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**Paper for the House Committee Meeting
on 7 March 2008**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 29 February 2008**

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Amendment to be made by : 12 March 2008 (or 23 April 2008 if extended by resolution)

PART I SCHEDULES OF BUS ROUTES

Background

The Chief Executive in Council (CE in Council) has, by orders made under section 5(1) of the Public Bus Services Ordinance (Cap. 230) (the Ordinance), granted to the existing franchised public bus companies the right to operate a public bus service on such routes as specified in the orders (section 5(1) Order). To meet changing transport needs of the community, the Commissioner for Transport is empowered under section 15(1) of the Ordinance to require the bus companies, after consultation with them, to introduce new routes and make alterations to the specified routes on a temporary basis. Such adjustments of routes may legally have effect for a maximum period of 24 months. Those routes need to be specified in a section 5(1) Order made by CE in Council before the 24 month period expires.

2. The existing section 5(1) Orders were approved by CE in Council in June 2006 incorporating changes to bus routes up to the end of April 2006. The new section 5(1) Orders incorporate the changes introduced between 4 May 2006 and 2 December 2007 so that they may continue to have effect legally. Members may wish to refer to the LegCo Brief (Ref.: THB(T)L 2/4/115) issued by the Transport and Housing Bureau in February 2008 for background information.

Public Bus Services Ordinance (Cap. 230)
Schedule of Routes (Citybus Limited) Order 2008 (L.N. 36)

3. This Order repeals the Schedule of Routes (Citybus Limited) Order 2006 (L.N. 161 of 2006) and updates the schedule of bus routes operated by the Citybus Limited (other than for north Lantau and the airport at Chek Lap Kok).

According to the LegCo Brief, in respect of the company's franchise for Hong Kong Island and cross-harbour bus services, two new routes have been introduced, three routes have been cancelled and alterations to 30 routes have been made.

Public Bus Services Ordinance (Cap. 230)
Schedule of Routes (Citybus Limited) (North Lantau and Chek Lap Kok Airport)
Order 2008 (L.N. 37)

4. This Order repeals the Schedule of Routes (Citybus Limited) (North Lantau and Chek Lap Kok Airport) Order 2006 (L.N. 162 of 2006) and updates the schedule of bus routes operated by the Citybus Limited for north Lantau and the airport at Chek Lap Kok. According to the LegCo Brief, alterations have been made to 12 routes.

Public Bus Services Ordinance (Cap. 230)
Schedule of Routes (Kowloon Motor Bus Company (1933) Limited) Order 2008
(L.N. 38)

5. This Order repeals the Schedule of Routes (Kowloon Motor Bus Company (1933) Limited) Order 2006 (L.N. 163 of 2006) and updates the schedule of bus routes operated by the Kowloon Motor Bus Company (1933) Limited. According to the LegCo Brief, the bus company has introduced two new routes, cancelled six routes and made alterations to 196 routes.

Public Bus Services Ordinance (Cap. 230)
Schedule of Routes (Long Win Bus Company Limited) Order 2008 (L.N. 39)

6. This Order repeals the Schedule of Routes (Long Win Bus Company Limited) Order 2006 (L.N. 164 of 2006) and updates the schedule of bus routes operated by the Long Win Bus Company Limited. According to the LegCo Brief, alterations to 11 routes have been made.

Public Bus Services Ordinance (Cap. 230)
Schedule of Routes (New Lantao Bus Company (1973) Limited) Order 2008
(L.N. 40)

7. This Order repeals the Schedule of Routes (New Lantao Bus Company (1973) Limited) Order 2006 (L.N. 165 of 2006) and updates the schedule of bus routes operated by the New Lantao Bus Company (1973) Limited. According to the LegCo Brief, the bus company has introduced two new routes, cancelled one route and made alterations to six routes.

Public Bus Services Ordinance (Cap. 230)
Schedule of Routes (New World First Bus Services Limited) Order 2008
(L.N. 41)

8. This Order repeals the Schedule of Routes (New World First Bus Services Limited) Order 2006 (L.N. 166 of 2006) and updates the schedule of bus routes operated by the New World First Bus Services Limited. According to the LegCo Brief, four routes have been introduced and alterations have been made to 31 routes.

9. Neither the public nor the Panel on Transport has been consulted on the above six Orders. No difficulties have been identified in the legal or drafting aspects of the Orders. All the Orders will come into operation on 1 May 2008.

PART II TRADE DESCRIPTIONS

Trade Descriptions Ordinance (Cap. 362)
Trade Descriptions (Definition of Fei Cui and Natural Fei Cui) Regulation
(L.N. 42)

Trade Descriptions (Definition of Diamond) Regulation (L.N. 43)

10. Section 33 of the Trade Descriptions Ordinance (Cap. 362) (the Ordinance) empowers CE in Council to make regulations to assign a definite meaning to any expression used in the course of trade or business as, or as part of, a trade description applied to goods or when used in the circumstances specified in the regulations. An expression shall be deemed for the purposes of the Ordinance to have the assigned meaning when it is so used. Offences in connection with false trade description as provided in the Ordinance may be punishable with a fine of \$100,000 and 2 years' imprisonment upon conviction on indictment.

11. L.N. 42 and L.N. 43 are made by CE in Council under section 33 of the Ordinance. L.N. 42 defines the expression "fei cui" or "翡翠" and the expression "natural" or "天然" when used to describe "fei cui". An article that does not fall within the definition cannot be described as "fei cui" or "natural fei cui", as the case may be. L.N. 43 defines the expression "diamond" or "鑽石". An article that does not fall within the definition cannot be described as "diamond". However, artificial diamond is permitted to be described by applying "artificial", "man-made", "synthetic" or other similar expressions, so long as the description taken as a whole clearly indicates that the article concerned is not natural diamond.

12. According to the LegCo Brief, 132 trade associations had been consulted between August and September 2007. The Panel on Economic Development was briefed at its meeting on 22 October 2007 on the outcome of the trade consultation and the Administration's legislative proposals (which included the proposals for the two Regulations) in relation to the Ordinance for strengthening consumer protection. Members supported the legislative proposals in general and

were concerned that it should be ensured that operation of honest traders would not be affected. Members may wish to refer to the LegCo Brief (File Ref.: CIB CR14/18/2) issued by the Commerce and Economic Development Bureau and dated 27 February 2008 for background information.

13. The Legal Service Division is seeking clarification from the Administration on a drafting point in respect of L.N. 43. A further report will be submitted, if necessary. No difficulties have been identified in the legal or drafting aspects of L.N. 42. The two Regulations will come into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette.

PART III FUGITIVE OFFENDERS

Fugitive Offenders Ordinance (Cap. 503)

Fugitive Offenders (Terrorist Bombings) Order (L.N. 44)

Fugitive Offenders (Maritime Safety) Order (L.N. 45)

14. Both L.N. 44 and L.N. 45 were made by the Chief Executive in Council under section 3 of the Fugitive Offenders Ordinance (Cap. 503). Cap. 503 provides for the surrender to certain places outside Hong Kong of persons who are wanted for prosecution, or for the imposition or enforcement of a sentence, in respect of certain offences against the laws of those places. It also provides for the treatment of persons wanted for prosecution, or for the imposition or enforcement of a sentence, in respect of certain offences against the law of Hong Kong who are surrendered from certain places outside Hong Kong.

15. L.N. 44 was made to implement the extradition arrangements under the International Convention for the Suppression of Terrorist Bombings (the Bombings Convention), which entered into force for Hong Kong on 13 December 2001. The objective is to apply between Hong Kong and the places outside Hong Kong to which the Bombings Convention relates the procedures for the surrender of fugitive offenders set out in Cap. 503. Those procedures apply in relation to the arrangements for the surrender of fugitive offenders as set out in the Bombings Convention. Those procedures are subject to the limitations, restrictions, exceptions and qualifications contained in the terms of the Bombings Convention as set out in the Schedule to L.N. 44.

16. L.N. 45 was made to implement the extradition arrangements under the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (the Maritime Safety Convention) and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (the Fixed Platforms Protocol). The procedures under the extradition arrangements are subject to the limitations, restrictions, exceptions and qualifications contained in the terms of the Maritime Safety Convention and the Fixed Platforms Protocol as respectively set out in Schedules 1 and 2 to L.N. 45.

17. Members may refer to the LegCo Brief (ref: SBCR 1/5691/00 – SBCR 22/1476/86) issued by the Security Bureau on 27 February 2008 for the background about L.N. 44 and L.N. 45. The Panel on Security was consulted on the proposals to implement the extradition arrangements under the Bombings Convention, the Maritime Safety Convention and the Fixed Platforms Protocol at its meeting on 4 July 2006. Members were generally supportive of the proposals.

18. L.N. 44 and L.N. 45 shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette. No difficulties have been identified in the legal or drafting aspects of L.N. 44 and L.N. 45.

PART IV INTEREST ON TAX RESERVE CERTIFICATE

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

Tax Reserve Certificates (Rate of Interest) (No. 2) Notice 2008 (L.N. 46)

19. By this Notice made by the Secretary for Financial Services and the Treasury under rule 7(2)(h) of the Tax Reserve Certificates (Fourth Series) Rules (Cap. 289 sub. leg. A), the rate of interest payable on tax reserve certificates issued on or after 3 March 2008 is fixed at 1.05% per annum (the new rate). The Schedule to the Tax Reserve Certificates (Rate of Interest) (Consolidation) Notice (Cap. 289 sub. leg. B) is consequentially amended by inserting “and before 3 March 2008” in item 162 and adding the new rate as item 163.

20. Neither the public nor the Panel on Financial Affairs has been consulted on the Notice. No legal or drafting difficulties have been identified.

PART V COPYRIGHT ORDINANCE

Copyright (Amendment) Ordinance 2007 (15 of 2007)

Copyright (Amendment) Ordinance 2007 (Commencement) Notice 2008 (L.N. 47)

Copyright (Amendment) Ordinance 2007 (Commencement) (No. 2) Notice 2008 (L.N. 48)

21. The Copyright (Amendment) Ordinance 2007 (No. 15 of 2007) (the amendment Ordinance) was passed in July 2007. By L.N. 47 and L.N. 48, the Secretary for Commerce and Economic Development appoints 25 April 2008 as the day on which the provisions of the amendment Ordinance relating to the following matters shall come into operation –

- (a) moral and related rights for performers of aural performances and for underlying works in sound recordings;

- (b) provisions introducing new criminal and civil liability in relation to the making of and dealing in circumvention devices;
- (c) rental rights for films; and
- (d) the provision on rights management information.

22. At its meeting of the Panel on Commerce and Industry held on 19 February 2008, the Administration briefed the Panel on the follow-up to the amendment Ordinance, in particular, the issues of publicity and public education activities and the commencement timetable for the provisions of the amendment Ordinance which were yet to come into operation. The proposed commencement date for the above matters (as set out in para. (a) to (d) above) was included in the briefing. The Panel was in principle supportive of the Administration's proposed commencement timetable for the provisions of the amendment Ordinance that were yet to come into operation.

23. At the meeting, the Administration was requested to follow up closely on the licensing scheme and to report the progress made in respect of the negotiation of the details and terms of the licensing scheme between the copyright owners and rental shop operators to the Panel in due course. According to the report made by the Administration to the Panel in March 2008 (LC Paper No. CB(1)985/07-08(01)), a consensus was reached between the Hong Kong Video Development Foundation Ltd (HKVDF) and the Alliance of the Rental Industry as regards the proposed video rental licensing scheme. HKVDF agreed to implement the licensing scheme in a progressive manner.

24. No difficulties have been identified in the legal or drafting aspects of these commencement notices.

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