

立法會
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**Paper for the House Committee Meeting
on 13 October 2006**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 6 October 2006**

Date of Tabling in LegCo : 11 October 2006

Amendment to be made by : 8 November 2006 (or 29 November 2006 if extended by resolution)

PART I SHIPPING AND PORT CONTROL

Shipping and Port Control Ordinance (Cap. 313)

Shipping and Port Control (Works) Regulation (L.N. 191)

Shipping and Port Control (Cargo Handling) (Repeal) Regulation (L.N. 192)

The Shipping and Port Control (Works) Regulation (L.N. 191) (“the Works Regulation”) is to enhance the safety requirements of work on board ocean-going vessels and to align them with the safety standard applicable to local vessels. The latter are governed by the Merchant Shipping (Local Vessels) Ordinance (Cap. 548).

2. The Works Regulation will replace the Shipping and Port Control (Cargo Handling) Regulations (Cap. 313 sub. leg. B) (“the Cargo Handling Regulations”). It will expand the scope of and seek to improve the present provisions contained in the Cargo Handling Regulations. The major improvements are:—

- (a) the enhancement of the requirement of safe means of access to and from and on board an ocean-going vessel;
- (b) the lifting appliances and gears will be subject to the requirement for test and examination by a competent examiner not only when first taken into use but also periodically thereafter. The qualifications of a competent examiner will also be specified;

- (c) the Director of Marine will be empowered to approve the training and certificate-issuing authorities;
- (d) the occupational safety requirements of works (like the appointment of work supervisors, provision and use of protective equipment, maintenance of first aid equipment, etc) will be prescribed. The failure to comply with the occupational safety requirements will attract criminal liability; and
- (e) the penalty for contravention of testing and examination requirements in the Works Regulation will be increased from a fine of level 2 (maximum of \$5,000) to level 3 (maximum of \$10,000).

3. The Cargo Handling Regulations shall be repealed by the Shipping and Port Control (Cargo Handling) (Repeal) Regulation (L.N. 192) on a day to be appointed by the Secretary for Economic Development and Labour by notice published in the Gazette.

4. The Works Regulation shall come into operation on a day to be appointed by the Secretary for Economic Development and Labour by notice published in the Gazette.

5. According to the LegCo Brief prepared by the Economic Development and Labour Bureau dated 4 October 2006 (File Ref.: MA60/1, MA60/8), the Panel on Economic Services was consulted in January 2003 and members had expressed support. Further, the relevant industries and interested parties, including the Labour Advisory Board and Port Operations Committee, also supported the proposed legislation.

6. Members may refer to the said LegCo Brief for further information.

7. No difficulties relating to the legal and drafting aspects have been identified.

PART II REGULATIONS FOR LOCAL VESSELS

Merchant Shipping (Local Vessels) Ordinance (Cap. 548)

Merchant Shipping (Local Vessels) (General) Regulation (L.N. 193)

Merchant Shipping (Local Vessels) (Safety and Survey) Regulation (L.N. 194)

Merchant Shipping (Local Vessels) (Compulsory Third Party Risks Insurance) Regulation (L.N. 195)

Merchant Shipping (Local Vessels) (Works) Regulation (L.N. 196)

Background

8. The Merchant Shipping (Local Vessels) Ordinance (Cap. 548) (“the Principal Ordinance”) is enacted in 1999 but has yet to come into operation. According to the LegCo Brief, the Principal Ordinance requires 11 pieces of subsidiary legislation for its implementation. Five of them have already been made and passed the scrutiny of the Council in the past five years. The Merchant Shipping (Local Vessels and Miscellaneous Amendments) Ordinance 2005 (24 of 2005) (“the Amendment Ordinance”) is enacted last year to amend the Principal Ordinance adding, amongst others, express provisions imposing an obligation to take out compulsory insurance in respect local vessels against third party risks. The four Regulations gazetted are part of the continuing process of preparing for the implementation of the Principal Ordinance as amended by the Amendment Ordinance.

9. The four Regulations are made by the Secretary for Economic Development and Labour (“the Secretary”) under section 89 of the Principal Ordinance. Members may refer to the LegCo Brief (File Ref.: MA 70/18, MA 70/16, MA 70/9, MA 70/14) issued by the Economic Development and Labour Bureau and dated 4 October 2006 for further information.

Merchant Shipping (Local Vessels) (General) Regulation

10. L.N. 193 makes general provisions applicable to local vessels within the meaning of section 2 of the Principal Ordinance. According to the LegCo Brief, it consolidates various existing provisions regulating local vessels in the Shipping and Port Control Regulations (cap. 313 sub. leg. A) (“SAPCR”). Those provisions in SAPCR will cease to have effect on local vessels upon the commencement of the Principal Ordinance. The 12 Parts of the General Regulation cover matters from the procedural requirements governing the arrival and departure of local vessels, the navigation in the waters of Hong Kong, the berthing of, and use of buoys and piers by local vessels, the embarkation and debarkation of passengers, the safety requirements for handling of cargo, the use and display of lights and signals, the regulation and control of certain vessel registered in Mainland or Macau, the vessel traffic service permitting a report system operated through high frequency radiotelephone communication, and the imposition of control over some activities (such as racing events, water-skiing, fishing and bunkering activities) in waters of Hong Kong, and miscellaneous requirements enhancing the navigation safety of local vessels.

11. The General Regulation is to come into operation on a date to be appointed by the Secretary by notice published in the Gazette except sections 4(4)(b), 49 and 50 of the General Regulation, which shall come into operation 6 months thereafter.

Merchant Shipping (Local Vessels) (Safety and Survey) Regulation

12. L.N. 194 has 12 Parts. It provides for procedures and requirements for the approval of plans of local vessels, the application for, the issue, revocation and suspension of certificates of inspection and of survey, Hong Kong load line certificate,

freeboard assignment certificate, survey record of safety equipment and declaration of fitness, requirements for construction, maintenance and alteration of local vessels, the provision on board of life-saving appliances and fire-fighting apparatus, and the carriage of passengers. It also sets the plying limits, requirements for fitting of radar equipment and restrictions on use of certain engines. Consequently, a considerable part of the 8 Schedules to the Regulation comprises technical specifications and data.

13. According to the LegCo Brief, matters relating to safety and survey of local vessels are presently governed by relevant sections in the Shipping and Port Control Ordinance (Cap. 313), the Merchant Shipping (Safety) Ordinance (cap. 369) and the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413). Those existing provisions would cease to have effect after the coming into effect of the Regulation.

14. The Safety and Survey Regulation is to come into operation on a date to be appointed by the Secretary by notice published in the Gazette.

Merchant Shipping (Local Vessels) (Compulsory Third Party Risks Insurance) Regulation

15. L.N.195 provides for the application, suspension and revocation of approval of approved insurer for the compulsory insurance, keeping of records of insurance and issue of certificate of insurance in prescribed form by the approved insurer, the effect of suspension and revocation of the approval of an approved insurer, criminal liability of persons concerned in the management of body of persons, the duty of the Director of Marine to keep register of approved insurers and the power of the Director to specify the amount of insurance cover.

16. According to the LegCo Brief, the Compulsory Third Party Risks Insurance Regulation incorporates relevant provisions in the Merchant Shipping Ordinance (Cap. 281) and the Merchant Shipping (Compulsory Third Party Risks Insurance) Regulations (Cap. 281 sub. leg. K), which would cease to apply to local vessels after the coming into effect of the Regulation.

17. The Compulsory Third Party Risks Insurance Regulation is to come into operation on the date appointed for the commencement of section 9 (except when it only relates to section 23B(1)(c)) of the Amendment Ordinance.

Merchant Shipping (Local Vessels) (Works) Regulation

18. L.N. 196 prescribes the safe means of access to and from local vessels and workplace on such vessels, the safety requirements for workplaces on local vessels, the appointment and duties of works supervisors, the provision of safety helmets and other protective clothing and equipment, the safety requirements for lifting appliances and lifting gears, the safety measures for cargo handling, and miscellaneous prohibitions. Contravention of the safety prescriptions is a criminal offence and is generally liable to a fine at level 3 (i.e. \$10,000). According to the

LegCo Brief, it consolidates provisions in the Shipping and Port Control (Cargo Handling) Regulations (Cap. 313 sub. leg. B), which will be repealed on a date to be appointed by the Secretary by notice published in the Gazette (see L.N. 192).

19. The Works Regulation is to come into operation on a day to be appointed by the Secretary by notice published in the Gazette.

Consultation

20. According to the LegCo Brief, the Economic Development and Labour Bureau has consulted the Provisional Local Vessel Advisory Committee and its relevant sub-committees and working groups, which represent a wide cross-section of the local shipping industry. The Administration has secured their support of the regulations.

21. The Panel on Economic Services (“the Panel”) was briefed on the legislative proposal relating to the General Regulation and Merchant Shipping (Local Vessels) (Safety Survey) Regulation (as the Safety and Survey Regulation was then entitled) on 22 April 2002. Members in general supported the two regulations but concern was raised about the proposed penalties under the General Regulation for illegal bunkering activities. The Administration was also invited to consider requiring large size vessels to be fitted with approved-type radar and to have trained radar operators.

22. The Panel discussed the legislative proposal relating to the Compulsory Third Party Risks Insurance Regulation and the Works Regulation on 27 January 2003, and 24 February 2003. The Panel supported the Works regulation whilst various concerns were raised in respect of the Third Party Risks Insurance Regulation. The Administration subsequently reduced the minimum liability covers, and clarified the insurance requirement in respect of River Trade Vessels and the scope of insurance coverage regarding cargo handling operations. The Panel further discussed issues relating to the General Regulation and the Compulsory Third Party Risks Insurance Regulation on 7 December 2004. Members may refer to the minutes of the respective Panel meetings for further information (LC Paper No. CB(1)1761/01-02, CB(1)936/02-03, CB(1)1180/02-03 and CB(1)673/04-05).

23. The Legal Service Division is continuing the scrutiny of the Regulations and will seek clarification from the Administration on certain drafting points. A further report will be made, if necessary.

PART III FEE REVISION, INVALIDATION OF IDENTITY CARDS AND MISCELLANEOUS AMENDMENTS

Control of Chemicals Ordinance (Cap. 145)
Control of Chemicals (Fee Revision) Regulation 2006 (L.N. 197)

24. The Control of Chemicals (Fee Revision) Regulation 2006 (“the Regulation”) is made under section 16 of the Control of Chemicals Ordinance (Cap. 145). It provides for the increase of the fees specified in regulation 6 of the Control of Chemicals Regulations (Cap. 145 sub. leg. A) regarding application for the issue or reissue of a licence/permit for the import, export, supply, dealing, manufacture and possession of controlled chemicals.

25. The Regulation shall come into operation on 1 January 2007. The Panel of Security has not discussed this Regulation. Members may refer to the LegCo Brief (with no file reference) issued by the Security Bureau in October 2006 and a paper prepared by the Security Bureau in June 2005 on Revision of Fees and Charges for Services not Directly Affecting People’s Livelihood under the Purview of Security Bureau (LC Paper No. CB(2)2124/04-05(01)) for further information.

Places of Public Entertainment Ordinance (Cap. 172)

Places of Public Entertainment (Amendment) Regulation 2006 (L.N. 198)

26. The Places of Public Entertainment (Amendment) Regulation 2006 (“the Amendment Regulation”) is made under section 7 of the Places of Public Entertainment Ordinance (Cap. 172) by the Secretary for Home Affairs to introduce a provisional licensing regime for cinemas and theatres under the Places of Public Entertainment Regulations (Cap. 172 sub. leg. A) to expedite the existing licensing process.

27. The new regime empowers the licensing authority to issue a provisional licence to an applicant upon having satisfied that certain requirements are met. The Amendment Regulation also provides for the fees for the grant and renewal of a provisional licence and the appeal mechanism against refusal to issue or renew a provisional licence by the licensing authority. The licensing authority is empowered to cancel a licence (provisional or not) if any false or misleading statement of information was made or furnished by the applicant in connection with the application for the grant or renewal of the licence.

28. According to the LegCo Brief, the Hong Kong Theatres Association has been consulted on the proposed provisional licensing system and supported the proposal.

29. At its meeting on 17 July 2006, the Panel on Home Affairs was consulted on the Administration’s proposals to introduce provisional licences for cinemas and theatres. Members expressed support for the Administration’s proposals as it would benefit the business environment of the trade.

30. This Regulation shall come into operation on 30 November 2006. Members may refer to the LegCo Brief (File Ref.: S/F(1) to HAB/CR1/9/39) issued by

the Home Affairs Bureau in October 2006 and the minutes of the Panel meeting on 17 July 2006 issued vide LC Paper No. CB(2)3175/05-06 on 11 October 2006 for details.

31. No difficulties relating to the legal and drafting aspects have been identified.

Immigration Ordinance (Cap. 151)

Immigration (Anchorage and Landing Places) (Amendment) Order 2006 (L.N. 199)

32. The Immigration (Anchorage and Landing Places) (Amendment) Order 2006 (“the Amendment Order”) is made under section 60 of the Immigration Ordinance (Cap. 115) to expand the scope of paragraph 2 of the Immigration (Anchorage and Landing Places) Order (Cap. 115 sub. leg. C) by the Secretary for Security.

33. Under the existing paragraph 2(1)(b), certain areas within the restricted area in the Hong Kong International Airport have been designated as an approved immigration anchorage where passengers travel by air may continue their journey to the Mainland by sea within the restricted area of the Airport and vice versa. At present, only ships conveying passengers between the Airport and other parts of China are allowed to berth at the Airport. The Amendment Order allows ships regularly conveying passengers between Hong Kong and Macau or other parts of China to berth at the Airport and to pick up passengers at the Airport as a means to enhance the connectivity between the Airport and Pearl River Delta.

34. The Panel on Economic Services has not been consulted on the Amendment Order. However, the Panel was consulted on the Airport Authority's plan to develop cross-boundary ferry services for transit passengers between the Airport and major ports in the Pearl River Delta at the meeting on 18 July 2003 when it indicated support for the new services to improve the connectivity of the Airport and the Pearl River Delta. The Panel of Security has not discussed this Order.

35. The Amendment Order shall come into operation on 30 November 2006. Members may refer to the LegCo Brief (with no file reference) prepared by the Economic Development and Labour Bureau and Security Bureau dated 6 October 2006 for further information.

Registration of Persons Ordinance (Cap. 177)

Registration of Persons (Invalidation of Identity Cards) (No. 2) Order 2006 (L.N. 200)

36. The Registration of Persons (Invalidation of Identity Cards) (No. 2) Order (“the No. 2 Order”) is made under section 7C of the Registration of Persons

Ordinance (Cap. 177) by the Secretary for Security to invalidate “old Identity Cards” as part of the continuing process of the Smart Identity Cards Replacement Exercise. The No. 2 Order invalidates identity cards issued before 23 June 2003 or issued on or after that day as a result of an application made before that date and the date of birth of the holder falls in or between 1943 and 1957. Such identity cards will be invalidated on 15 January 2007. In May 2006, the Secretary for Security has made a similar order: the Registration of Persons (Invalidation of Identity Cards) Order 2006 (L.N. 116 of 2006), which invalidates old identity cards held by persons born in or between 1958 and 1969.

37. The No. 2 Order shall come into operation on 30 November 2006. The Panel of Security has not discussed this Order. Members may refer to the LegCo Brief (with no file reference) issued by the Security Bureau dated 6 October 2006 for further information.

Import and Export Ordinance (Cap. 60)
Import and Export (General) Regulations (Amendment of Seventh Schedule)
(New Zealand) Notice 2006 (L.N. 201)

38. The Import and Export (General) Regulations (Cap. 60 sub. leg. A) (“the Regulations”) is made under section 31 of the Import and Export Ordinance (Cap. 60). Regulation 7(2) empowers the Director-General of Trade and Industry to amend by notice in the Gazette, *inter alia*, the Seventh Schedule to the Regulations, which contains the list of specified countries or places where an international certification scheme for rough diamonds known as the Kimberley Process Certification Scheme are implemented. The Notice amends the Seventh Schedule by adding New Zealand as one of the specified countries or places where trade in rough diamond under the said Kimberley Process Certification Scheme may be carried on. The Notice has not been discussed in the Panel of Commerce and Industry. It takes effect on 6 October 2006 when the Notice was published in the Gazette.

Road Traffic Ordinance (Cap. 374)
Road Traffic (Traffic Control) (Designation of Prohibited and Restricted Zones)
(Amendment) Notice 2006 (L.N. 202)

39. The Road Traffic (Traffic Control) (Designation of Prohibited and Restricted Zones) (Amendment) Notice 2006 (“the Amendment Notice”) is made by the Airport Authority under the Road Traffic (Control) Regulations (Cap. 374 sub. leg. G) as modified by section 1 of Part V of Schedule 2 to the Airport Authority Bylaw (Cap. 483 sub. leg. A). The Amendment Notice amends Road Traffic (Traffic Control) (Designation of Prohibited and Restricted Zones) Notice (Cap. 374 sub. leg. U) (“the Notice”) which sets out the prohibited and restricted zones in the Hong Kong International Airport where driving of vehicles are prohibited or drivers are prohibited from picking up or setting down passengers or loading or unloading goods.

40. Schedule 1 of the Notice is amended by designating the following areas as prohibited zones:—

- (a) the access road linking Cheong Lin Road to CLP Power Hong Kong Ltd. Airport ‘A’ Substation near Sky City Interchange;
- (b) the access road linking East Coast Road to CLP Power Hong Kong Ltd. Airport ‘A’ Substation near Sky City Interchange;
- (c) the Coach Station at Terminal 2; and
- (d) all designated roads at Chek Lap Kok.

41. Schedule 2 of the Notice is amended by designating the following areas as restricted zones:—

- (a) a section of Cheong Hing Road;
- (b) the northern and southern sections of Sky Plaza Road Central; and
- (c) Cheong Lin Path, Sky City Road East, Sky Plaza Road South, Sky Plaza Drive, Sky Plaza Road, Airport North Interchange, Airport South Interchange, Chun Wan Road Interchange, a segregated left turning lane near Airport South Interchange and a segregated left turning lane near Airport North Interchange.

42. The Panel of Transport has not been consulted on the Amendment Notice.

43. The Amendment Notice shall come into operation on 1 December 2006.

PART IV COMMENCEMENT NOTICES

Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006 (16 of 2006)

Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006 (Commencement) Notice 2006 (L.N. 203)

44. The Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006 (16 of 2006) (“the Ordinance”) recognizes, *inter alia*, the forms given, and the medical examination and treatment conducted or given by registered Chinese medicine practitioners by amending the Employment Ordinance (Cap. 57) and its subsidiary legislation, the Employees’

Compensation Ordinance (Cap. 282) and the Pneumoconiosis (Compensation) Ordinance (Cap. 360).

45. By section 1(2) of the Ordinance, it shall come into operation on a day to be appointed by the Secretary for Economic Development and Labour. By the Notice, 1 December 2006 has been appointed as the day on which Parts 1, 2 and 5 of the Ordinance shall come into operation. Part 1 is the short title and the commencement of the Ordinance. Part 2 amends the Employment Ordinance and its subsidiary legislation whereas Part 5 makes related amendments. The Legal Service Division has made inquiry as to the commencement date of the remaining parts. According to the Labour Department, as there is a need to amend other related ordinances, the remaining parts will be commenced at a later date.

46. Members may refer to the Report of the Bills Committee dated 20 June 2006 (File Ref.: LC Paper No. CB(2)2499/05-06) for further information.

**Financial Reporting Council Ordinance (18 of 2006)
Financial Reporting Council Ordinance (Commencement) Notice 2006
(L.N. 204)**

47. The Financial Reporting Council Ordinance (18 of 2006) (“the Ordinance”) introduces a new supervisory regime of auditors and accountants of listed entities. Under section 1(2), the Ordinance shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury. By the Notice, 1 December 2006 has been appointed as the day on which various sections and Schedules to the Ordinance establishing the Financial Reporting Council, Audit Investigation Board and Financial Reporting Review Panel, and making related amendments to other ordinances, shall come into operation.

48. Members may find further information from the Report of the Bills Committee on Financial Reporting Council Bill (LC Paper No. CB(1)1944/05-06).

**Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2006
(L.N. 145)
Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2006
(Commencement) Notice (L.N. 205)**

49. The Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2006 (L.N. 145) (“the Amendment Regulation”) is made under section 46 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485). It seeks to enhance the protection of scheme members’ interests and the flexibility of the investments of the fund, improve operation of the investment regulations and remove certain restrictions in the investment. Section 1 of the Amendment Regulation provides that it shall come into operation on a day to be appointed by the Secretary for

Financial Services and the Treasury. By the Notice, 1 December 2006 has been appointed as the day on which the Amendment Regulation shall come into operation.

**Protection of Endangered Species of Animals and Plants Ordinance (3 of 2006)
Protection of Endangered Species of Animals and Plants Ordinance
(Commencement) Notice (L.N. 206)**

50. The Protection of Endangered Species of Animals and Plants Ordinance (3 of 2006) (“the Ordinance”) regulates the import, introduction from the sea, export, re-export, possession and control of certain endangered species of animals and plants and parts and derivatives of those species and to give effect to the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Under Section 1(2) of the Ordinance, the Ordinance shall come into operation on a day to be appointed by the Secretary for the Environment, Transport, and Works. By the Notice, 1 December 2006 has been appointed as the day on which the Ordinance shall come into operation.

**Road Traffic (Registration and Licensing of Vehicles) (Amendment) Regulation
2006 (L.N. 52)**

**Road Traffic (Registration and Licensing of Vehicles) (Amendment) Regulation
2006 (Commencement) Notice (L.N. 207)**

51. The Road Traffic (Registration and Licensing of Vehicles) (Amendment) Regulation 2006 (L.N. 52) (“the Amendment Regulation”) is made under section 6 of the Road Traffic Ordinance (Cap. 374) to amend Schedule 7 to the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg. E). It revises the permitted area of operation of New Territories and Lantau taxis to enable them to serve the departure area of the new Terminal at Sky Plaza of the Hong Kong International Airport. Section 1 of the Amendment Regulation provides that it shall come into operation on a day to be appointed by the Secretary for the Environment, Transport and Works. By the Notice, 1 December 2006 has been appointed as the day on which the Amendment Regulation shall come into operation.

Telecommunication (Amendment) Ordinance (36 of 2000)

**Telecommunication (Amendment) Ordinance 2000 (Commencement) Notice
2006 (L.N. 208)**

52. The Telecommunication (Amendment) Ordinance (36 of 2000) (“the Ordinance”) aims to consolidate and enhance the regulatory powers of the Telecommunications Authority, to strengthen competition safeguards, to improve interconnection and access arrangements to telecommunication services, and to streamline licensing procedures. Section 1(3) of the Ordinance provides that certain sections, including section 5(a)(iii) and (b) of the Ordinance which amends section 8 of the Telecommunication Ordinance (Cap. 106) (“TO”), shall come into operation on

a day to be appointed by the Secretary for Information Technology and Broadcasting. By the Notice, 2 February 2007 has been appointed as the day on which section 5(a)(iii) and (b) of the Ordinance shall come into operation.

53. Save in respect of the Regulations reported in Part II, no difficulties in relation to the legal and drafting aspects of the above items of subsidiary legislation have been observed.

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