

立法會
Legislative Council

LC Paper No. LS72/05-06

**Paper for the House Committee Meeting
on 26 May 2005**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 19 May 2006**

Date of Tabling in LegCo : 24 May 2006

Amendment to be made by : 21 June 2005 (or 12 July 2006 if extended by resolution)

PART I FEES REVISION

Security and Guarding Services Ordinance (Cap. 460)

Security and Guarding Services (Fees) (Amendment) Regulation 2006 (L.N. 104)

This amends the Security and Guarding Services (Fees) Regulation (Cap. 460 sub. leg. A) by—

- (a) increasing the prescribed fees for issue and renewal of security personnel permits from \$110 to \$120; and
- (b) decreasing various fees in respect of security company licences.

2. The fees are revised in accordance with the Administration's policy of full-cost recovery. Members may refer to the LegCo Brief (File Ref: SEC 9/6/11) in May 2006 issued by the Security Bureau for background information.

3. According to the LegCo Brief, the Security and Guarding Services Industry Authority, the two major associations of security companies and four unions of permit holders have been consulted. The Hong Kong Security Association and the Hong Kong Buildings Management and Security Workers General Union have raised concern over the increase of the permit fees. The Panel on Security was consulted on the Administration's proposals by circulation of paper and at the meeting on 6 December 2005. Members did not raise queries on the proposals.

4. The Amendment Regulation shall come into operation on 17 July 2006.

PART II PROTECTION OF ENDANGERED SPECIES OF ANIMALS AND PLANTS

Protection of Endangered Species of Animals and Plants Ordinance (3 of 2006)

Protection of Endangered Species of Animals and Plants (Exemption for Appendix I Species) Order (L.N. 105)

Protection of Endangered Species of Animals and Plants (Exemption for Appendices II and III Species) Order (L.N. 106)

5. The Protection of Endangered Species of Animals and Plants Ordinance (3 of 2006) (the Ordinance) was passed by the Legislative Council on 1 March 2006. It will replace the existing Animals and Plants (Protection of Endangered Species) Ordinance (Cap. 187).

6. The newly enacted Ordinance aligns Hong Kong's control regime with the Convention on International Trade in Endangered Species of Wild Fauna and Flora (the Convention) and streamlines the licensing requirements. Under the Ordinance, the import, introduction from the sea, export, re-export, and possession or control of certain endangered species of animals and plants and parts and derivatives of those species are subject to licensing requirements unless exempted.

7. L.N. 105 provides for exemptions from the licensing requirements on specimens of Appendix I Species under the Ordinance. Appendix I Species are the highly endangered species which are threatened with extinction and are or may be affected by trade. The Order is made by the Chief Executive in Council.

8. L.N. 106 provides for exemptions from the licensing requirements on specimens of Appendices II and III Species. These species, although not necessarily threatened with extinction, may become so unless trade in specimens of such species is subject to strict regulation. The Order is made by the Secretary for the Environment, Transport and Works.

9. Both Orders contain provisions for exemptions in respect of—
- (a) specimens for co-operative conservation programmes;
 - (b) specimens for scientific or educational study or for display in a museum or herbarium; and
 - (c) specimens that form part of a person's personal or household effects.

10. L.N. 106 also provides for exemption for the export of an artificial propagated plant species which is accompanied with a phytosanitary certificate.

11. Members may refer to the LegCo Brief (File Ref.: EP 55/25/01 Pt.14) dated 17 May 2006 issued by the Environmental Protection Department for background information.

12. According to the LegCo Brief, the Agriculture, Fisheries and Conservation Department had consulted the Endangered Species Advisory Committee and representatives of the trade (including those from traditional Chinese medicine, floral, pet and leather trade groups) on the proposal. The Endangered Species Protection Liaison Group had also been consulted. They supported the proposal.

13. The two Orders have not been discussed by the Panel on Environmental Affairs. During deliberations in the Bills Committee, members noted that an exemption order might be made regarding the import, export and re-export of a specimen of a scheduled species which was subject to a loan, donation or exchange arranged for non-commercial purposes between registered scientific institutions. They expressed concern about possible abuse of exemption orders and considered that criteria should be worked out for considering applications for exemption orders. The Administration states that there are standards in the Convention for the registration of a scientific institution and so far no institution has been registered as a scientific institution.

14. The two Orders will come into operation on the day appointed for the commencement of the Ordinance.

PART III AMENDMENTS TO AND SUBSIDIARY LEGISLATION MADE UNDER DEPOSIT PROTECTION SCHEME ORDINANCE

Deposit Protection Scheme Ordinance (Cap. 581)

Deposit Protection Scheme Ordinance (Amendment of Schedules 1 and 4) Notice 2006 (L.N. 107)

15. By this Notice made by the Chief Executive in Council under section 54 of the Deposit Protection Scheme Ordinance (Cap. 581) (the Ordinance), Schedules 1 and 4 to the Ordinance are amended to—

- (a) add a definition of structured deposit as section 2A in Schedule 1 and to exclude a structured deposit from the definitions of “protected deposit” and “relevant deposit” in sections 1 and 2 respectively so that it is clear that structured deposits are not protected under the Deposit Protection Scheme (DPS);

- (b) add in section 3 of Schedule 1, the definition of “commodity (商品)”, “financial product (金融產品)” and “relevant figure (有關數字)”, which are terms used in the new section 2A;
- (c) amend the definition of “excluded person” in section 3 of Schedule 1 to exclude an officer of a member of the DPS or its related company in so far as the definition of “relevant deposit” is concerned’ so that a Scheme member need not exclude a deposit of such officer for the purposes of calculating the amount of its contribution to be paid into the DPS Fund;
- (d) add a definition of “specified date” in section 1(1) of Schedule 4 and to substitute “specified date” for all references to “20 October” in the Schedule so as to provide an alternative date for the purposes of Schedule 4 if 20 October (i.e. the date currently specified in the Schedule) in a particular year happens to be a general holiday;
- (e) add new subsections (5A) and (5B) in section 3 of Schedule 4 to allow the calculation of the build-up levy for the start-up year of operation of DPS to be made on a pro rata basis;
- (f) make consequential amendments and also some textual amendments in the Chinese text.

This Notice shall come into operation on the day appointed for the commencement of Schedule 4 to the Ordinance (i.e. 25 September 2006).

16. According to the LegCo Brief, the Board has consulted the banking industry, and other interested party including the Consumer Council, the Securities and Futures Commission, the Hong Kong Institute of Certified Public Accountants, the Law Society of Hong Kong and the Hong Kong Bar Association. There was support from some of them and no expression of view from the others. Members may wish to refer to the LegCo Briefs (Ref: B9/2/2C) dated 19 May 2006 and issued by the Financial Services and the Treasury Bureau for further and background information. The Panel on Financial Affairs was briefed at its meeting on 6 March 2006 on the latest progress of the DPS and the proposed amendments to the Ordinance. Members supported in principle the proposed amendments.

17. The Legal Service Division is seeking clarification from the Administration on a few drafting points and shall make a further report, if necessary, after receipt of the reply.

Deposit Protection Scheme (Representation on Scheme Membership and Protection of Financial Products under Scheme) Rules (L.N. 108)

Deposit Protection Scheme (Payment of Contributions, Late Payment Fees and Rebates) Rules (L.N. 109)

18. Both of these Rules are made by the the Hong Kong Deposit Protection Board (the Board) under section 51(1)(d) and (2) of the Ordinance after consultation with the Financial Secretary and the Hong Kong Association of Banks.

19. L.N. 108 requires a Scheme member—

- (a) to make known to the public that it is a member of the DPS—
 - (i) by displaying a Membership Sign at its relevant places of business at which it carries on banking business (section 3(1)); and
 - (ii) by displaying a Membership Sign on the website on which it carries on banking business or advertises its banking business under certain circumstances (section 3(2));
- (b) to make known to the public that it is a member of the DPS by including a membership representation statement in advertisements and promotional materials under specified circumstances (section 4);
- (c) to notify customers of financial products not within the meaning of “protected deposit” that the financial products are not protected by the DPS (sections 5 and 6);
- (d) to notify depositors of protected deposits, before the Scheme member varies certain term or condition of the deposits or varies certain right or obligation of the depositors or Scheme member, that on the variation, the deposits are no longer protected by the DPS (section 7).

The modes of the requisite notification are prescribed. A contravention of the Rules is a criminal offence punishable on indictment with a fine up to \$100,000 and imprisonment up to 2 years (section 8). A defence is afforded to a person charged if he could prove that he has taken reasonable precaution and exercised due diligence to avoid the commission of the offence by himself or any person under his control (section 9).

20. L.N. 109 prescribes that—

- (a) contributions and late payment fees payable by a Bank that is a member of the DPS under section 15(3) and (4) of the Ordinance are to be paid

by an entry made in the settlement account maintained by an authorized institution with the Monetary Authority (MA) (section 3(1));

- (b) a contribution is payable within 21 days after the date on which the relevant notice in relation to the contribution is given to the Scheme member (section 3(2)); and
- (c) rebates payable by the Board under section 8 of Schedule 4 to the Ordinance are to be paid by a credit entry made in the settlement account maintained with MA designated by the Scheme member by notice in writing to the Board (section 4).

21. Both sets of Rules shall come into operation on the day appointed for the commencement of Part 5 of the Ordinance (i.e. 25 September 2006).

22. According to the LegCo Brief, the Board has complied with the statutory consultation requirement under section 51 of the Ordinance and has also consulted the Consumer Council on L.N. 108. All comments have been properly addressed. Members may wish to refer to the LegCo Brief (Ref: B9/2/2C) dated 19 May 2006 and issued by the Financial Services and the Treasury Bureau for further and background information. The Panel on Financial Affairs was briefed on 6 March 2006 of the latest implementation progress of the DPS and the proposed requirements in these Rules. Members supported in principle the main contents of the Rules. Member may wish to refer to the minutes of the Panel meeting of 6 March 2006 (LC Paper No. CB(1) 1337/05-06) for details.

23. The Legal Service Division is seeking clarification from the Administration on some drafting points and shall make a further report, if necessary, after receipt of the reply.

Deposit Protection Scheme Ordinance (Commencement) Notice 2006 (L.N. 110)

24. By this Notice made under section 1(2) of the Ordinance, the Secretary for Financial Services and the Treasury has appointed 25 September 2006 as the day on which all the provisions of the Ordinance that have not come into operation shall come into operation. Neither the public nor any LegCo Panel has been consulted. No difficulties in the legal or drafting aspects of this Notice have been identified.

PART IV ELECTORAL MATTERS

Electoral Affairs Commission Ordinance (Cap. 541)

Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) (Amendment) Regulation 2006 (L.N. 112)

25. This makes amendments to the principal regulation consequential to amendments made by the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Ordinance 2006 (10 of 2006) to introduce an interim register of Election Committee (EC) members and remove the term “relevant date”. These consequential amendments provide for the compilation and publication arrangements in relation to the interim register and replace the term “relevant date” with a reference to the date on which the relevant vacancy declaration was made.

26. The amending regulation also removes obsolete provisions relating to the functional constituencies provisional register and subsector provisional register for 2003.

Electoral Affairs Commission (Nominations Advisory Committees (Election Committee)) (Amendment) Regulation 2006 (L.N. 113)

27. This is also consequential to the introduction of the aforementioned interim register. The amendments made are to make clear that any advice given by the Nominations Advisory Committee under the principal regulation or its refusal to give advice or to consider giving advice does not preclude a person from objecting to the registration in the interim register (i.e. not only the final register) of a nominee as a EC member.

Electoral Affairs Commission (Electoral Procedure) (Election Committee) (Amendment) Regulation 2006 (L.N. 114)

28. This consists of amendments made for the purposes of –

- (a) dealing with consequentially the disqualification of candidates for the subsectors of the Chinese People’s Political Consultative Conference, Heung Yee Kuk and District Councils introduced by the aforementioned Ordinance No. 10 of 2006;
- (b) aligning the electoral procedures for EC subsector elections with those for LegCo election; and
- (c) rationalizing certain electoral arrangements.

29. As regards (a), section 13 of the principal regulation is amended to require the Returning Officer to take into account when deciding whether a candidate for a subsector election is validly nominated the newly introduced disqualification provisions.

30. The amendments for (b) mirror certain amendments on electoral matters made to the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541 sub. leg. D) for implementation in the 2004 LegCo election. These include increasing the penalty for unauthorized filming, photographing etc. within a polling station from three to six months and specifying the types of ballot papers which are clearly invalid by their nature (i.e. tendered, unused, spoilt or unmarked ballot papers) and which must therefore be separated and not counted.

31. Under (c), one of the amendments is to amend section 54 of the principal regulation to enable the Electoral Affairs Commission (EAC) to direct voters/ authorized representatives to follow its direction as regards how a ballot paper should be put into the ballot box.

32. All the three amending regulations shall come into operation on 14 July 2006. Members may refer to LegCo Brief : REO 23/40/5/6 issued by the Registration and Electoral Office in May 2006 for more details.

33. At its meeting on 20 March 2006, the Panel on Constitutional Affairs was briefed on the scope of amendments to be made by the EAC to the subsidiary legislation under the EAC Ordinance to prepare for the EC subsector elections in December 2006. Members did not raise objection to the scope of three amending regulations.

34. Scrutiny of their technical aspects is continuing and a further report will be made if necessary.

PART V AMENDMENTS TO SUBSIDIARY LEGISLATION MADE UNDER SECURITIES AND FUTURES ORDINANCE

Securities and Futures Ordinance (Cap. 571)

Securities and Futures (Financial Resources) (Amendment) Rules 2006 (L.N. 117)

35. These Amendment Rules made by the Securities and Futures Commission (SFC) under section 145 of the Securities and Futures Ordinance (Cap. 571) (SFO) after consultation with the Financial Secretary amend the Securities and Futures (Financial Resources) Rules (Cap. 571 sub. leg. N) (FRR). They are to come into operation on 1 October 2006, but sections 3 and 9 will come into operation on 1 August 2007.

36. The amendments are wholly technical. The main provisions include—
- (a) repealing the definition of “concentration discounting factor” in section 2(1) of FRR;
 - (b) abolishing the application of the concentration discounting factor to securities collateral in section 22(1)(b)(i) and the related notification requirement in section 55(1)(h);
 - (c) increasing the haircut percentage on listed warrants to 100%;
 - (d) increasing the threshold in section 42(2) for adjusting the ranking liabilities of a licensed corporation from 65% to 80% of the aggregate of amounts receivable from its margin clients with a transitional period of 1 year from 1 October 2006 for licensed corporations licensed before 1 October 2006;
 - (e) providing in Table 1 to Schedule 1 for the paid-up share capital requirement of \$10 million for a corporation licensed for Type 6 regulated activity which is not subject to the no sponsor work licensing condition;
 - (f) adding Table 1A to Schedule 2 which contains haircut percentages for the purpose of calculating the haircut amount under section 22(1)(b)(i) in respect of shares listed in Hong Kong and held by a licensed corporation providing securities margin financing (SMF) as security against amounts owed by its clients in their margin accounts with the haircut percentage for a licensed corporation which repledges securities collateral set at the higher rate of 60%; and
 - (g) replacing item 2 in Table 1 to Schedule 2 to set the haircut percentage for shares listed on a recognized stock exchange but not stratified according to stock indices at 30%.

37. SFC released the Consultation Paper on Proposed Measures to Address Risks Arising from Securities Margin Financing (SMF Consultation) together with relevant draft rule amendments on 28 September 2004 for public comment. According to the LegCo Brief, a total of 24 submissions were received and numerous discussions with industry participants over the proposal were held. Members may wish to refer to the LegCo Brief on these Amendment Rules dated 17 May 2006 and issued by SFC for further and background information. The Panel on Financial Affairs was briefed on the consultation conclusions at its meeting on 17 December 2004 and on the further discussion with the industry and the two-stage approach in imposing the repledging limit at the meeting on 6 February 2006. Members may

wish to refer to the Minutes of the respective meetings for details (LC Paper Nos. CB(1)1017/04-05 and CB(1)1178/05-06).

38. SFC published the Consultation Paper on the Regulation of Sponsors and Compliance Advisers on 29 June 2005. One of the proposals was that a eligibility criterion for firms wishing to act as sponsors under their Type 6 regulated activity licence is having a minimum paid-up share capital of \$10 million. According to the Administration, 14 responses were received and the majority was supportive of the proposal. Members may wish to refer to the LegCo Brief for further information.

39. The Legal Service Division is seeking clarification from the Administration on some technical and drafting points and shall make a further report, if necessary, after the Administration's reply has been received.

Securities and Futures (Client Securities) (Amendment) Rules 2006 (L.N. 118)

40. These Amendment Rules made by the SFC under section 148 of the SFO amend the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H) (CSR) for the purpose of imposing a repledging limit on intermediaries licensed for dealing in securities (DS) or securities margin financing (SMF). They are to come into operation on 1 October 2006.

41. Section 4 adds a new section 8A. It provides for a limit of 140% on the amount of securities collateral which an intermediary licensed for DS or SMF or an associated entity of such intermediary is permitted to deposit as collateral for financial accommodation provided to the intermediary. Sections 2 and 3 amend sections 7(2)(b) and 8(2) (which govern treatment of securities collateral by intermediary licensed for DS and SMF respectively) to make the provisions subject to the new section 8A.

42. Section 5 adds a new section 14 setting out the transitional arrangement in respect of the new section 8A. Under the arrangement, for an intermediary licensed immediately prior to 1 October 2006 for DS or for SMF, the repledging limit will be 180% instead of 140% for the period from 1 October 2006 to 30 September 2007.

43. The repledging limit has been set out in the SMF Consultation and was considered at the meetings of the Panel on Financial Affairs referred to in paragraph 37 above. Members may wish to refer to the LegCo Brief on these Amendment Rules dated 17 May 2006 and issued by SFC for further and background information. The Legal Service Division is seeking clarification from the Administration on some technical and drafting points and shall make a further report, if necessary, after the Administration's reply has been received.

**Securities and Futures (Contract Notes, Statement of Account and Receipts)
(Amendment) Rules 2006 (L.N. 119)**

44. These Amendment Rules made by SFC under section 152 of SFO amend the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules (Cap. 571 sub. leg. Q). They impose an additional requirement on an intermediary which is licensed for SMF or DS where such intermediary or an associated entity of such intermediary has repledged a client's securities collateral at any time during a monthly accounting period to state in the monthly statement of account to that client for that period (a) whether the clients has provided the intermediary or its associated entity with a standing authority authorizing the repledge of securities collateral, and (b) the repledge made by the intermediary or the associated entity. These Rules are to come into operation on 1 October 2006.

45. The requirement imposed by these Amendment Rules was one of the proposals set out in the SMF Consultation and was considered by the Panel on Financial Affairs at its meetings referred to in paragraph 37 above. Members may wish to refer to the LegCo Brief on these Amendment Rules dated 17 May 2006 and issued by SFC for further and background information. No difficulties in the legal or drafting aspects of these Amendment Rules have been identified.

PART VI MISCELLANEOUS

Air Pollution Control Ordinance (Cap. 311)

**Air Pollution Control (Vehicle Design Standards) (Emission) (Amendment)
Regulation 2006 (L.N. 111)**

46. This imposes more stringent standards on certain motor vehicles in order to reduce the emission of air pollutants from them. It requires—

- (a) newly registered goods vehicles, light buses and buses each of design weight over 3.5 tonnes to comply with Euro IV emission standards from 1 October 2006; and
- (b) newly registered motorcycles to comply with Euro III emission standards from 1 January 2007.

47. Members may refer to the LegCo Brief (File Ref.: EP11/V1/70/3) issued by the Environmental Protection Department in May 2006 for background information. According to the LegCo Brief, the Advisory Council on the Environment, the Hong Kong Motors Traders Association, the Hong Kong Motorcycle Association and the

Hong Kong Motorcycle of Commerce have been consulted and did not raise any objection. Some members of the transport trades are worried about the operability of Euro IV models in the Mainland because of the difference in standards for diesel fuel. Some members of the transport trades would also like the government to subsidize vehicles owners to replace their vehicles with Euro IV models. The Administration does not consider that there is such a need. It does not have a timetable to phase out the pre-Euro IV vehicles.

48. The Panel on Environmental Affairs was consulted at its meeting on 27 February 2006. Members raised no objection to the implementation of the proposal. They however held the view that incentives, such as concessions on First Registration Tax, should be introduced to encourage the use of more environmentally friendly diesel and hybrid vehicles, the latter of which ran on a combination of petrol and electricity.

Airport Authority Ordinance (Cap. 483)

Airport Authority Ordinance (Map of Restricted Area) Order (L.N. 115)

49. This specifies the new boundaries of the Restricted Area for the purposes of the Airport Authority Ordinance (Cap. 483) and replaces the existing Airport Authority Ordinance (Map of Restricted Area) Order (Cap. 483 sub. leg. H). It shall come into operation on 15 September 2006.

50. According to the Administration, the existing Order needs to be re-made to reflect the latest changes in the boundaries of the airport restricted area due to various development projects such as the Asia Airfreight Terminal II and the Skypier I as well as modification of Restricted Area at different levels of the Passenger Terminal Building for operational needs. The Order has not been referred to any LegCo Panel for discussion.

Registration of Persons Ordinance (Cap. 177)

Registration of Persons (Invalidation of Identity Cards) Order 2006 (L.N. 116)

51. As from 23 June 2003, new Smart Identity Cards have been issued. The purpose of this Order is to invalidate old identity cards issued before that date, or issued on or after that date as a result of an application made before that date, and which cards bear a date of birth between and including 1958 to 1969. Old identity cards shall cease to be valid on 16 October 2006 to allow time for holders of old identity cards to replace their identity cards before they are invalidated.

52. Members may refer to the LegCo Brief dated 17 May 2006 issued by the Security Bureau for background information. The Panel on Security has not been consulted on the above Order.

53. This Order shall come into operation on 13 July 2006.

Factories and Industrial Undertakings Ordinance (Cap. 59)
Factories and Industrial Undertakings (Loadshifting Machinery) Regulation
(Commencement) Notice 2006 (L.N. 120)

54. The Commissioner for Labour has appointed 1 September 2006 as the day on which paragraphs (f) to (j) in Part II of the Schedule to the Factories and Industrial Undertakings (Loadshifting Machinery) Regulation shall come into operation.

55. The Regulation sets out the training and certification requirements for operators of specified loadshifting machines. Paragraphs (f) to (j) in Part II of the Schedule specifies that a compactor, a dumper, a grader, a locomotive and a scraper are loadshifting machines. A responsible person of a specified loadshifting machine shall ensure that the machine is only operated by a person who has received recognized training and holds a valid certificate applicable to that specified machine.

56. At the meeting on 28 April 2006, the Panel on Manpower discussed the proposed commencement date of the Regulation. Some members expressed concern whether the course fees would be affordable to the machine operators. They had asked the Administration to consider providing subsidies to course participants to alleviate the financial burden on them. They had also asked the Administration to discuss with course providers for the provision of training courses after working hours or at weekends. The Administration agreed to look into the issues and revert to the Panel.

57. No difficulties in relation to the legal and drafting aspects of L.N.s 104 to 106, 111, 115, 116 and 120 have been identified.

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25 May 2006
LS/S/31/05-06