A. (acting as operator of the Euroclear System)” and “Clearstream Banking S.A.” respectively.

32. Members may refer to the LegCo Brief (File Ref.: L/M 8/05) dated 6 May 2005 issued by the Financial Services and the Treasury Bureau for background information.

33. There was no consultation with the public or LegCo Panel on Financial Affairs.

34. The Notice will come into operation on 1 July 2005.

35. Except for L.N. 62 (which the Legal Service Division recommends members to form a Subcommittee to study) and L.N.s 65 and 66 (which are subject to further reports), no difficulties in relation to the legal and drafting aspects of the above items have been identified.

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