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**Paper for the House Committee Meeting
on 12 May 2006**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 4 May 2006**

Date of tabling in LegCo : 10 May 2006

Amendment to be made by : 7 June 2006 (or 28 June 2006 if extended by resolution)

PART I CARRIAGE OF DANGEROUS GOODS BY AIR

Civil Aviation Ordinance (Cap. 448)

Air Navigation (Hong Kong) Order 1995 (Amendment of Schedule 16) Order 2006 (L.N. 74)

Dangerous Goods (Consignment by Air) (Safety) Ordinance (Cap. 384)

Dangerous Goods (Consignment by Air) (Safety) (Amendment) Regulation 2006 (L.N. 75)

Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384 sub. leg. A)

Dangerous Goods (Consignment by Air) (Safety) Regulations (Amendment of Schedule) Order 2006 (L.N. 76)

The International Civil Aviation Organization (ICAO) promulgates under the Convention on International Civil Aviation (Chicago Convention) safety requirements of the carriage of dangerous goods (DG) by air. These requirements are set out in the Technical Instructions for the Safe Transport of Dangerous Goods by Air (TIs), which are published by ICAO and usually updated biennially. The 2005-06 edition of the TIs (New TIs) came into effect on 1 January 2005. It will remain valid until 31 December 2006 or replaced by another new edition, whichever may last happen. Since the Chicago Convention applies to Hong Kong, the requirements of the New TIs also apply.

2. The Chicago Convention is implemented in Hong Kong through the Air Navigation (Dangerous Goods) Regulations (which is Schedule 16 to the Air

Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) (AN(DG)R) and the Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384 sub. leg. A) (DG(CAS)R). AN(DG)R regulate the carriage of DG by airlines and make direct references to TIs. DG(CAS)R regulate the checking and preparation of DG by shippers and forwarders and make direct references to specific TIs in its Schedule. The New TIs consequently necessitate the amendment of the two regulations.

3. The Chief Executive in Council is empowered under section 2A of the Civil Aviation Ordinance (Cap. 448) to make provisions necessary or expedient to carry out the Chicago Convention. The Air Navigation (Hong Kong) Order 1995 (Amendment of Schedule 16) Order 2006 is made by the Chief Executive in Council to amend Schedule 16, i.e. AN(DG)R. (Members may wish to note that the Air Navigation (Hong Kong) Order 1995 does not have a Chinese version.) Apart from updating the references to TIs in regulations 2(1) and 6(1)(a) to New TIs, AN(DG)R are amended by replacing regulation 8(2) with new regulation 8(2) and (2A). Regulation 8(2) imposes an obligation on the operator of an aerodrome and of an air passenger carrying aircraft to provide passengers with information on the categories of DG that may not be taken on board an aircraft. Regulation 8(2A) specifies the means by which such information is to be provided to passengers.

4. The Chief Executive in Council is empowered under section 3 of the Dangerous Goods (Consignment by Air) (Safety) Ordinance (Cap. 384) to make regulations to give effect to and to carry out any editions of TIs. The Dangerous Goods (Consignment by Air)(Safety)(Amendment) Regulation 2006 is made to amend DG(CAS)R. It contains the following substantive amendments:-

regulation	repeal	substitute/add
2	-	A new definition of “declared dangerous goods”.
4(1)	Paragraph (g)	A new paragraph (g) specifying in the context of the relevant provision that the goods are declared dangerous goods.
7A	-	A new regulation 7A imposing a requirement that a member of staff of a freight forwarder must first complete training appropriate to the function of processing air cargo containing declared dangerous goods before he is to perform such function. A fine of \$20,000 and imprisonment for 6 months may be imposed for contravention.
7B	-	A new regulation 7B imposing a requirement that each member of staff of a freight forwarder who performs the function of processing air cargo without declared dangerous goods or of handling, loading or storing air cargo must have completed the training appropriate to that function. The same criminal sanctions as provided in regulation 7A may be imposed on the forwarder for contravention.

5. The Schedule to DG(CAS)R refers to specific TIs and therefore requires amendment. Also the new regulations 7A and 7B necessitate consequential amendments to the Schedule. The Director-General of Civil Aviation is empowered under regulation 9 to amend the Schedule by order published in the Gazette. The Dangerous Goods (Consignment by Air) (Safety) Regulations (Amendment of Schedule) Order 2006 is made to effect the necessary amendments.

6. The Panel on Economic Services was consulted at its meeting on 29 November 2005 on the proposed amendments for the implementation of the new requirements of ICAO. Members generally supported the proposed amendments and had enquired about the requisite preparation and staff training arrangements. The respective subsidiary legislation is to come into operation on a date to be appointed by the Director-General of Civil Aviation by notice published in the Gazette. Members may wish to refer to the LegCo Brief (Ref: EDB/CR 1/15/951/49 (05)) dated 3 May 2006 and issued by the Economic Development and Labour Bureau for further and background information. No difficulties in the legal or drafting aspects of the subsidiary legislation have been identified.

7. The Legal Service Division has written to the responsible bureau for an explanation for the time lag between the coming into effect of the New TIs and the gazettal of the amendments to the subsidiary legislation necessary for their implementation and has also enquired about the timetable for fully commencing the amendments. The reply from the Administration is attached as **Annex A**.

PART II FEES REVISION

Dangerous Drugs Ordinance (Cap. 134)

Dangerous Drugs (Fee Revision) Regulation 2006 (L.N. 77)

Antibiotics Ordinance (Cap. 137)

Antibiotics (Fee Revision) Regulation 2006 (L.N. 78)

Pharmacy and Poisons Ordinance (Cap. 138)

Pharmacy and Poisons (Pharmacy and Poisons Appeal Tribunal) (Fee Revision) Regulation 2006 (L.N. 79)

Quarantine and Prevention of Disease Ordinance (Cap. 141)

Quarantine and Prevention of Disease (Scale of Charges) (Charges Revision) Regulation 2006 (L.N. 80)

Dentists Registration Ordinance (Cap. 156)

Dentists (Registration and Disciplinary Procedure) (Fee Revision) Regulation 2006 (L.N. 81)

Ancillary Dental Workers (Dental Hygienists) (Fee Revision) Regulation 2006 (L.N. 82)

Medical Registration Ordinance (Cap. 161)
Medical Registration (Fee Revision) Regulation 2006 (L.N. 83)
Midwives Registration Ordinance (Cap. 162)
Midwives Registration (Fee Reduction) Regulation 2006 (L.N. 84)

Nurses Registration Ordinance (Cap. 164)
Nurses (Registration and Disciplinary Procedure) (Fee Revision) Regulation 2006 (L.N. 85)
Enrolled Nurses (Enrolment and Disciplinary Procedure) (Fee Revision) Regulation 2006 (L.N. 86)

Supplementary Medical Professions Ordinance (Cap. 359)
Medical Laboratory Technologists (Registration and Disciplinary Procedure) (Fee Revision) Regulation 2006 (L.N. 87)
Occupational Therapists (Registration and Disciplinary Procedure) (Fee Revision) Regulation 2006 (L.N. 88)
Radiographers (Registration and Disciplinary Procedure) (Fee Revision) Regulation 2006 (L.N. 89)
Optometrists (Registration and Disciplinary Procedure) (Fee Revision) Regulation 2006 (L.N. 90)
Physiotherapists (Registration and Disciplinary Procedure) (Fee Revision) Regulation 2006 (L.N. 91)

Chiropractors Registration Ordinance (Cap. 428)
Chiropractors Registration (Fee Revision) Regulation 2006 (L.N. 92)

Chinese Medicine Ordinance (Cap. 549)
Chinese Medicine Practitioners (Fee Revision) Regulation 2006 (L.N. 93)
Chinese Medicine (Fee Revision) Regulation 2006 (L.N. 94)

8. In accordance with government policy that fees should in general be set at levels sufficient to recover the full cost of providing the services, L.N.s 77, 80 to 94 are made by the Secretary for Financial Services and the Treasury under section 29A of the Interpretation and General Clauses Ordinance (Cap. 1), L.N. 78 by the Director of Health under section 12 of the Antibiotics Ordinance (Cap. 137) and L.N. 79 by the Secretary for Health, Welfare and Food under section 30(10) of the Pharmacy and Poisons Ordinance (Cap. 138) to revise 86 fees (with 67 increases and 19 reductions) specified in their respective principal regulations.

9. Members may refer to the LegCo Brief issued by the Health, Welfare and Food Bureau (the Bureau) in May 2006 (Ref: HWF CR 1/3/3921/89 Pt. 10) and the paper for the Panel on Health Services (the Panel) on Revision of Fees and Charges for Services Not Directly Affecting People's Livelihood under the Purview of Department of Health (Fees and Charges) issued by the Bureau in April 2006 (Ref: LC Paper No. CB(2)1639/05-06(11)) for background information. Details of the fees revision are set out at **Annex S** of the LegCo Brief.

10. The Panel was consulted on the Administration's proposal to revise the Fees and Charges at its meeting on 10 April 2006. The Administration pointed out that it had frozen most of the Fees and Charges since February 1998 as an exceptional measure to alleviate the financial burden on the public in times of economic difficulty. In 2000, the Administration consulted the Panel on its proposal to revise the fees and charges relating to registration of health care professionals. Apart from these fees and fees prescribed by regulations made in or after 2000, the rest of Fees and Charges had not been revised for nine years or longer. Members generally raised no objection to the proposals. A Member considered it unreasonable that the cost recovery rate for fees relating to commercial products and activities, such as application for registration of a pharmaceutical product or substance, annual licence for manufacturers of pharmaceutical products and registration of premises of an authorised seller of poisons, was much lower than for registration of health care professionals. The Administration explained that the lower cost recovery rate for certain fees was due to historical reason. Consideration could be given to revise upwards the rate of increase of those fees which were far from the target of achieving full cost recovery. Members may refer to the minutes of the Panel meeting held on 10 April 2006 (Ref: LC Paper No. CB(2)1870/05-06) for details.

11. According to the LegCo Brief, the Administration has sought the views of the Chinese Medicine Council of Hong Kong, Chinese Medicine Practitioners Board, Chinese Medicines Board, Chiropractors Council, Dental Council of Hong Kong, Medical Council of Hong Kong, Medical Laboratory Technologists Board, Midwives Council of Hong Kong, Nursing Council of Hong Kong, Occupational Therapists Board, Optometrists Board, Pharmacy and Poisons Board, Physiotherapists Board, Radiographers Board, Representatives of Shipping Sector and Supplementary Medical Professions Council on the fees proposal. Except for the Chinese Medicine Council of Hong Kong, the consulted bodies raised no objection to the proposal. The Chinese Medicine Council has suggested that the fees relating to the Licensing Examination for Chinese medicine practitioners (i.e. items 68 to 70 in Annex S of the LegCo Brief) be increased by 5% instead of 15%.

12. According to the LegCo Brief, having regard to the views of the Members of the Panel, the Administration has revised the fees proposal relating to:

- (a) the fees for application for taking the licensing examination, fees for taking licensing examinations and review of results of the licensing examinations under the Chinese Medicine Practitioners (Fees) Regulation (Cap. 549 sub. leg. B) (i.e. items 68 to 72 in Annex S of the LegCo Brief). It is now proposed that the fees be increased by 10% with a cost recovery rate ranging from 33% to 75%. The Administration is of the view that the actual increase in dollar terms, which ranges from \$71 to \$272, is mild and is not expected to create exceptional hardship to the candidates sitting for the examination.
- (b) the fee payable in respect of each appeal under the Pharmacy and

Poisons (Pharmacy and Poisons Appeal Tribunal) Regulations (Cap. 138 sub. leg. D) (i.e. item 5 in Annex S of the LegCo Brief). The fee is proposed to be increased by 100%. The Administration is of the view that the increase in dollar terms, which is \$835, is unlikely to have material impact on the operating cost of the business concerned.

13. The L.N.s shall come into operation on 1 July 2006.

PART III UPDATING LISTS OF STRATEGIC COMMODITIES

Import and Export Ordinance (Cap. 60)

Import and Export (Strategic Commodities) Regulations (Amendment of Schedule 1) Order 2006 (L.N. 95)

14. This Amendment Order is made by the Director-General of Trade and Industry under section 6B of the Import and Export Ordinance (Cap. 60). It amends Schedule 1 to the Import and Export (Strategic Commodities) Regulations (Cap. 60 sub. leg. G) (the Regulations) by repealing and adding provisions to the Munitions List, Dual-Use Goods List and the Definitions of Terms.

15. The Regulations impose licensing controls on the import, export, transshipment and transit of strategic commodities. The licences are issued by the Trade and Industry Department but the licensing regime is enforced by the Customs and Excise Department. Schedule 1 to the Regulations sets out a list of munitions, and a list of materials, equipment, software and technology capable of being used for both industrial and military purposes (Dual-Use Goods List). The lists are based on the control lists adopted by various international non-proliferation regimes and convention, namely, the Wassenaar Arrangement¹ (WA), the Australia Group² (AG), the Missile Technology Control Regime³ (MTCR), the Nuclear Suppliers Group⁴ and

¹ Wassenaar Arrangement is an international arrangement started in November 1996 with 33 founding members with a view to promote transparency and greater responsibility in the transfer of conventional arms and dual-use goods and technologies. Details of WA are available at <http://www.wassenaar.org/index.html>.

² Australia Group is an informal arrangement that aims at minimizing the risk of assisting chemical and biological weapon proliferation through effective national export licensing measures of participating countries. Details of the Group are available at http://www.australiagroup.net/index_en.htm.

³ Missile Technology Control Regime is an informal and voluntary association of 34 states with the goal of non-proliferation of unmanned delivery systems capable of delivering weapons of mass destruction. It is based on adherence to common export policy guidelines applied to an integral common list of controlled items. Details of the Regime are available at <http://www.mtcr.info/english/index.html>.

⁴ Nuclear Suppliers Group is a group of nuclear supplier countries which seeks to contribute to the non-proliferation of nuclear weapons through the implementation of guidelines for nuclear exports and nuclear related exports. Details of the Group are available at <http://www.nuclearsuppliersgroup.org/>.

the Chemical Weapons Convention⁵.

16. According to the Administration, the amendments to the Schedule effected by the Amendment Order reflects the revisions adopted by WA, AG, MTCR to their respective control lists up to the end of 2005. The major changes include the removal of control over microprocessors that have multiple data or instruction bus or serial communication ports, a non-fluorinated polymeric substance and some test equipment of semiconductor devices, relaxation of the control thresholds of digital computers from 190,000 million theoretical operations per second to 0.75 Weighted TeraFLOPS⁶ and analogue-to-digital converter integrated circuits, imposition of control on optical detectors based on silicon focal plane arrays, infrared plane arrays based on micro-bolometer materials, cellular mobile telecommunication jamming equipment and encryption equipment using quantum cryptography, plant pathogens, airborne spraying or fogging systems capable of dispensing biological agents in aerosol form, liquid propellant tanks and clarification of the scope of control on fuel substances used as propellants.

17. The proposed amendments are wholly technical and textual. Neither the public nor any of the panels of LegCo has been consulted on the Amendment Order. It is to come into operation on a date to be appointed by the Director-General of Trade and Industry by notice published in the Gazette. Members may wish to refer to the LegCo Brief (Ref: TRA CR 1506/2) dated 27 April 2006 and issued by the Trade and Industry Department for further information.

18. The Legal Service Division is seeking clarification from the Administration on a number of technical and drafting points. A further report will be made, if necessary, after the reply of the Administration has been received.

Encl

Prepared by

KAU Kin-wah (L.N.s 74 to 76 and 95)

LAI Shun-wo, Monna (L.N.s 77 to 94)

Assistant Legal Advisers

Legislative Council Secretariat

9 May 2006

⁵ The Convention on the Prohibition of the Development Production, Stockpiling and Using of Chemical Weapons and on their Destruction, which came into force on 29 April 1997, aims to eliminate a whole category of weapon of mass destruction by prohibiting the development, production, acquisition, stockpiling, retention, transfer or use of chemical weapons by State parties. Details of the Convention are available at <http://www.opcw.org/>.

⁶ TeraFLOPS means 10¹² floating-point operations per second.

EDB/CR 1/15/951/49 (05)

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LS/S/19(1)/05-06

9 May 2006

Mr KAU Kin-wah
Assistant Legal Adviser
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Mr KAU,

**Air Navigation (Hong Kong) Order 1995 (Amendment
of Schedule 16) Order 2006
Dangerous Goods (Consignment by Air) (Safety)
(Amendment) Regulation 2006
Dangerous Goods (Consignment by Air) (Safety) Regulations
(Amendment of Schedule) Order 2006**

Thank you for your letter of 4 May 2006. I write to respond to the questions raised in the letter.

On the time taken to make the legislative amendments, it would be useful for me to first explain the work required for similar exercises. A new edition of the Technical Instructions (TIs) promulgated by the International Civil Aviation Organisation (ICAO) is normally issued after it has taken effect. In the present case, we only received the 2005-06 edition of the TIs in January 2005. The Civil Aviation Department then analyses the 1000-page new edition in detail with reference to the previous edition to identify what corresponding changes are required for the local implementing legislation. This is then followed by public consultation and drafting of the amendment legislation. Past experience indicated that on average it took about a year for the amendment legislation to be introduced into the Legislative Council.

For the 2005-06 TIs, it has taken slightly longer (viz 16 months) to prepare the legislative amendments because the changes introduced are more complicated as compared to previous editions, and some of which have far-reaching implications which require thorough consultations with the industry. The most obvious example is that the new TIs require all freight forwarder staff to undergo proper training in respect of the handling of dangerous goods, regardless of whether they in fact already handle such goods. This new requirement would affect around 20,000 people who perform different functions in the freight forwarding industry. We have to fully engage the freight forwarding industry and organizations providing dangerous goods training to work out the training arrangements and ensure that there is adequate training capacity to meet the training needs. This is an important and necessary step to ensure that the new training requirement would not create compliance problem for the industry before we can formally incorporate it in the local legislation.

You also asked when the Administration intends to fully implement the legislation. It is our intention to bring all of the amendments into immediate effect after completion of the negative vetting procedure, with the exception of the provisions regarding the training of freight forwarding staff. This is to address the industry's concern that they would require sufficient time to properly train 20,000 staff. We aim at implementing the provisions, through a separate commencement notice to be made by the Director-General of Civil Aviation, as soon as the industry has completed the necessary training.

Yours sincerely,

(Darryl Chan)

for Secretary for Economic Development and Labour

cc LegCo Secretariat (Attn : LA and SALA2)
DGCA (Attn : Mr Simon Li)] w/ copy of ALA's
DoJ (Attn : Ms Mabel Cheung and] letter dd 4.5.2006
Ms Rickie Chan)]