

立法會

Legislative Council

LC Paper No. LS121/04-05

**Paper for the House Committee Meeting
on 7 October 2005**

**Legal Service Division's Report on
Subsidiary Legislation gazetted from 8 July 2005 to 30 September 2005**

This paper annexes ten Legal Service Division's reports on items of subsidiary legislation gazetted from 8 July 2005 to 30 September 2005 (**Annex**). The items of subsidiary legislation included in these reports (except for United Nations Sanctions (Côte d'Ivoire) Regulation (L.N. 122), United Nations Sanctions (Democratic Republic of the Congo) (Amendment) Regulation 2005 (L.N. 123) and United Nations Sanctions (Sudan) (Amendment) Regulation 2005 (L.N. 124) gazetted on 8 July 2005 and Western Harbour Crossing Ordinance (Replacement of Schedule 1) Notice 2005 (L.N. 129) gazetted on 29 July 2005, which are not required to be tabled) will be tabled at the Council meeting on 12 October 2005. Under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), the Legislative Council may amend the tabled items of subsidiary legislation by 9 November 2005, or by 30 November 2005 if extended by resolution.

2. Seven out of the ten reports on subsidiary legislation gazetted on 8 July 2005, 15 and 22 July 2005, 29 July and 2 August 2005, 5 August 2005, 12 August 2005, 26 August 2005 and 2 September 2005 were separately submitted to Members during the summer recess to enable Members to consider the relevant subsidiary legislation as soon as possible. They are submitted again in this bundle to facilitate consideration by the House Committee.

3. Members may wish to have particular attention on the following items:

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- (a) United Nations Sanctions (Côte d'Ivoire) Regulation (L.N. 122)
United Nations Sanctions (Democratic Republic of the Congo)
(Amendment) Regulation 2005 (L.N. 123)
United Nations Sanctions (Sudan) (Amendment) Regulation 2005
(L.N. 124)
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These Regulations come within the terms of reference of the Subcommittee to examine the implementation in Hong Kong of resolutions of the United Nations Security Council in relation to sanctions, it is recommended that the above Regulations be referred to the Subcommittee for further study.

- (b) Market to which the Public Health and Municipal Services Ordinance Applies Declaration 2005 (L.N. 125)
Public Health and Municipal Services (Designation of Public Markets) Order 2005 (L.N. 126)
Public Health and Municipal Services Ordinance (Amendment of Tenth Schedule) Order 2005 (L.N. 127)
Market to which the Public Health and Municipal Services Ordinance Applies (No. 2) Declaration 2005 (L.N. 147)
Public Health and Municipal Services (Designation of Public Markets) (No. 2) Order 2005 (L.N. 151)
Public Health and Municipal Services Ordinance (Amendment of Tenth Schedule) (No. 2) Order 2005 (L.N. 152)
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Members may recall that in the Legal Service Division's report on subsidiary legislation gazetted on 15 and 22 July 2005, that is, L.N. 125 to L.N. 127 (LC Paper No. LS97/04-05), we informed Members that in respect of the arrangement adopted by the Administration that in future legislative exercise of designating a public market, a declaration of market under section 79(1) of the Public Health and Municipal Services Ordinance (Cap. 132) will be published one week before the subsequent public market designation is gazetted. We had expressed to the Administration our view that since the declaration and designation were part and parcel of the legislative exercise relating to the same market, it would be desirable for the two items of subsidiary legislation to be published during the period before the next LegCo meeting so that they can be tabled at the same LegCo meeting under section 34(1) of Cap. 1. The Administration has considered that from the operational angle it would be difficult to deliberately schedule an exercise under section 79 of Cap. 132 so that the two items of subsidiary legislation which will be published on two successive Fridays in future can be tabled at the same LegCo meeting. Although the publication of the designation in an Extraordinary Gazette immediately after the publication of the

antecedent declaration could help ensure that both items of subsidiary legislation can be tabled at the next LegCo meeting, the Administration is of the view that the issue of an Extraordinary Gazette may not be warranted for the purpose of a routine exercise under section 79 of Cap. 132. Nevertheless, the Administration has agreed that in future legislative exercise, a LegCo Brief will be issued on the publication of a market declaration to give Members advance notice of the forthcoming designation to assist Members in understanding the relationship between the two instruments even though the scrutiny period of the declaration is to start one week earlier than that of the designation.

Members may wish to note that in a similar legislative exercise relating to the Tai Kok Tsui Market where the declaration of market (L.N. 146) was gazetted on 23 September 2005 and the subsidiary legislation relating to the subsequent public market designation (L.N. 151 and L.N. 152) gazetted on 30 September 2005, the Administration has issued a LegCo Brief explaining the background pertaining to the relevant subsidiary legislation.

(c) The Harmful Substances in Food (Amendment) Regulation 2005 (L.N. 137)

This Amendment Regulation prescribes that the maximum concentration of malachite green is 0 microgram per kilogram in “any food (including live fish, live reptiles and live poultry)”. The Amendment Regulation commenced operation on the date of its publication in the Gazette (i.e. 26 August 2005). As some members expressed concern about the implementation of the regulatory framework for live fish and the enforcement of the Amendment Regulation, the Panel on Food Safety and Environmental Hygiene (“the Panel”) held two meetings on 30 August and 2 September 2005 to discuss with the Administration and the live fish trade. The Administration had provided more details on the proposed regulatory framework for live fish and the enforcement of the Amendment Regulation. The Panel noted that the Administration planned to introduce the legislative proposal on the regulation of live fish in the 2006-07 session. Members did not raise further queries on the Amendment Regulation at the last meeting on 2 September 2005.

- (d) Waste Disposal (Amendment) Ordinance 2004 (Commencement) Notice (L.N. 143)
Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Commencement) Notice 2005 (L.N. 144)
Waste Disposal (Designated Waste Disposal Facility) (Amendment) Regulation 2004 (Commencement) Notice 2005 (L.N. 145)
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The charging scheme for disposal of construction waste at government waste disposal facilities will take effect on 20 January 2006. The Administration has, in response to our enquiry, explained the arrangements made prior to the implementation of the charging scheme as previously proposed at the meetings of the relevant Bills Committee and Subcommittee.

- (e) Legal Practitioners (Risk Management Education) (Amendment) Rules 2005 (L.N. 146)
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These Amendment Rules make amendments to section 12 of the principal rules, including the addition of a new section 12(4). As at 23 September 2005 when the Amendment Rules, including the new section 12(4), were gazetted (after being made on 21 September 2005), the “notice under subsection (1)” as referred to in the new section had not been gazetted. On our enquiry and as it had transpired, it was found that the notice was made on 23 September 2005 and gazetted on 30 September 2005. We expressed our concern that the new section 12(4) should refer to a notice that did not exist at the time the section was made. The Law Society of Hong Kong has responded that such timing does not have any adverse impact on the legal basis or legal effect of the section, nor will it prejudice the interests of anyone subject to the Rules. In this respect, we do not propose to further pursue the apparent technical difficulty in the light of the Law Society’s response.

4. The Secretariat has circulated to Members the Gazettes which contain the subsidiary legislation covered by these ten reports in the usual manner. Members may also view the relevant Gazettes at the following website : <http://www.gld.gov.hk/egazette/>.

5. Apart from the technical difficulty identified in L.N. 146, no difficulties relating to the legal and drafting aspects of the items covered by the ten reports have been identified.

6. Members are recommended to refer the United Nations Sanctions (Côte d'Ivoire) Regulation (L.N. 122), United Nations Sanctions (Democratic Republic of the Congo) (Amendment) Regulation 2005 (L.N. 123) and United Nations Sanctions (Sudan) (Amendment) Regulation 2005 (L.N. 124) to the Subcommittee to examine the implementation in Hong Kong of resolutions of the United Nations Security Council in relation to sanctions for further study. Members may also consider whether it is necessary to set up a subcommittee to study any other items of subsidiary legislation covered by these ten reports.

Encl

Prepared by

Legal Service Division
Legislative Council Secretariat
6 October 2005

LS/S/44/04-05

**Legal Service Division's Reports on
Subsidiary Legislation gazetted between 8 July 2005 and 30 September 2005**

<u>L.N. No</u>	<u>Item</u>
*122	United Nations Sanctions (Côte d'Ivoire) Regulation
*123	United Nations Sanctions (Democratic Republic of the Congo) (Amendment) Regulation 2005
*124	United Nations Sanctions (Sudan) (Amendment) Regulation 2005
125	Market to which the Public Health and Municipal Services Ordinance Applies Declaration 2005
126	Public Health and Municipal Services (Designation of Public Markets) Order 2005
127	Public Health and Municipal Services Ordinance (Amendment of Tenth Schedule) Order 2005
128	Tax Reserve Certificates (Rate of Interest) (No. 5) Notice 2005
*129	Western Harbour Crossing Ordinance (Replacement of Schedule 1) Notice 2005
130	Quarantine and Prevention of Disease Ordinance (Amendment of First Schedule) Order 2005
131	Prevention of the Spread of Infectious Diseases Regulations (Amendment of Form) Order 2005
132	Public Health and Municipal Services (Setting Aside Places for Use as Public Pleasure Grounds) (No. 2) Order 2005
133	Public Health and Municipal Services Ordinance (Amendment of Fourth Schedule) (No. 2) Order 2005

*not required to be tabled

<u>L.N. No</u>	<u>Item</u>
135	Statutes of the University of Hong Kong (Amendment) Statute 2005
136	Aviation Security (Amendment) Ordinance 2005 (Commencement) Notice
137	Harmful Substances in Food (Amendment) Regulation 2005
138	Import and Export (General) Regulations (Amendment of Seventh Schedule) (No. 2) Notice 2005
139	Transfer of Sentenced Persons (Amendment) (Macau) Ordinance (Commencement) Notice
140	Places for Autopsies (Amendment) Order 2005
141	Tax Reserve Certificates (Rate of Interest) (No. 6) Notice 2005
142	Barristers (Qualification for Admission and Pupillage) (Amendment) Rules 2005
143	Waste Disposal (Amendment) Ordinance 2004 (Commencement) Notice
144	Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Commencement) Notice 2005
145	Waste Disposal (Designated Waste Disposal Facility) (Amendment) Regulation 2004 (Commencement) Notice 2005
146	Legal Practitioners (Risk Management Education) (Amendment) Rules 2005
147	Market to which the Public Health and Municipal Services Ordinance Applies (No. 2) Declaration 2005
148	Banking (Amendment) Ordinance 2005 (Commencement) Notice 2005
149	Road Traffic (Public Service Vehicles) (Amendment) Regulation 2005 (Amendment of Commencement Date) Regulation 2005
150	Child Abduction and Custody (Parties to Convention) (Amendment) Order 2005

<u>L.N. No</u>	<u>Item</u>
151	Public Health and Municipal Services (Designation of Public Markets) (No. 2) Order 2005
152	Public Health and Municipal Services Ordinance (Amendment of Tenth Schedule) (No. 2) Order 2005
153	Legal Practitioners (Risk Management Education) Rules (Appointment of End Date of First Practice Year) Notice 2005
154	Legal Practitioners (Risk Management Education) Rules (Appointment of Commencement Date) Notice 2005
155	Tax Reserve Certificates (Rate of Interest) (No. 7) Notice 2005
156	Statute Law (Miscellaneous Provisions) Ordinance 2005 (Commencement) Notice 2005

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Legislative Council

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 8 July 2005**

LEGAL NOTICES NOT REQUIRED TO BE TABLED

United Nations Sanctions Ordinance (Cap. 537)

United Nations Sanctions (Côte d'Ivoire) Regulation

(L.N. 122)

This Regulation gives effect to decisions of the Security Council of the United Nations ("the UNSC") in Resolution 1572 of 15 November 2004 to implement sanctions on Côte d'Ivoire.

2. In December 2004, the Chief Executive ("CE") received instruction from the Ministry of Foreign Affairs of the People's Republic of China ("MFA") requesting the HKSAR Government to implement that Resolution.

3. The Regulation provides for, among other things, the implementation of the following sanctions -

- (a) prohibition against the direct or indirect sale, supply or transfer of arms or related materials to Côte d'Ivoire;
- (b) prohibition against the provision of advice, assistance or training related to military activities in certain circumstances;
- (c) prohibition against making available to or for the benefits of certain persons or entities any funds or other financial assets or economic resources; and
- (d) prohibition against entry into or transit through the HKSAR of certain persons.

4. A person may apply to the CE for a licence to be exempted from the above prohibitions if certain requirements are met. Enforcement and offence provisions are also provided in the Regulation.

5. This Regulation comes into operation on the date of gazettal, i.e. on 8 July 2005 and expires at midnight on 14 December 2005.

6. Members may refer to the Paper issued by the Commerce, Industry and Technology Bureau in July 2005 (CB(1)2029/04-05(01)) for details. The Regulation is attached at Annex A to the Paper. A document issued by the Acting Chief Secretary for Administration confirming the receipt of the MFA's instruction by the CE in December 2004 is at Annex B while a copy of the Resolution is at Annex C.

United Nations Sanctions (Democratic Republic of the Congo) (Amendment) Regulation 2005 (L.N. 123)

7. The principal Regulation, i.e. the United Nations Sanctions (Democratic Republic of the Congo) Regulation (L.N. 27 of 2005) came into operation on 4 March 2005 to implement UNSC Resolutions 1493 and 1552. The latter Resolution was adopted by UNSC on 27 July 2004 which decided to renew until 31 July 2005 the relevant provisions of Resolution 1493 of 28 July 2003. In August 2004, the CE received instructions from MFA requesting the HKSAR Government to implement Resolutions 1493 and 1552.

8. On 18 April 2005, the UNSC adopted Resolution 1596 making further decisions concerning the Democratic Republic of the Congo after taking note of a Group of Experts reports. The UNSC further decided that it shall, no later than 31 July 2005, review the relevant measures. In May 2005, the CE received instruction from MFA requesting the HKSAR Government to implement Resolution 1596.

9. This Amendment Regulation amends the principal Regulation to give effect to a decision of Resolution 1596 by -

- (a) replacing the definition of "person connected with Congo" with the new term of "person in the territory of the Democratic Republic of the Congo";
- (b) amending the requirements to be met for granting of licences for supply, delivery or carriage of prohibited goods and provision of certain assistance or training; and
- (c) providing for the implementation of the following new sanctions imposed by the UNSC—
 - (i) prohibition against making available to or for the benefits of certain persons or entities any funds or other financial assets or economic resources; and
 - (ii) prohibition against entry into or transit through the HKSAR of certain persons.

10. This Amendment Regulation comes into operation on the date of gazettal, i.e. on 8 July 2005. The principal Regulation (as amended by this Amendment Regulation) will expire at midnight on 31 July 2005.

11. Members may refer to the Paper issued by the Commerce, Industry and Technology Bureau in July 2005 (CB(1)2029/04-05(02)) for details. The Amendment Regulation is attached at Annex A to the Paper. A document issued by the Acting Chief Secretary for Administration confirming the receipt of the MFA's instruction by the Acting Chief Executive in May 2005 is at Annex B while a copy of Resolution 1596 is at Annex C.

United Nations Sanctions (Sudan) (Amendment) Regulation 2005 (L.N. 124)

12. The principal Regulation, i.e. the United Nations Sanctions (Sudan) Regulation (L.N. 45 of 2005) came into operation on 1 April 2005 to implement UNSC Resolution 1556.

13. On 29 March 2005, UNSC adopted Resolution 1591 making further decisions concerning Sudan. In May 2005, the CE received instruction from MFA requesting the HKSAR Government to implement that Resolution.

14. This Amendment Regulation amends the principal Regulation to give effect to a decision of Resolution 1591 by -

- (a) replacing the definition of "person connected with Darfur" by "person connected with Sudan" to include all the parties to the N'djamena Ceasefire Agreement and other belligerents in Darfur;
- (b) amending the requirements to be met for granting of licences for supply, delivery or carriage of prohibited goods and provision of certain assistance; and
- (c) providing for the implementation of the following new sanctions imposed by the UNSC—
 - (i) prohibition against making available to or for the benefit of certain persons or entities any funds or other financial assets or economic resources; and
 - (ii) prohibition against entry into or transit through the HKSAR of certain persons.

15. This Amendment Regulation comes into operation on the date of gazettal, i.e. on 8 July 2005. There is no expiry date in the principal Regulation or in this Amendment Regulation.

16. Members may refer to the Paper issued by the Commerce, Industry and Technology Bureau in July 2005 (CB(1)2029/04-05(03)) for details. The Amendment Regulation is attached at Annex A to the Paper. A document issued by the Acting Chief Secretary for Administration confirming the receipt of the MFA's instruction by the Acting Chief Executive in May 2005 is at Annex B while a copy of Resolution 1591 is at Annex C.

Recommendation on the above Regulations

17. Although the above regulations (made under section 3 of the United Nations Sanctions Ordinance) are not required to be tabled to LegCo and are not subject to scrutiny or amendment by LegCo under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), they come within the terms of reference of the Subcommittee to examine the implementation in Hong Kong of resolutions of the United Nations Security Council in relation to sanctions. It is recommended that the above Regulations be referred to the Subcommittee for further study. Members may note that by the time these Regulations are referred to the House Committee, the Regulation on the Democratic Republic of the Congo will have expired and that there might be a new resolution before 31 July 2005.

Prepared by

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20 July 2005

立法會
Legislative Council

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 15 and 22 July 2005**

Date of Tabling in LegCo : 12 October 2005

Amendment to be made by : 9 November 2005 (or 30 November 2005 if extended by resolution)

PART I SUBSIDIARY LEGISLATION GAZETTED ON 15 JULY 2005

**Public Health and Municipal Services Ordinance (Cap. 132)
Market to which the Public Health and Municipal Services Ordinance Applies
Declaration 2005 (L.N. 125)**

Section 79(1) of the Public Health and Municipal Services Ordinance (Cap. 132) (“the Ordinance”) provides that the Ordinance shall apply to every market, being a market in which food is sold, which is declared by the Director of Food and Environmental Hygiene (“the Director”) to be a market to which the Ordinance applies. Under section 79(3) of the Ordinance, the Director may, by order published in the Gazette, designate as a public market any market to which the Ordinance applies.

2. L.N. 125, which is made under section 79(1) of the Ordinance, declares the Mong Kok Cooked Food Market at Level 2 (Portion), Mong Kok Complex, 557 Shanghai Street, Kowloon (“Mong Kok Cooked Food Market”) to be a market to which the Ordinance applies. Consequentially, the Schedule to the Declaration of Markets Notice (Cap. 132 sub. leg. AN) is amended by adding the Mong Kok Cooked Food Market.

3. L.N. 125 has come into operation on the day on which it was published in the Gazette, that is, 15 July 2005.

PART II SUBSIDIARY LEGISLATION GAZETTED ON 22 JULY 2005

**Public Health and Municipal Services Ordinance (Cap. 132)
Public Health and Municipal Services (Designation of Public Markets) Order
2005 (L.N. 126)
Public Health and Municipal Services Ordinance (Amendment of Tenth**

Schedule) Order 2005 (L.N. 127)

4. L.N. 126, which is made under section 79(3) of the Ordinance, designates the Mong Kok Cooked Food Market as a public market.

5. Consequent upon the designation of the Mong Kok Cooked Food Market as a public market, L.N. 127 updates the Tenth Schedule to the Ordinance to reflect the designation.

6. L.N. 126 and L.N. 127 have come into operation on the day on which they were published in the Gazette, that is, 22 July 2005.

7. Members may note that while it has been the past practice for subsidiary legislation relating to declaration of markets and designation of such markets as public markets to be published in the Gazette on the same day, a new arrangement is adopted in respect of the Mong Kok Cooked Food Market in that L.N. 125 was gazetted on 15 July 2005 and L.N. 126 and L.N. 127 were gazetted on 22 July 2005. The Legal Service Division has asked the Administration the reason for departing from the past practice and to clarify the legal status of the Mong Kok Cooked Food Market before it is designated as a public market.

8. In reply, the Administration explained that the purpose of gazetting L.N. 125 one week before L.N. 126 and L.N. 127 were gazetted is to reflect more clearly the procedural sequence that a new market should be first declared and made known in the Gazette to be one to which the Ordinance applies before the Director proceeds to designate it as a public market.

9. As for the legal status of Mong Kok Cooked Food Market during the seven-day period between 15 July 2005 and 22 July 2005, the Administration agreed that the market concerned might have fallen within the legal meaning of "private market" as defined under the Ordinance during that period. Nevertheless, the status of a private market in the interim was only notional because the whole market in question has not come into use to date and the market stalls will only be let to the operators through a restricted auction to be held on 30 August 2005.

10. In the light of the Administration's explanation, we are prepared to accept that the legal and drafting aspects of L.N. 125 to L.N. 127 present no problem. However, in order to avoid any future query about the "private market" status of a declared market during the period between the two publication dates of a market declaration and the subsequent public market designation, the Administration has indicated that in future legislative exercise of designating a public market, a declaration of market under section 79(1) of the Ordinance would be made to take effect from a future date, which would be the intended commencement date of the subsequent designation of the market as a public market. This arrangement, according to the Administration, will make it clear to the public the procedure sequence relating to market declaration and the subsequent public

market designation, and at the same time synchronize their operative dates. Since a market declaration under section 79(1) of the Ordinance and the subsequent public market designation are part and parcel of the legislative exercise relating to the same market, we have expressed to the Administration our view that in future legislative exercise, it would be desirable for the declaration and designation to be published during the period before the next LegCo meeting so that both items of subsidiary legislation can be tabled at the same LegCo meeting under section 34(1) of the Interpretation and General Clauses Ordinance (Cap. 1).

Prepared by

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Legislative Council Secretariat
8 August 2005

LS/S/35/04-05

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Legislative Council

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 29 July and 2 August 2005**

Date of Tabling in LegCo : 12 October 2005

Amendment to be made by : 9 November 2005 (or 30 November 2005 if extended by resolution)

PART I QUARANTINE AND PREVENTION OF DISEASE

Quarantine and Prevention of Disease Ordinance (Cap. 141)

Quarantine and Prevention of Disease Ordinance (Amendment of First Schedule) Order 2005 (L. N. 130)

Prevention of the Spread of Infectious Diseases Regulations (Amendment of Form) Order 2005 (L. N. 131)

The Quarantine and Prevention of Disease Ordinance (Cap. 141) (“the Ordinance”) consolidates the law relating to quarantine and the prevention of disease among human beings. In the Ordinance, the term “infectious disease” is defined as any disease specified in the First Schedule to the Ordinance. The Quarantine and Prevention of Disease Ordinance (Amendment of First Schedule) Order 2005 (L.N. 130) amends the First Schedule to the Ordinance to add “*Streptococcus suis* infection” as an infectious disease. The effect is that provisions relating to infectious diseases in the Ordinance and regulations made thereunder apply to this disease.

2. The Prevention of the Spread of Infectious Diseases Regulations (Cap. 141 sub. leg. B) (“the Regulations”) were made under the Ordinance for the purpose of preventing the introduction into, the spread in and the transmission from, Hong Kong of any disease. Under regulation 4 of the Regulations, a medical practitioner or medical officer is required to notify the Director of Health forthwith in a form specified in the Schedule to the Regulations if he has reason to suspect the existence of a case of an infectious disease or, in the case of death, that an infectious disease existed. Consequential to the addition of “*Streptococcus suis* infection” to the list of infectious diseases, the Prevention of the Spread of Infectious Diseases Regulations (Amendment of Form) Order 2005 (L.N. 131) adds “*Streptococcus suis* infection” to Form 2 of the Schedule to the Regulations.

3. Members may refer to an information paper (circulated as LC Paper No. CB(2)2415/04-05(01)) issued by Health, Welfare and Food Bureau to the Panel on Health Services and other Members dated 1 August 2005 for background information.

4. The Panel on Health Services has not been consulted about the Orders.

PART II TAX RESERVE CERTIFICATES

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

Tax Reserve Certificates (Rate of Interest) (No. 5) Notice 2005 (L. N. 128)

5. This Notice fixes the rate of interest payable on tax reserve certificates issued on or after 1 August 2005 at 1.6000% per annum.

PART III LEGAL NOTICE NOT REQUIRED TO BE TABLED AND NO AMENDMENT COULD BE MADE BY THE LEGISLATIVE COUNCIL

Western Harbour Crossing Ordinance (Cap. 436)

Western Harbour Crossing Ordinance (Replacement of Schedule 1) Notice 2005 (L.N. 129)

6. The Western Harbour Crossing Ordinance (Cap. 436) (“the Ordinance”) provides for a specified toll adjustment mechanism in respect of the Western Harbour Crossing. Under Schedule 4 to the Ordinance, the Western Harbour Tunnel Company Limited (“the Company”) or the franchisee may effect toll increases on six specified dates: 1 January 2001, 1 January 2005, 1 January 2009, 1 January 2013, 1 January 2017 and 1 January 2021. However, if the Company’s or the franchisee’s actual net revenue in any year (that is not a year ending immediately before the specified dates) falls short of the minimum estimated net revenue for that year specified in Schedule 5 to the Ordinance, the Company or the franchisee may advance the toll increase. The maximum levels of increase in respect of different categories of vehicles, from operating date up to 31 December 2010 or during period of 13 years beginning on operating date, are specified in Schedule 2 to the Ordinance.

7. Members may refer to an information paper (LC Paper No. CB(1) 2152/04-05(01)) issued by Environment, Transport and Works Bureau and a press release issued by the Company (LC Paper No. CB(1) 2152/04-05(02)) to the Panel on Transport on 28 July 2005 for background information. A comparison table of the existing and new tolls is provided in Annex B to LC Paper No. CB(1) 2152/04-05(01)).

8. A set of financial information of the Company was also circulated to the Panel on Transport vide LC Paper No. CB(1) 2156/04-05 on 29 July 2005.

9. According to paragraph 3 of the information paper (LC Paper No. CB(1) 2152/04-05(01)), since the operation of the Western Harbour Crossing in 1997, the Company’s net revenue has consistently fallen short of the specified levels. To date, the Company has raised its statutory tolls thrice; in December 2000, July 2002 and

February 2004. However, in respect of certain categories of vehicles, concessionary tolls have been offered by the Company and it has been charging actual tolls less than the statutory tolls.

10. Under section 52(1) of the Ordinance, where a toll is increased in accordance with the Ordinance and the project agreement, the Commissioner for Transport shall by notice published in the Gazette amend Schedule 1 to vary the relevant tolls. Under section 52(2), the Company or the franchisee shall not give effect to more than one increase in the tolls in one year. The last tolls increase has come into effect since 24 February 2004 (L.N. 24 of 2004). Section 52(3) provides that section 34 of the Interpretation of General Clauses Ordinance (Cap. 1) shall not apply in respect of such notice, hence the notice is not tabled before the Legislative Council. This Notice replaces Schedule 1 to the Ordinance to show the new tolls.

11. Members have all along been concerned about the toll adjustment mechanisms of various tunnels delivered through the Build-Operate-Transfer mode, and the resultant traffic and economic impacts associated with toll increases. In view of the recent toll increases of the Eastern Harbour Crossing, Tate's Cairn Tunnel, and Tai Lam Tunnel and Yuen Long Approach Road, the Council passed a motion on 6 July 2005, urging the Administration to review, inter alia, the toll increase mechanism under the Ordinance and formulate measures to achieve effective distribution of traffic among the three road harbour crossings. The Administration was requested to expeditiously put up specific proposals to address Members' concerns in six months' time.

12. In June 2005, the Panel on Transport also requested the Research and Library Services Division to conduct a research on the operation of toll roads, bridges and tunnels in selected places to facilitate their consideration of the related issues.

13. The Panel on Transport will continue to follow up on the related issues.

14. The Notice came into operation on 31 July 2005.

15. 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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Legislative Council Secretariat
11 August 2005

立法會
Legislative Council

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 5 August 2005**

Date of tabling in LegCo : 12 October 2005

Amendment to be made by : 9 November 2005 (or 30 November 2005 if extended by resolution)

**Public Health and Municipal Services Ordinance (Cap. 132)
Public Health and Municipal Services (Setting Aside Places for Use as Public
Pleasure Grounds) (No. 2) Order 2005 (L.N. 132)
Public Health and Municipal Services Ordinance (Amendment of Fourth
Schedule) (No. 2) Order 2005 (L.N. 133)**

L.N. 132 sets aside 6 places in Kowloon and the New Territories for use as public pleasure grounds. L.N. 133 amends the Fourth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132) to update the list of public pleasure grounds accordingly.

2. The effect of these two Orders is to vest the general management and control of public pleasure grounds, including the exclusive right to provide amenities of any kind, in the Director of Leisure and Cultural Services.

Prepared by

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Legislative Council Secretariat
5 August 2005

立法會
Legislative Council

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 12 August 2005**

Date of tabling in LegCo : 12 October 2005

Amendment to be made by : 9 November 2005 (or 30 November 2005 if extended by resolution)

**University of Hong Kong Ordinance (Cap. 1053)
Statutes of the University of Hong Kong (Amendment) Statute 2005 (L.N. 135)**

This amendment Statute is made by the Chancellor of the University of Hong Kong under section 13(2) of the University of Hong Kong Ordinance (Cap. 1053) (the Ordinance) on the recommendation of the Court of the University of Hong Kong. It amends Statute III of the Statutes of the University of Hong Kong in the Schedule to the Ordinance as follows:-

in paragraph	by adding
1(a)	Bachelor of Journalism
1(b)	Master of Public Health Master of Science in Dental Materials Science Master of Science in Library and Information Management
1(c)	Doctor of Psychology
2(a)	Advanced Diploma in Oral and Maxillofacial Surgery Postgraduate Diploma in Child and Adolescent Health Postgraduate Diploma in Chinese Language Subject Knowledge for Graduate Teachers Postgraduate Diploma in Creative Writing in English Postgraduate Diploma in Dental Materials Science Postgraduate Diploma in Education Postgraduate Diploma in Information Technology and Intellectual Property Law Postgraduate Diploma in Psycho-oncology Postgraduate Diploma in Public Health
2(b)	Postgraduate Certificate in Psycho-oncology Postgraduate Certificate in Public Health

2. The amendments would enable the University to award or confer the degrees and academic distinctions added.

Aviation Security Ordinance (Cap. 494)

Aviation Security (Amendment) Ordinance 2005 (Commencement) Notice (L.N. 136)

3. By this notice made under section 1(2) of the Aviation Security (Amendment) Ordinance 2005 (14 of 2005), the Secretary for Security has appointed 10 November 2005 as the date at which the Ordinance shall come into operation.

4. The Amendment Ordinance amends the Aviation Security Ordinance (Cap. 494) to impose criminal sanctions against unruly or disruptive behaviour committed by passengers on board civil aircraft, and to provide for the extraterritorial application of the relevant provisions to offences of unruly or disruptive passenger behaviour committed outside Hong Kong on non-Hong-Kong-controlled civil aircraft that next land in Hong Kong. A Bills Committee has scrutinized the relevant Bill before its enactment. Members may wish to refer to the Bills Committee Report (Ref.: LC Paper No. CB(2)1850/04-05) for further information.

Concluding Observations

5. There has been no public consultation or consultation with any LegCo Panel. No difficulties have been identified in the legal or drafting aspects of the subsidiary legislation reported above.

Prepared by

KAU Kin-wah

Assistant Legal Adviser

Legislative Council Secretariat

15 August 2005

立法會
Legislative Council

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 26 August 2005**

Date of tabling in LegCo : 12 October 2005

Amendment to be made by : 9 November 2005 (or 30 November 2005 if extended by resolution)

PART I MISCELLANEOUS

**Public Health and Municipal Services Ordinance (Cap. 132)
Harmful Substances in Food (Amendment) Regulation 2005 (L.N. 137)**

The Amendment Regulation was made under sections 55(1) and 57 of the Public Health and Municipal Services Ordinance (Cap. 132) (“the Ordinance”). Under section 55(1), the Director of Food and Environmental Hygiene may, so far as appears to him to be necessary or expedient in the interests of the public health, or otherwise for the protection of the public, make regulations for requiring, prohibiting or regulating the addition etc. of any specified substance to food intended for sale for human consumption. Pursuant to this power the Director has made the Harmful Substances in Food Regulations (Cap. 132 sub. leg. AF) (“the Principal Regulations”). Under section 57 of the Ordinance, regulations made under section 55 may include provision for the prohibition, restriction or regulation of the sale etc. of live poultry, live reptiles and live fish in the same manner as if such were food.

2. The First Schedule to the Principal Regulations is a list of substances the maximum concentration of which in specified foods is prescribed. Under regulation 3 of the Principal Regulations, no person shall import, consign, deliver, manufacture or sell, for human consumption, any food of a description specified in the First Schedule which contains any substances or the description of such substances specified therein in greater concentration than is prescribed. Under regulation 5 of the Principal Regulations, contravention of regulation 3 is an offence punishable by a fine at level 5 (i.e. \$50,000) and imprisonment for 6 months.

3. The Amendment Regulation adds malachite green into the list of substances in the First Schedule. The maximum concentration prescribed is 0 microgram per kilogram in “any food (including live fish, live reptiles and live poultry)”. The effect of the addition is that importing, consigning, delivering,

manufacturing or selling any food (including live fish, live reptiles and live poultry) for human consumption which contains malachite green becomes an offence punishable by a fine at level 5 and imprisonment for 6 months. The Amendment Regulation commenced operation on the date it was published in the Gazette (i.e. 26 August 2005).

4. The Health and Welfare Bureau has issued a LegCo Brief (File Ref: HWF(F) CR 2/3231/05) dated August 2005 on the Amendment Regulation.

5. The Panel on Food Safety and Environmental Hygiene (“the Panel”) was informed of the legislative amendment at its special meetings on 19 and 26 August 2005, when discussing the discovery of malachite green in eels and freshwater fish imported from the Mainland. Panel members in general supported prohibiting the presence of malachite green in live fish and fish products intended for human consumption in order to safeguard public health.

6. As some members expressed concern about the implementation of the regulatory framework for live fish and the enforcement of the Amendment Regulation, the Panel held two further meetings on 30 August and 2 September 2005 to further discuss with the Administration and the live fish trade. The Administration had provided more details on the proposed regulatory framework for live fish and the enforcement of the Amendment Regulation. The Panel noted that the Administration planned to introduce the legislative proposal on the regulation of live fish in the 2006-07 session. Members did not raise further queries on the Amendment Regulation at the last meeting on 2 September 2005.

Import and Export (General) Regulations (Cap. 60 sub. leg. A)

**Import and Export (General) Regulations (Amendment of Seventh Schedule)
(No. 2) Notice 2005 (L.N. 138)**

7. By this Notice made by the Director-General of Trade and Industry under regulation 7(2) of the Import and Export (General) Regulations (Cap. 60 sub. leg. A) (“the Regulations”), the Seventh Schedule to the Regulations is amended by adding Indonesia.

8. Part VI of and the Seventh Schedule to the Regulations implement in Hong Kong an international certification scheme for rough diamonds known as the Kimberley Process Certification Scheme. The amendment made by this Notice reflects the fact that trade in rough diamonds may be carried on with Indonesia under the Kimberley Process Certification Scheme.

9. The Panel on Commerce and Industry has not been briefed about the Notice.

PART II COMMENCEMENT NOTICE

Transfer of Sentenced Persons Ordinance (Cap. 513)

Transfer of Sentenced Persons (Amendment) (Macau) Ordinance (Commencement) Notice (L.N. 139)

10. Under section 2 of the Transfer of Sentenced Persons (Amendment) (Macau) Ordinance (13 of 2005) (“the Amendment Ordinance”), the Secretary for Security appoints 1 December 2005 as the day on which the Amendment Ordinance will come into operation.

11. The Amendment Ordinance amends the Transfer of Sentenced Persons Ordinance (Cap. 513) to make it applicable to the arrangements for the transfer of sentenced persons between the Hong Kong Special Administrative Region and the Macau Special Administrative Region.

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

Prepared by

Lam Ping-man, Stephen
Assistant Legal Adviser
Legislative Council Secretariat
8 September 2005

立法會
Legislative Council

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 2 September 2005**

Date of tabling in LegCo : 12 October 2005

Amendment to be made by : 9 November 2005 (or 30 November 2005 if extended by resolution)

**Coroners Ordinance (Cap. 504)
Places for Autopsies (Amendment) Order 2005 (L.N. 140)**

This Order is made by the Secretary for Health, Welfare and Food under section 5(1)(a) of the Coroners Ordinance (Cap. 504) to add Kwai Chung Public Mortuary to the Schedule to the Places for Autopsies Order (Cap. 504 sub. leg. A) as a mortuary for the reception of dead bodies for the purpose of autopsies.

2. The Panel on Health Services was briefed on the operation of public mortuaries, the measures to alleviate the problem of insufficient refrigerating capacity, and other related issues at its meeting on 19 July 2005. The Administration pointed out that with the recent completion of the Kwai Chung Public Mortuary which was expected to become fully operational in September/October 2005, bodies in other public mortuaries could be transferred there if necessary. Members may refer to the minutes of the Panel meeting on 19 July 2005 (Ref: LC Paper no. CB(2)2547/04-05) for details.

3. No difficulties relating to the legal and drafting aspects of the Order have been identified.

**Tax Reserve Certificates (Fourth Series) Rules (Cap. 289 sub. leg. A)
Tax Reserve Certificates (Rate of Interest) (No. 6) Notice 2005 (L.N. 141)**

4. By this Notice made under rule 7(2)(h) of the Tax Reserve Certificates (Fourth Series) Rules (Cap. 289 sub. leg. A), the Financial Secretary prescribed the rate of interest payable on tax reserve certificates issued on or after 5 September 2005 to be 1.8500% per annum (the new rate). Accordingly, the Schedule to the Tax Reserve Certificates (Rate of Interest) (Consolidation) Notice (Cap. 289 sub. leg. B) is amended by adding “and before 5 September 2005” at the end of item 149 and the new rate as item 150.

5. No difficulties relating to the legal and drafting aspects of the Notice have been identified.

Prepared by

LAI Shun-wo, Monna
Assistant Legal Adviser
Legislative Council Secretariat
7 September 2005

立法會
Legislative Council

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 16 September 2005**

Date of tabling in LegCo : 12 October 2005

Amendment to be made by : 9 November 2005 (or 30 November 2005 if extended by resolution)

PART I AMENDMENT OF FORMS

**Legal Practitioners Ordinance (Cap. 159)
Barristers (Qualification for Admission and Pupillage) (Amendment) Rules 2005
(L.N. 142)**

The Amendment Rules are made by the Council of the Hong Kong Bar Association (“the Bar Council”) under section 72AA of the Legal Practitioners Ordinance (Cap. 159) with the prior approval of the Chief Justice. The prescribed forms in the Barristers (Qualification for Admission and Pupillage) Rules (Cap. 159 sub. leg. AC) are amended to provide that—

- (a) in an application for the issue of a certificate of eligibility for admission, certificate of qualification for admission and certificate of eligibility for pupillage, the document required to identify the applicant is either a Hong Kong Identity Card, a passport or other travel document;
- (b) an overseas lawyer who applies for a certificate of eligibility for admission, or a person who applies for a certificate of eligibility for pupillage may make the requisite declaration in a place outside Hong Kong;
- (c) an applicant for the issue of a certificate of eligibility for pupillage is not required to include in the application his residency particulars. There is no residency requirement for approval of application for pupillage by the Bar Council. There is only a residency requirement applicable to admission as a barrister under section 27 of the Legal Practitioners Ordinance.

2. The Amendment Rules shall come into operation on a day to be appointed by the Bar Council. No consultation with the Panel on the Administration of Justice and Legal Services has been carried out. No difficulties relating to the legal and drafting aspects have been identified.

PART II COMMENCEMENT NOTICES

Waste Disposal (Amendment) Ordinance 2004 (17 of 2004)

Waste Disposal (Amendment) Ordinance 2004 (Commencement) Notice (L.N. 143)

3. By this Notice, the Secretary for the Environment, Transport and Works (“the Secretary”) appoints 1 December 2005 as the day on which the Waste Disposal (Amendment) Ordinance 2004 shall come into operation.

4. The Amendment Ordinance amends the Waste Disposal Ordinance (Cap. 354) to –

- (a) strengthen the control against illegal disposal of waste by prohibiting unlawful depositing of waste, empowering the magistrate to order removal of waste from Government land or payment of expenses, and empowering the Director of Environmental Protection (“the Director”) to remove waste in case of imminent risk of adverse environmental impact; and
- (b) provide the statutory basis for the making of regulations for introducing a charging scheme for the disposal of construction waste at landfills, sorting facilities and public fill reception facilities.

Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Cap. 354 sub. leg. N)

Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Commencement) Notice 2005 (L.N. 144)

5. The Secretary appoints 1 December 2005 as the day on which the following provisions of the Regulation shall come into operation:

- (a) Parts 1, 3 and 4;
- (b) Part 5 (except sections 14 to 18 and 19(1) to (7));
- (c) Part 6;
- (d) Schedule 1 (except Part 2);
- (e) Schedule 2 (except Part 2);
- (f) Schedule 3 (except Part 2);
- (g) Schedule 4 (except items 3 and 5 of Part 1, and Part 2); and
- (h) Schedule 5.

6. The Secretary also appoints 20 January 2006 as the day on which the remaining provisions of the Regulation, other than items 3 and 5 of Part 1 of Schedule 4, shall come into operation.

7. The Regulation introduces a charging scheme for the disposal of construction waste at government waste disposal facilities. The provisions referred to in paragraph 5 that will come into operation on 1 December 2005 mainly relate to the application for billing account and exemption account, the types of vessels to be approved for delivering construction waste to public fill reception facility, and set out the landfills, refuse transfer stations, sorting facilities and public fill reception facilities (collectively “prescribed facilities”) that are available.

8. The remaining provisions of the Regulation that will come into operation on 20 January 2006 set out the conditions for disposal of construction waste at prescribed facilities, the calculation of landfill charge, sorting charge and public fill charge, the suspension and revocation of billing account and the content requirements of inert construction waste for prescribed facilities. The purpose of appointing two commencement dates is to allow time for contractors to establish billing accounts and exemption accounts.

9. Items 3 and 5 of Part 1 of Schedule 4 of the Regulation refer to the Sai Ying Pun Temporary Public Filling Barging Point and the Kai Tak Temporary Public Filling Barging Point, which according to the Administration, have ceased operation on 17 June and 5 February 2005 respectively. The two items would be repealed in due course.

Waste Disposal (Designated Waste Disposal Facility) (Amendment) Regulation 2004 (L.N. 165 of 2004)

Waste Disposal (Designated Waste Disposal Facility) (Amendment) Regulation 2004 (Commencement) Notice 2005 (L.N. 145)

10. By this Notice, the Secretary appoints 1 December 2005 as the day on which the following provisions of the Amendment Regulation shall come into operation:

- (a) sections 1 and 2;
- (b) section 3 (in relation to new section 3A(3) and (4));
- (c) sections 8 and 9(a) and (b); and
- (d) section 9(c) (except in relation to new items 23 and 25 of Schedule 1).

11. The Secretary also appoints 20 January 2006 as the day on which the remaining provisions of the Amendment Regulation, except in relation to items 23 and 25 of Schedule 1, shall come into operation.

12. The Amendment Regulation sets out the powers for the Director to

implement the charging scheme in government waste disposal facilities. The provisions referred to in paragraph 10 that will come into operation on 1 December 2005 mainly relate to the specification of additional premises as designated waste disposal facilities, and the power of the Director to give notice in the Gazette of the criteria adopted to determine whether any waste falls within a type of construction waste.

13. The remaining provisions of the Amendment Regulation that will come into operation on 20 January 2006 set out the waste disposal facilities that are available for disposal of construction waste, the inert content specifications that the construction waste must conform to, and the related powers of the Director. Items 23 and 25 of Schedule 1 of the Amendment Regulation refer to the Sai Ying Pun Temporary Public Filling Barging Point and the Kai Tak Temporary Public Filling Barging Point. The relevant provisions would be repealed in due course.

14. In response to our enquiry, the Administration has explained the arrangements made prior to the implementation of the charging scheme as previously proposed at the meetings of the relevant Bills Committee and Subcommittee. The Tripartite Working Group, comprised of representatives from the construction industry, waste haulers and waste facility operators, has been consulted on the commencement dates, the guidelines for determination of the waste content as well as other operational details. The computer systems at the facilities have been upgraded, procedures streamlined, a “Waste Facilities Enforcement Manual” developed and publicity and educational programmes launched. A dry run to test the operational arrangements has commenced since 15 July 2005 and will continue up to 19 January 2006. Members may refer to the copy of letter from the Environmental Protection Department at the **Annex** for details.

15. No consultation with the Panel on Environmental Affairs on the three commencement notices has been carried out. No difficulties relating to the legal and drafting aspects of these three notices have been identified.

Encl

Prepared by

Wong Sze-man, Bernice
Assistant Legal Adviser
Legislative Council Secretariat
30 September 2005

本署檔案
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來函檔案
YOUR REF: LS/S/41/04-05
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**Environmental Protection Department
Headquarters**

46/F Revenue Tower
5 Gloucester Road
Wanchai, Hong Kong



Annex

環境保護署總部

香港
灣仔告士打道五號
稅務大樓四十六樓

BY FAX

Fax No.: 2877 5029
Total No. of page(s): 3

Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong

27 September 2005

(Attn : Ms Bernice Wong
Assistant Legal Adviser)

Dear Ms. Wong,

**Waste Disposal (Amendment) Ordinance 2004
(Commencement) Notice
Waste Disposal (Charges for Disposal of Construction Waste)
Regulation (Commencement) Notice
Waste Disposal (Designated Waste Disposal Facility)
(Amendment) Regulation 2004 (Commencement) Notice**

Thank you for your letter of 20 September on the captioned. Our responses to your questions are set out below:

- (a) The Construction Waste Charging Scheme (“Scheme”) is scheduled to commence on 1 December 2005. In order to allow time for contractors to establish billing accounts and exemption accounts, we will only start receiving construction waste disposal charges from 20 January 2006 onwards, hence the two commencement dates.
- (b) The last dates of operations of the Kai Tak Temporary Public Filling Barging Point and the Sai Ying Pun Temporary Public Filling Barging Point were 5 February 2005 and 17 June 2005 respectively. We shall repeal the relevant provisions in due course.

- (c) The Tripartite Working Group (“TWG”) has been consulted on the commencement dates and the members are receptive of the arrangement. Guidelines on the differentiation between inert and non-inert construction waste as well as other operational details were discussed at the 4th, 5th and 6th TWG meetings held in February, May and June 2005 respectively. Such guidelines are put into operation in the dry-run now under way.
- (d) The computer systems at the facilities have been upgraded to support the new construction waste transaction procedures. The enhanced systems will manage the weighing of waste and the recording of waste transaction data. To further streamline the procedures, the infrastructure of the waste reception areas of the facilities have also been modified, including the provision of additional waste reception kiosks, erection of additional traffic management signs, and introduction of vehicle licence plate recognition systems and bar code reading systems.
- (e) A draft "Waste Facilities Enforcement Manual" has been developed to provide guidance to the staff in implementing the Scheme. Comments from the ICAC have been sought and will be incorporated in the final version of the Manual as far as practicable. Where necessary, the DoJ will also be consulted.
- (f) A series of publicity and educational programmes have been developed to publicise the Scheme. Such measures include TV and radio APIs to announce the commencement of the Scheme and advise the public not to flytip construction waste. The APIs have been broadcast since early September 2005. A dedicated website in EPD homepage has been launched so as to provide the public with the information and implementation progress of the Scheme. Other measures include a series of leaflets and posters being distributed to the public, the trade and users of the waste disposal facilities. One of the leaflets covering general information on the Scheme has been distributed via water bills since July 2005. In addition, a series of briefing sessions and seminars to the trade and the public on the implementation arrangements of the Scheme will be held from October to December 2005.

(g) A dry-run to test and fine-tune the operational arrangements has commenced on 15 July 2005 and will continue up to 19 January 2006, i.e. before charging for disposal of construction waste starts on 20 January 2006.

2. The above should have addressed your questions. If you need further information, please contact Dr. Ellen Chan, Assistant Director (Environmental Infrastructure) of Environmental Protection Department.

Yours sincerely,

(TE Chi-wang)
for Director of Environmental Protection

Internal
AD(EI)

立法會
Legislative Council

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 23 September 2005**

Date of tabling in LegCo : 12 October 2005

Amendment to be made by : 9 November 2005 (or 30 November 2005 if extended by resolution)

PART I MISCELLANEOUS

**Legal Practitioners Ordinance (Cap. 159)
Legal Practitioners (Risk Management Education) (Amendment) Rules 2005
(L.N. 146)**

The Legal Practitioners (Risk Management Education) Rules (Cap. 159 sub. leg. Z) (“the Rules”) were made in 2002 and came into operation on 14 March 2003. The Rules are to provide for the implementation of a programme of training courses on risk management for solicitors, foreign lawyers and trainee solicitors. The Law Society of Hong Kong intends to apply these Rules to different categories of lawyers by different phases.

2. In October 2003, section 12 to the Rules (L.N. 238 of 2003) is amended to empower the Council of the Law Society of Hong Kong (“the Council”) to appoint by notice published in the Gazette an end date of the first practice year of a solicitor who was admitted on or after 15 September 1990 and who was a principal immediately before 31 October 2003. This category of solicitors will have to complete the principal’s core courses before the end date of the first practice year as appointed by the Council and to attend 3 hours elective courses in the subsequent practice years.

3. In these Amendment Rules, section 12 is further amended to re-define the category of solicitors whose first practice year is to end on a date to be appointed by notice as a solicitor who was admitted on or after 15 September 1990 and who is a principal, or who was a principal on or after 14 March 2003.

4. A new section 12(4) is added to provide that “in relation to a solicitor whose first practice year ends on 31 December 2005 pursuant to a notice under subsection (1), his next practice year shall commence on 1 January 2006 and end on 31 October 2006”.

5. As at 23 September 2005 when the new section 12(4) was gazetted (after being made on 21 September 2005), the “notice under subsection (1)” as referred to in this subsection had not been gazetted. On our enquiry and as it had transpired, it was found that the notice was made on 23 September 2005 and gazetted on 30 September 2005 (L.N. 153 as reported in our next report vide LC Paper No. LS121/04-05). We expressed our concern that section 12(4) should refer to a notice that did not exist at the time the section was made. The Law Society responded that such timing does not have any adverse impact on the legal basis or legal effect of the section, nor would it prejudice the interests of anyone subject to the Rules. Members may refer to the correspondence attached for details.

6. We do not propose to further pursue the apparent technical difficulty in the light of the Law Society’s response.

**Public Health and Municipal Services Ordinance (Cap. 132)
Market to which the Public Health and Municipal Services Ordinance Applies
(No. 2) Declaration 2005 (L.N. 147)**

7. This Declaration declares the Tai Kok Tsui Market at Basement, Ground Floor, First Floor and Second Floor of the Tai Kok Tsui Municipal Services Building, 63 Fuk Tsun Street, Kowloon to be a market to which the Public Health and Municipal Services Ordinance (Cap. 132) applies with effect from 30 September 2005.

8. According to the LegCo Brief HWF(F)7/13 Pt. 5 issued by the Health, Welfare and Food Bureau in September 2005, the Director of Food and Environmental Hygiene will proceed to designate the Tai Kok Tsui Market as a public market by making a Designation Order and an Amendment Order to the Tenth Schedule to be published in the Gazette on 30 September 2005. This Declaration, the forthcoming Designation Order and the Amendment Order will come into operation on the same day. The effect of the Notice and the 2 Orders is to confer upon the Director a statutory duty to manage and control the venue as a public market in accordance with the provisions of Cap. 132.

PART II COMMENCEMENT NOTICE

**Banking (Amendment) Ordinance 2005 (19 of 2005)
Banking (Amendment) Ordinance 2005 (Commencement) Notice 2005
(L.N. 148)**

9. The Banking (Amendment) Ordinance 2005 was passed by LegCo on 6 July 2005. Apart from amending the Banking Ordinance (“BO”) to provide a framework for incorporating the revised capital adequacy framework under Basel II, it also includes a number of miscellaneous amendments.

10. The Secretary for Financial Services and the Treasury appoints 2 December 2005 as the day on which the Amendment Ordinance (except sections 2, 3, 4, 6 and 7 and the Schedule) shall come into operation. This means that the miscellaneous amendments under sections 5, 8 to 15 will first come into operation. The miscellaneous amendments include-

- (a) limiting the liability of managers of companies for some offences under the BO to instances that are results of an act or omission on the part of the manager personally or of a person under his control;
- (b) allowing the Monetary Authority (“MA”) to increase capital adequacy ratio of licensed banks to a maximum of 16%;
- (c) allowing the MA to publish details of disciplinary decisions in respect of securities business of authorized institutions; and
- (d) allowing a defence of “reasonable excuse” to some offences.

Concluding remarks

11. No Panel has been consulted on the above three items of subsidiary legislation and no difficulties relating to the legal and drafting aspects of the above items have been identified except as mentioned in paragraph 5.

Encl.

Prepared by

HO Ying-chu, Anita
Assistant Legal Adviser
Legislative Council Secretariat
5 October 2005

HC/fl/90432
LS/S/42/04-05
2869 9209
2877 5029

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

30 September 2005

(Attention: Ms Heidi CHU,
Director of Standards and Development)

BY FAX

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

Dear Ms Chu,

**Legal Practitioners (Risk Management Education)(Amendment) Rules 2005
L.N. 146 of 2005**

Your prompt reply on 29 September 2005 is much appreciated.

The new section 12(1) of the Legal Practitioners (Risk Management Education) Rules, as published in the Gazette on 23 September 2005, allows the Council of the Law Society to appoint, by notice published in the Gazette, an end date of the first practice year for a group of post-September 1990 solicitors and post-March 2003 principals, and not just those pre-October 2003 principals. In the new section 12(4), it provides that “in relation to a solicitor whose first practice year ends on 31 December 2005 pursuant to a notice under subsection (1), his next practice year shall commence on 1 January 2006 and end on 31 October 2006”. Failing the first publication of the end date of the first practice year notice in the Gazette, the appointment of the next practice year in section 12(4) seems to be quite incomprehensible.

As explained, the end-date notice is to be published on 30 September 2005, one week later so as “to avoid any ambiguity on whether the notice is issued pursuant to the old or new section 12(1) that may be caused by publishing it on the same day as the relevant amendment comes into operation”.

According to section 28(3)(a) of the Interpretation and General Clauses Ordinance (Cap. 1), subsidiary legislation comes into operation at the beginning of the day on which it is published. Hence, the Amendment Rules including the new section 12(1) and (4) comes into operation at the beginning of 23 September 2005. As from 23 to 30 September 2005, could you please explain the legal basis and the legal effect of the new section 12(4)?

Further, for any similar future legislative exercise, would the Law Society consider issuing a LegCo Brief to assist Members in understanding the subsidiary legislation concerned?

Your reply in both Chinese and English, on or before 3 October 2005, if possible, is most appreciated.

Yours sincerely,

(Anita HO)
Assistant Legal Adviser

cc: DoJ (Attention: Mr Vidy CHEUNG, SGC) Fax No. 2845 2215
LA
SALA2



THE

LAW SOCIETY
OF HONG KONG

香港律師會

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Our Ref :
Your Ref : HC/fl/90619
Direct Line : 2846-0551

4 October 2005

Ms Anita Ho
Assistant Legal Adviser
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central, Hong Kong

By Fax and Post

Fax no.: 2877-5029

Dear Ms Ho,

Re : **Legal Practitioners (Risk Management Education) (Amendment) Rules
2005 - L.N. 146 of 2005**

Thank you for your letter dated 30 September 2005.

The new section 12(4) came into effect when it was gazetted on 23 September 2005. It serves to define the category of solicitors whose second practice year will commence on 1 January 2006

Prior to the publication of the end date notice on 30 September 2005, section 12(4) had no specific application in that it did not operate to cover any solicitors but simply defined the category of solicitors that would be caught under it. Since the publication of the end date notice on 30 September 2005, section 12(4) has operated to cover those solicitors to whom the end date notice applies.

The timing of the publication of the end date notice was based on the view given by the Department of Justice. It is considered that such timing does not have any adverse impact on the legal basis or legal effect of the new section 12(4), nor will it prejudice the interests of anyone subject to the Legal Practitioners (Risk Management Education) Rules ("RME Rules"). In any event, under section 12(4), the second practice year will not start until 1 January 2006.

It is unlikely that there will be similar legislative exercise involving an amendment to the RME Rules and the publication of an end date notice because it is expected that

President	Vice-Presidents	Council Members				Secretary General
Peter C.L. Lo	Lester G. Huang Wong Kwai Huen Junius K.Y. Ho	Michael J. Lintern-Smith Ip Shing Hing Billy W.Y. Ma Sylvia W.Y. Siu	Cecilia K.W. Wong Denis G. Brock Alex T.H. Lai Kenneth S.Y. Ng	Andrew Jeffries Stephen W.S. Hung Dieter L.T. Yih Ambrose S.K. Lam	Joseph C.W. Li Amirali B. Nasir Melissa K. Pang Thomas S.T. So	Patrick R. Moss

future practice years will be able to follow the normal 12-month practice year cycle provided for in the RME Rules. Nevertheless, in case there is any similar legislative exercise in the future, the Law Society would consider issuing a LegCo brief to explain the amendments.

Yours sincerely



HEIDI CHU
Director of
Standards and Development

cc. Mr Vidy Cheung, Department of Justice (Fax no.: 2845-2215)

立法會
Legislative Council

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 30 September 2005**

Date of Tabling in LegCo : 12 October 2005

Amendment to be made by : 9 November 2005 (or 30 November 2005 if extended by resolution)

PART I PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE

Public Health and Municipal Services Ordinance (Cap. 132)

Public Health and Municipal Services (Designation of Public Markets) (No. 2) Order 2005 (L.N. 151)

Public Health and Municipal Services Ordinance (Amendment of Tenth Schedule) (No. 2) Order 2005 (L.N. 152)

By the Market to which the Public Health and Municipal Services Ordinance Applies (No. 2) Declaration 2005 (“the Market Declaration”) (L.N. 147 of 2005) gazetted on 23 September 2005, the Director of Food and Environmental Hygiene (“the Director”) declares the Tai Kok Tsui Market at Basement, Ground Floor, First Floor and Second Floor of the Tai Kok Tsui Municipal Services Building, 63 Fuk Tsun Street, Kowloon to be a market to which the Public Health and Municipal Services Ordinance (Cap. 132) (“the Ordinance”) applies with effect from 30 September 2005.

2. Under section 79(3) of the Ordinance, the Director may, by order published in the Gazette, designate as a public market any market to which the Ordinance applies. L.N. 151, which is made under section 79(3) of the Ordinance, designates the Tai Kok Tsui Market as a public market.

3. Consequent upon the designation of the Tai Kok Tsui Market as a public market, L.N. 152 updates the Tenth Schedule to the Ordinance to reflect the designation.

4. L.N. 151 and L.N. 152 have come into operation on the day on which they were published in the Gazette, that is, 30 September 2005, which ties in with the commencement date of the Market Declaration.

5. Members may refer to LegCo Brief (File Ref.: HWF(F) 7/13 Pt.5) issued by the Health, Welfare and Food Bureau in September 2005 for background information.

PART II LEGAL PRACTITIONERS ORDINANCE

Legal Practitioners Ordinance (Cap. 159)

Legal Practitioners (Risk Management Education) Rules (Appointment of End Date of First Practice Year) Notice 2005 (L.N. 153)

Legal Practitioners (Risk Management Education) Rules (Appointment of Commencement Date) Notice 2005 (L.N. 154)

6. By the Legal Practitioners (Risk Management Education) Amendment Rules (L.N. 146 of 2005) gazetted on 23 September 2005, section 12(1) of the Legal Practitioners (Risk Management Education) Rules (Cap. 159 sub. leg. Z) (“the principal Rules”) is amended to enable the Council of The Law Society of Hong Kong (“the Council”) to appoint by notice published in the Gazette a date on which the first practice year of a solicitor (being the practice year in which the principal Rules first apply to him), who was admitted as a solicitor of the High Court on or after 15 September 1990 and who is a principal, or who was a principal on or after 14 March 2003 (“post-1990 solicitor”), shall end.

7. L.N. 153, which is made under section 12(1) of the principal Rules, as amended by L.N. 146, appoints 31 December 2005 as the date on which the first practice year of a post-1990 solicitor ends. The effect of L.N. 153 is that a post-1990 solicitor is required to complete the relevant training courses on risk management education by 31 December 2005. In response to the Legal Service Division’s enquiry on the implementation timetable of the principal Rules, the Law Society of Hong Kong (“the Law Society”) has explained that in November 2004 the Society launched a training programme pursuant to the principal Rules. It was initially intended that the expiry of the first practice year should fall on 31 October 2005. Post-1990 solicitors have been attending the training programme since it was launched in November 2004. The programme was however temporarily suspended in February to April 2005 pending the completion of the review conducted by the Law Society in February 2005. In order to allow sufficient time for the post-1990 solicitors to complete their obligations under the principal Rules, the expiry date of the first practice year for these solicitors is therefore proposed to be fixed for 31 December 2005.

8. Under section 12(2) of the principal Rules, in relation to any solicitor other than a solicitor mentioned in section 12(1), or to any trainee solicitor or foreign lawyer, the principal Rules shall not take effect until such date as the Council may appoint by notice published in the Gazette. By L.N. 154, the Council appoints 1 November 2005 as the date on which the principal Rules shall take effect in relation to a solicitor who is a principal and who was admitted as a solicitor of the High Court before 15 September 1990.

PART III COMMENCEMENT NOTICE

Statute Law (Miscellaneous Provisions) Ordinance 2005 (10 of 2005)

Statute Law (Miscellaneous Provisions) Ordinance 2005 (Commencement) Notice 2005 (L.N. 156)

9. L.N. 156 appoints 3 October 2005 as the day on which Division 1 of Part 5 of the Statute Law (Miscellaneous Provisions) Ordinance 2005 (10 of 2005) (“the 2005 Ordinance”) will come into operation.

10. The 2005 Ordinance, which was passed by this Council on 29 June 2005, makes miscellaneous amendments to various Ordinances for the purpose of improving, clarifying and updating the law. The Ordinance (except Division 1 of Part 5) came into operation on the day on which it was published in the Gazette, that is, 8 July 2005. Division 1 of Part 5 of the 2005 Ordinance amends the Legal Practitioners Ordinance (Cap. 159) (“LPO”) to include two representatives of The Chinese University of Hong Kong (“CUHK”) to be members of the Standing Committee on Legal Education and Training established under section 74A of LPO to reflect the fact that a law school is to be established in CUHK.

PART IV MISCELLANEOUS

Road Traffic Ordinance (Cap. 374)

Road Traffic (Public Service Vehicles) (Amendment) Regulation 2005 (Amendment of Commencement Date) Regulation 2005 (L.N. 149)

11. One of the purposes of the Road Traffic (Public Service Vehicles) Regulation 2005 (L.N. 83 of 2005) (“the principal Regulation”) is to amend Schedule 5 to the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg. D) to increase the return toll charge payable by taxi passengers for every hiring which is for a destination across the harbour via the Eastern Harbour Crossing (“EHC”) or the Western Harbour Crossing (“WHC”) where the hiring does not begin from a cross-harbour taxi stand from \$15 to \$25 with effect from 1 October 2005. This commencement date was intended to tie in with the commencement date of the increase in the tunnel toll of EHC for empty taxis from \$15 to \$25.

12. L.N. 149 amends the principal Regulation to change the commencement date for the increase in the return toll charge payable by taxi passengers using EHC or WHC from 1 October 2005 to a date to be appointed by the Secretary for the Environment, Transport and Works. According to the LegCo Brief (File Ref.: ETWB(T)CR1/3/5591/71) issued by the Environment, Transport and Works Bureau on 28 September 2005, the deferral of the commencement date of the increase arises from the decision of New Hong Kong Tunnel Company Limited, the franchisee of EHC, to extend the toll concession for empty taxis for three months until the end of 2005. Members may refer to paragraphs 3 and 4 of the LegCo Brief for details.

13. According to paragraph 9 of the LegCo Brief, the Transport Department has informed all urban taxi associations of the proposed deferral of the commencement date of the increase in the return toll charge and the taxi trade has not raised any objection to the proposal.

**Child Abduction and Custody Ordinance (Cap. 512)
Child Abduction and Custody (Parties to Convention) (Amendment) Order 2005
(L.N. 150)**

14. L.N. 150 updates the list of the Contracting States and territories to the Convention on the Civil Aspects of International Child Abduction (“the Convention”) set out in the Schedule to the Child Abduction and Custody (Parties to Convention) Order (Cap. 512 sub. leg. A) by adding 13 new Contracting States to the Schedule. These new Contracting States are the Federative Republic of Brazil, Republic of Bulgaria, Republic of Estonia, Republic of the Fiji Islands, Republic of Latvia, Republic of Lithuania, Republic of Peru, Democratic Socialist Republic of Sri Lanka, Oriental Republic of Uruguay, Republic of Uzbekistan, Republic of Malta, Kingdom of Thailand and Republic of Trinidad and Tobago. The effect of this Order is that the Convention will apply between Hong Kong and those states with effect from 1 October 2005.

15. Members may refer to LegCo Brief (File Ref.: HWF CR 1/3281/86) issued by the Health, Welfare and Food Bureau on 29 September 2005 for background information.

**Tax Reserve Certificate (Fourth Series) Rules (Cap. 289 sub. leg. A)
Tax Reserve Certificates (Rate of Interest) (No. 7) Notice 2005 (L.N. 155)**

16. L.N. 155 fixes the rate of interest payable on tax reserve certificates issued on or after 3 October 2005 at 2.1333% per annum.

Concluding remarks

17. The relevant LegCo Panels have not been consulted on the above items of subsidiary legislation.

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

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5 October 2005

LS/S/43/04-05