

立法會

Legislative Council

LC Paper No. LS86/07-08

**Paper for the House Committee Meeting
on 23 May 2008**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 16 May 2008**

Date of tabling in LegCo : 21 May 2008

Amendment to be made by : 18 June 2008 (or 9 July 2008 if extended by resolution)

PART I PRIVILEGES AND IMMUNITIES OF INTERNATIONAL ORGANIZATIONS

International Organizations (Privileges and Immunities) Ordinance (Cap. 558)
International Organizations (Privileges and Immunities) (Bank of International Settlements) Order (L.N. 116)
International Organizations (Privileges and Immunities) (International Monetary Fund) Order (L.N. 117)
International Organizations (Privileges and Immunities) (International Bank for Reconstruction and Development and International Finance Corporation) Order (L.N. 118)

The three Orders are made by the Chief Executive in Council under section 3 of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558), which provides that the Chief Executive in Council may by order in the Gazette, declare that the provisions of an international agreement relating to the status, privileges and immunities of an international organization (IO) and of persons connected with the organization, and which are specified in the order, shall have the force of law in Hong Kong.

2. According to the LegCo Brief issued by the Administration Wing of the Chief Secretary for Administration's Office dated 14 May 2008 (SF(1) & SF(2) to PROT CR 1/2071/98), the Central People's Government (CPG) has concluded agreements or memoranda of understanding with six IOs for the

maintenance/establishment of their representative offices in the Hong Kong Special Administrative Region which confer privileges and immunities on the respective IOs, and their representative offices and personnel in HKSAR. The six IOs are—

- (a) United Nations High Commissioner for Refugees (UNHCR);
- (b) the Commission of the European Communities (CEC);
- (c) the Bank of International Settlements (BIS);
- (d) the International Monetary Fund (IMF);
- (e) the International Bank of Reconstruction and Development (IBRD); and
- (f) the International Finance Corporation (IFC).

3. The three Orders provide that certain provisions of the bilateral agreement/memoranda between CPG and BIS, IMF and IBRD/IFC¹, which are reproduced in the Orders, shall have the force of law in Hong Kong. UNHCR and CEC have been dealt with separately².

4. Among the of privileges and immunities confer on BIS, IMF, IRBD/IFC under the three Orders are—

- (a) inviolability of the office premises of the IOs concerned, its archives and documents, and personal inviolability of certain personnel of the IOs;
- (b) immunity from all forms of seizure or execution in respect of the properties and assets of the IOs;
- (c) immunity from legal process in respect of acts performed in the exercise of official functions; and
- (d) exemption from taxation and customs duties.

5. On 11 March 2008, the Administration Wing of the Chief Secretary for Administration's Office has issued an information paper "Subsidiary Legislation relating to Privileges and Immunities Conferred on Specified International Organizations" to the Panel on Administration of Justice and Legal Services (LC Paper CB(2)1299/07-08(02)) for discussion. The Panel noted the paper.

6. All three Orders shall come into operation on 18 July 2008.

¹ IBRD and IFC have jointly entered into an agreement with CPG to set up a joint office in Hong Kong.

² By The United Nations (Cap. 190 sub. leg. H) and the International Organizations (Privileges and Immunities) (Office of the Commission of the European Communities) Order (Cap. 558 sub. leg. A) respectively for UNHCR and CEC.

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

PART II LEGISLATIVE COUNCIL ELECTION

Legislative Council Ordinance (Cap. 542)

Legislative Council Ordinance (Amendment of Schedule 5) Order 2008 (L.N. 119)

8. The Order increases the specified rate of financial assistance given to candidates in the LegCo election from \$10 to \$11. Under the current scheme, candidates who are elected or who receive 5% of valid votes or more are eligible for financial assistance at a specified rate per vote, capped at 50% of the declared election expenses of the candidates. The Order shall come into operation on 18 July 2008.

9. According to the LegCo Brief CMAB C1/30/10 issued by the Constitutional and Mainland Affairs Bureau dated 14 May 2008, the increase of the specified rate is proposed in view of the 9.2% inflation from 2004 to February 2008.

Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554)

Maximum Amount of Election Expenses (Legislative Council Election) Regulation (L.N. 120)

10. The Regulation increases the election expense limits for Geographical Constituency (GC) and Functional Constituency (FC) elections by 5% as follows—

	<u>Existing Expense Limits</u>	<u>Revised Expense Limits</u>
<u>GC</u>		
Hong Kong Island	\$2,000,000	\$2,100,000
Kowloon East	\$1,500,000	\$1,575,000
Kowloon West	\$1,500,000	\$1,575,000
New Territories East	\$2,500,000	\$2,625,000
New Territories West	\$2,500,000	\$2,625,000

	<u>Existing Expense Limits</u>	<u>Revised Expense Limits</u>
<u>FC</u>		
Heung Yee Kuk, Agriculture and Fisheries, Insurance, and Transport FCs	\$100,000	\$105,000
Other FCs with not more than 5,000 registered electors	\$160,000	\$168,000
Other FCs with 5,001 to 10,000 registered electors	\$320,000	\$336,000
Other FCs with over 10,000 registered electors	\$480,000	\$504,000

11. According to the LegCo Brief (referred to in the item above), the Administration considers that if the specified rate for financial assistance is to be increased (see item above), the election expense limits should also be increased at the same time.

12. The Regulation is made under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554). It will repeal and replace the existing provisions relating to election expense limits for the LegCo election contained in the Maximum Scale of Election Expenses (Legislative Council)(Election Committee) Order (Cap. 288 sub. leg. I). The Regulation shall come into operation on 18 July 2008.

13. The Panel on Constitutional Affairs was briefed on the proposals to increase the specified rate of financial assistance and the election expense limits at its meeting on 21 April 2008. Panel members generally supported an increase in financial assistance. However, some members considered that the increased subsidy rate at \$11 inadequate. Some members suggested that the ceiling of the financial assistance, now set at 50% of election expenses, should be raised. As regards election expense limits for the 2008 LegCo election, views differed as to whether the limits should be reduced, increased or maintained at the existing levels or abolished altogether.

PART III AMENDMENTS TO SUBSIDIARY LEGISLATION MADE UNDER THE BUILDINGS ORDINANCE (CAP. 123)

Buildings Ordinance (Cap. 123)

Building (Planning) (Amendment) Regulation 2008 (L.N. 124)

14. Under regulation 72(1) of the Building (Planning) Regulations (Cap. 123 sub. leg. F) (the Principal Regulations), subject to certain exceptions³, where a building is one to which persons with a disability have, or may reasonably be expected to have, access, that building shall be designed to the satisfaction of the Building Authority in such a manner as will facilitate the access to, and use of, that building and its facilities by persons with a disability.

15. Under regulation 2(1) of the Principal Regulations, the term "disability" is defined to mean, in relation to a person, "impairment in vision, hearing or locomotion because of injury, disease or congenital deformity".

16. The Building Authority issued in 1997, the Design Manual – Barrier Free Access 1997 (DM 1997) to provide guidance to the practitioners of the construction industry. Those obligatory requirements in DM 1997 have been incorporated into the provisions in the Third Schedule to the Principal Regulations. In November 2007, a new version of the Design Manual, i.e. DM 2008 was finalised to take into account the advancement in building technology, improvement in quality of life of the general public and growing awareness of the community towards the needs of persons with a disability over the years.

17. Members may refer to the LegCo Brief (with no file reference on it) issued by the Development Bureau, Labour and Welfare Bureau and Buildings Department on 16 May 2008 for background information.

18. The Amendment Regulation amends the Principal Regulations to—

- (a) reflect the revised requirements as set out in DM 2008; and
- (b) provide for certain technical amendments.

³ One of those exceptions is that a building is deemed to be designed in accordance with regulation 72(1) if the design complies with the requirements set out in Part I of the Third Schedule to the Principal Regulations.

Another exception is that regulation 72 shall apply to the categories of buildings specified in the first column of Part II of the Third Schedule to the Principal Regulations only to the extent specified in the second column thereof.

19. The key areas of amendments relate to the design requirements of—
- (a) auditorium and related facilities (new Part 2, Division 1, Third Schedule to the Principal Regulations);
 - (b) hotels, hostels and guesthouses (new Part 2, Division 2, Third Schedule to the Principal Regulations);
 - (c) carpark (new Part 2, Division 3, Third Schedule to the Principal Regulations);
 - (d) access route (new Part 2, Division 4, Third Schedule to the Principal Regulations);
 - (e) ramps (new Part 2, Division 5, Third Schedule to the Principal Regulations);
 - (f) dropped kerbs (new Part 2, Division 6, Third Schedule to the Principal Regulations);
 - (g) the required staircases⁴ and the main circulation staircase in the common areas of a building (new Part 2, Division 7, Third Schedule to the Principal Regulations);
 - (h) handrails to ramps and steps (new Part 2, Division 8, Third Schedule to the Principal Regulations);
 - (i) corridors, lobbies and paths (new Part 2, Division 9, Third Schedule to the Principal Regulations);
 - (j) doors on accessible⁵ routes (new Part 2, Division 10, Third Schedule to the Principal Regulations);
 - (k) toilets and water closet cubicles on specified premises (new Part 2, Division 11, Third Schedule to the Principal Regulations);

⁴ Under new section 1 of Part 1 of the Third Schedule to the Building (Planning) Regulations, the term "required staircase" means an access staircase in a firefighting and rescue stairway or a staircase which provides means of escape in case of fire.

⁵ Under new section 1 of Part 1 of the Third Schedule to the Building (Planning) Regulations, the term "accessible", in relation to a site, building or facility or a portion of it, means the site, building, facility or portion—

- (a) can be approached, entered and used conveniently by persons with a disability; and
- (b) complies with this Schedule.

- (l) accessible bathrooms and accessible shower compartments (new Part 2, Division 12, Third Schedule to the Principal Regulations);
- (m) signs for accessible entrances to buildings, etc. (new Part 2, Division 13, Third Schedule to the Principal Regulations);
- (n) special design requirements to assist persons with visual or hearing impairment (new Part 2, Division 14, Third Schedule to the Principal Regulations);
- (o) public information or service counters in specified buildings (new Part 2, Division 15, Third Schedule to the Principal Regulations);
- (p) illumination at the ground floor entrance lobby and the lifts in a building, etc. (new Part 2, Division 16, Third Schedule to the Principal Regulations);
- (q) emergency call bells in accessible toilets (new Part 2, Division 17, Third Schedule to the Principal Regulations);
- (r) assistive listening system in the public information or service counters, etc. in specified buildings (new Part 2, Division 18, Third Schedule to the Principal Regulations);
- (s) lifts (new Part 2, Division 19, Third Schedule to the Principal Regulations);
- (t) escalators and passenger conveyors (new Part 2, Division 20, Third Schedule to the Principal Regulations); and
- (u) application of additional assistive provisions to specified buildings (new Part 2, Division 21, Third Schedule to the Principal Regulations).

20. Members may refer to a table prepared by the Administration on summary of key changes at the Annex.

21. According to paragraph 7 of the LegCo Brief, the Amendment Regulation will only apply to private buildings⁶. However, government departments and public authorities will also make reference to DM 2008 in the design and construction of government and public buildings.

22. According to paragraph 10 of the LegCo Brief, the Administration has consulted various stakeholders who have expressed general support for the proposals in DM 2008.

23. The Panel on Welfare Services (the Panel) discussed the proposal to revise the design requirements set out in DM 1997 at four meetings between 2006 and 2007. Members of the Panel on Development were also invited to attend the meetings. The Panel had also received views from deputations. At its meeting on 13 November 2006, the Panel was briefed on the draft revised DM. A motion urging the Administration to include further improvement measures in the draft revised DM was passed by the Panel. The Administration's response to the motion was discussed at the Panel meeting on 12 March 2007. While members in general were supportive of the proposed improvement measures to be included in the further revised DM, some members considered that more consultation should be conducted with the parties concerned on the design requirements. The Panel also urged the Administration to expedite the introduction of the legislative proposal as soon as practicable. At the request of the Panel, the Administration provided members with the draft final version of the revised DM in November 2007, and it was circulated to members for information. Members may refer to paragraphs 34 to 60 of the minutes of the Panel meeting held on 12 March 2007 (LC Paper No. CB(2)1469/06-07) for details of the discussion.

24. The Administration intends to commence the Amendment Regulation in October 2008.

⁶ S. 41(1) of the Buildings Ordinance (Cap. 123) provides that—

"The following shall be exempt from the provisions of this Ordinance—

- (a) buildings belonging to the Government;
- (aa) subject to section 18(2) and (3) of the Housing Ordinance (Cap 283), buildings upon any land vested in the Housing Authority or over which the Housing Authority has control and management;
- (b) buildings upon any land vested in any person on behalf of Her Majesty's naval, military or air force services;
- (ba) any land vested in the Housing Authority or in any person on behalf of Her Majesty's naval, military or air force services, and any unleased land within the meaning of the Land (Miscellaneous Provisions) Ordinance (Cap 28) other than such unleased land in respect of which a person is, under the terms of a Government lease, under an obligation to maintain;
- (c) any street or access road vested in and maintained by the Government:

Provided that the provisions of this Ordinance relating to projections over or upon any portion of any street whether or not on land held under lease from the Government and to hoardings shall apply to all buildings."

Buildings Ordinance (Cap. 123)

**Building (Refuse Storage and Material Recovery Chambers and Refuse Chutes)
(Amendment) Regulation 2008 (L.N. 125)**

25. This Amendment Regulation amends the Building (Refuse Storage and Material Recovery Chambers and Refuse Chutes) Regulations (Cap. 123 sub. leg. H) (the Principal Regulations). The main purpose of the Amendment Regulations is to add a new regulation 3A to the Principal Regulations. The new regulation 3A imposes a mandatory requirement that, where a plan relating to a domestic building or the domestic part of a composite building is submitted to the Building Authority for approval under section 14 of the Buildings Ordinance (Cap. 123), the plan must show provision for a refuse storage and material recovery room on every floor of the domestic building or of the domestic part of the composite building.

26. Multi-floor units (i.e. domestic units which occupy space on two or more consecutive floors) shall be provided with refuse storage and material recovery room in common area on at least one of the floors concerned.

27. Refuse storage and material recovery room is not required on any floor that is not designed for habitation or on any floor where a refuse storage and material recovery chamber or material recovery chamber is provided.

28. The mandatory requirement for the provision of refuse storage and material recovery room on every floor also does not apply to—

- (a) any part of a building that is designed for use as a hotel, guest-house, boarding-house, hostel or dormitory; and
- (b) small developments, for example villa type developments.

29. Members may refer to LegCo Brief (with no file reference) issued by the Environmental Protection Department on 14 May 2008 for background information.

30. According to paragraph 12 of the LegCo Brief, the Administration has consulted various stakeholders and they supported the proposal.

31. The proposal to require the provision of refuse storage and material recovery room on every floor of new domestic buildings and the domestic part of composite buildings was discussed by the Panel on Environmental Affairs at its meeting on 25 February 2008. Members generally supported the proposal which aimed at facilitating waste separation. They however emphasized the need for the Administration to ensure that the space allocated for refuse storage and material recovery facilities would be used for the stated purpose and not other purposes for the

benefit of developers. Members also stated that there was a need for the owners' corporations and/or management companies to encourage residents to make better use of the segregation bins for separation of waste.

32. The Amendment Regulation will come into operation on 1 December 2008.

33. No difficulties have been identified in relation to the legal or drafting aspects of L.N. 124 and L.N. 125.

PART IV LEVIES AND FEES

Securities and Futures Ordinance

Securities and Futures (Levy) (Amendment) Order 2008 (L.N. 121)

Securities and Futures (Investor Compensation – Levy) (Amendment) Rules 2008 (L.N. 122)

34. The Amendment Order and the Amendment Rules are made by the Chief Executive in Council under sections 394 and 244(1) respectively of the Securities and Futures Ordinance (Cap. 571) to—

- (a) exempt Securities Market Maker⁷ permit holders from paying a levy to the Securities and Futures Commission (SFC) under the Securities and Futures (Levy) Order (Cap. 571 sub. leg. Z) (Levy Order) and the Investor Compensation Fund (ICF) under the Securities and Futures (Investor Compensation – Levy) Rules (Cap. 571 sub. leg. AB) (Levy Rules) in respect of the sale and purchase of securities in the course of making a market; and
- (b) reduce the levy payable to the SFC and ICF in respect of a sale and purchase of a Mini-Hang Seng China Enterprises Index Futures Contract under the Levy Order and the Levy Rules.

Exemption

35. Under sections 394 and 244 of the Securities and Futures Ordinance, persons who engage in the sale and purchase of securities or futures contracts on the Hong Kong Stock Exchange (SEHK) are required to pay two types of levies, namely, a transaction levy payable to SFC and a levy for the funding of the ICF. The rates of

⁷ Under section 2 of the Securities and Futures (Short Selling and Securities Borrowing and Lending (Miscellaneous)) Rules (Cap. 571 sub. leg. R), "securities market maker" means a person who is registered with the Stock Exchange Company for the purpose of performing, in accordance with rules made by the Stock Exchange Company, market making or liquidity providing activities in respect of securities listed or admitted to trading on the recognized stock market it operates or an issuer of any structured product listed on the recognized stock market operated by the Stock Exchange Company under Chapter 15A of the Listing Rules;

these levies are determined by the Chief Executive in Council.

36. According to the LegCo Brief issued by the Financial Services and the Treasury Bureau on 14 May 2008 (File Ref: SUD 42/11(2007) Pt. 3), when Pilot Programme Securities (PPS)⁸ were launched in 2000, certain market makers were allowed to act as designated market makers and exempted from paying the levies because of their important market function and service by providing liquidity to the market, and that they have to take additional financial and market risks. For similar reasons, when SEHK launched its Exchange Traded Funds (ETF) in 2001, exemption from levies was granted to ETF market makers.

37. However, the Administration observes that some market makers for PPS and ETF are not eligible for the levies exemption because those market makers possess certain features which cause them fall outside the definition of PPS and ETF. Legislative amendments to revise the definition of PPS and ETF may be made necessary to grant the levies exemption to market makers of PPS and ETF with new features. However, this may result in delay in the launch of these new products. Since market makers of PPS and ETF are issued with Securities Market Maker permits by SEHK, to streamline the existing exemption regime, a new approach for granting levies exemption to exchange participants holding valid Securities Market Maker permits issued by SEHK is introduced by the Amendment Order and Amendment Rules to the Levy Order and the Levy Rules.

Reduction of Levy

38. When the Mini-Hang Seng Index Futures Contract ("Mini-HSI Futures Contract) was launched in October 2000, the levy payable for its sale and purchase is set at one-fifth of the levy of a standard Hang Seng Index Futures Contract as the value of a mini-HIS Futures Contract was one-fifth of that of a standard futures contract.

39. The Mini H-shares Index Futures Contract was launched in March 2008. The value of the Mini H-shares Index Futures Contract is also one-fifth of the standard futures contract but the levy is the same under the existing law. To bring the existing levy arrangement for Mini H-shares Futures Contracts in line with the Mini-HIS Futures Contracts, the Amendment Order and Amendment Rules reduce the levies of Mini H-share Futures Contracts to SFC from \$0.8 to \$0.5 under the Levy Order; and from \$0.16 to \$0.1 under the Levy Rules.

40. SFC has consulted the market makers of PPS and ETF on the proposed streamlining of levy exemption arrangements and the proposal was generally welcomed.

⁸ PPS means securities that are traded on a stock market operated by SEHK under its pilot programme which has the meaning assigned to it under SEHK's rules.

41. Members may refer to the LegCo Brief for further information. The Panel on Financial Affairs has not been consulted on the Amendment Order and Amendment Rules.

42. L.N. 121 and 122 shall come into operation on 12 July 2008.

43. No difficulties relating to the legal and drafting aspects of the Amendment Order and the Amendment Rules have been identified.

Control of Chemicals Ordinance (Cap. 145)

Control of Chemicals (Amendment) Regulation 2008 (L.N. 126)

Dutiable Commodities Ordinance (Cap. 109)

Dutiable Commodities (Amendment) Regulation 2008 (L.N. 127)

Firearms and Ammunition Ordinance (Cap. 238)

Firearms and Ammunition (Amendment) Regulation 2008 (L.N. 128)

Firearms and Ammunition (Storage fees) (Amendment) Order 2008 (L.N. 129)

Pawnbrokers Ordinance (Cap. 166)

Pawnbrokers (Amendment) Regulation 2008 (L.N. 130)

Massage Establishments Ordinance (Cap. 266)

Massage Establishments (Amendment) Regulation 2008 (L.N. 131)

44. The Amendment Regulations and Order are made by the Secretary for Financial Services and the Treasury under section 29A of the Interpretation and General Clauses Ordinance (Cap. 1) to revise certain fees and charges.

45. It is the Government's established policy that fees charged by the Government should in general be set at levels adequate to recover the full cost of providing the goods or services. The fees and charges had been frozen since 1998 owing to the poor economic conditions. The revision of fees resumed in 2006. Except for L.N. 126, the Amendment Regulations and Order are made as a result of a review exercise. To alleviate the impact of the fee increases on the users of the services concerned, the fees covered by L.N. 127 -131 will be increased by 8% to 20% with a view to achieving full-cost recovery within one to seven years. For L.N. 126, it is made to implement the third phase of a three-phase increment set in 1997.

L.N. 126

46. A licence issued by the Commissioner of Customs and Excise (the Commissioner) is required for the procuring, supplying, dealing in or with, manufacturing, possessing, importing into or exporting from Hong Kong any

substance specified in Schedules 1 to 3 of the principal Ordinance. A person who wishes to remove any Schedule 1 or 2 substance which is in transshipment from a vessel, aircraft or vehicle in or on which it was imported into Hong Kong, or to move any such substance within Hong Kong after its removal from such vessel, aircraft or vehicle must obtain a permit from the Commissioner.

47. In 1997, the Government decided that the licence fees should be increased by 3 phases to achieve full recovery of costs. In January 2007, the second phase was implemented. The Amendment Regulation implements the last phase by increasing the licence fee from \$1,090 to \$1,530 and the permit fee by from \$700 to \$950 to achieve full cost recovery.

48. The Customs and Excise Department has informed the trade of the increases and has received no adverse comments.

L.N. 127

49. The fee for the issue of a temporary liquor licence is prescribed in item 6 of Part 2 of the Schedule to the Dutiable Commodities Regulations (Cap. 109 sub. leg. A). By L.N. 127, the fee is increased from \$335 to 385.

L.N. 128

50. L.N. 128 amends the Second Schedule to the Firearms and Ammunition Regulation (Cap. 238 sub. leg. A) to increase the nine fees payable for, among other things —

- (a) the grant of an exemption to a person from holding a licence for possessing arms and ammunition;
- (b) the amendment of a licence or condition of a licence; and
- (c) the replacement of a licence or an exemption.

L.N. 129

51. L.N. 129 amends the Schedule to the Firearms and Ammunition (Storage Fees Order (Cap. 238 sub. leg. B) to increase the four fees payable for—

- (a) the storage of arms;
- (b) the storage of imitation firearms;
- (c) the storage of ammunition; and
- (d) the storage of arms and ammunition awaiting transshipment.

L.N. 130

52. L.N. 130 amends Part I to the Second Schedule to the Pawnbrokers Regulations (Cap. 166 sub. leg. A) by increasing the fee payable for the grant or renewal of a licence to a person to carry on business as a pawnbroker from \$3,480 to \$3,810.

L.N. 131

53. L.N. 131 amends Schedule 2 to the Massage Establishments Regulations (Cap. 266 sub. leg. A) to increase the fees payable for the issue (from \$6,410 to \$7,370) or renewal (from \$2,730 to \$3,000) of a licence to operate a massage establishment.

LegCo Brief

54. Members may refer to the LegCo Briefs issued by the Security Bureau in May 2008 (for L.N. 126) and SBCR 4/2801/85 (for L.N. 127 to 131) for further information.

Commencement

55. L.N. 126 shall come into operation on 1 August 2008 whereas L.N. 127 to 131 shall come into operation on 11 July 2008.

Consultation

56. The Panel on Security was consulted on the Administration's proposals to revise the above fees and charges by a paper for circulation on 8 April 2008 (LC Paper No. CB(2)1536/07-08(01)). Members did not raise queries on the proposals.

57. No difficulties relating to the legal and drafting aspects of the Amendment Rules and Order have been identified.

Companies Ordinance (Cap. 32)

Companies Ordinance (Amendment of Eighth Schedule) Order 2008 (L.N. 137)

58. Section 360(3A) of the Companies Ordinance (Cap. 32) (CO) empowers the Financial Secretary, by order published in the Gazette, to amend the table of fees in the Eighth Schedule to the CO. By virtue of section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), the Financial Secretary also means the Secretary for Financial Services and the Treasury.

59. In exercising the power under section 360(3A) of CO, the Secretary for Financial Services and the Treasury has made this Order to introduce a new search fees for the new incorporation forms for local companies upon commencement of the provisions in section 7 of Schedule 2 to the Companies (Amendment) Ordinance 2004.

60. The new search fees for the new incorporation forms for local companies are as follows—

	<u>Registered online users</u>	<u>Unregistered online users</u>	<u>On-site users</u>
For downloading an image record online	\$16	\$18	N/A
For online viewing of an image record	\$21	\$23	N/A
For obtaining a copy of an image record at the Companies Registry	N/A	N/A	\$30

61. Members may refer to LegCo Brief File Ref: C2/1/71(08) issued by the Financial Services Branch and Financial Services and the Treasury Bureau in May 2008 for background information.

62. According to paragraph 8 of the LegCo Brief, the Companies Registry has consulted various stakeholders who expressed general support for the new search fees for the new incorporation forms for local companies.

63. The Administration briefed the Financial Affairs Panel on the Order at the meeting held on 8 April 2008. The Panel had no objection to the Order.

64. The Order will come into operation on 11 July 2008 to tie in with the completion of the necessary modifications to the Companies Registry's information system.

65. No difficulties have been identified in relation to the legal or drafting aspects of L.N. 137.

PART V ENVIRONMENTAL PROTECTION AND CONSERVATION

Air Pollution Control Ordinance (Cap. 311)

Air Pollution Control (Fuel Restriction) (Amendment) Regulation 2008 (L.N. 123)

66. The Amendment Regulation is made by the Secretary for Environment under section 43 of the Air Pollution Control Ordinance (Cap. 311) (the principal Ordinance) to amend the Air Pollution Control (Fuel Restriction) Regulations (Cap. 311 sub. leg. I) (the principal Regulation) to control, among other things, the emission of sulphur dioxide.

67. To further reduce air pollution, the Amendment Regulation prohibits the use of liquid or solid fuel in the relevant plant⁹ in certain areas¹⁰, subject to exceptions.

68. In relation to relevant plants outside those areas, liquid fuel with a sulphur content of no more than 0.005% by weight or a viscosity of more than 6 centistokes at 40% (i.e. restricted liquid fuel) may be used at any relevant plant when the plant has been issued with a certificate of compliance by a competent examiner certifying that, among other things, the level of pollutants emitted from the relevant plant does not exceed the specified emission limits set out in Schedule 1 to the principal Regulation as amended by the Amendment Regulation.

69. The Amendment Regulation makes it an offence for a competent examiner to give certification on the relevant plant if the competent examiner has not carried out certain tests required or the certificate contains any statement or information which he knows or reasonably ought to know to be false or misleading in a material particular. The competent examiner is liable to a fine of \$50,000 upon first conviction, and a fine of \$50,000 and three months imprisonment upon subsequent conviction.

70. The Amendment Regulation also sets out the continuing duties that fuel users and owners of relevant plants are required to carry out for using restricted liquid fuel in relevant plants. Such duties include the keeping of a certificate of compliance and the production to an officer of the Air Pollution Control Authority such certificate for inspection. An owner who fails to keep and to produce the certificate commits an offence and is liable to a fine of \$50,000 upon the first conviction, and to a fine of \$50,000 and imprisonment of 3 months upon a subsequent conviction.

⁹ "Relevant plant" is defined in section 2 of the principal Ordinance as "furnace, engine, oven or industrial plant".

¹⁰ Under regulations 2 and 4 of the Air Pollution (Fuel Restriction) Regulations (Cap. 311 sub. leg. I), certain area in Sha Tin has been delineated as fuel restriction area where use of certain fuel is prohibited.

71. The proposal to mandate the use of ultra low sulphur diesel in industrial and commercial processes and to allow the use of other fuels and technologies as an alternative means to reduce emissions was discussed by the Panel on Environmental Affairs at its meeting on 17 December 2007. While not opposing to the proposal, some members were concerned that the proposal was not applicable to merchant ships and vessels. They also emphasized the need for the Administration to consult the trades and relevant stakeholders on the proposal. According to the Administration, a working group had been set up by the Transport and Housing Bureau, Marine Department and Environmental Protection Department to study the control of emissions from marine vessels. At members' request, information on the working group, including its membership, role and progress of work has been provided to the Panel vide LC Paper No. CB(1)1008/07-08(01).

72. Members may refer to the LegCo Brief issued by the Environmental Protection Department in May 2008 for further information.

73. The Amendment Regulation shall come into operation on 1 October 2008.

74. No difficulties relating to the legal and drafting aspects of the Amendment Regulation have been identified.

Antiquities and Monuments Ordinance (Cap. 53)

Antiquities and Monuments (Declaration of Historical buildings) Notice 2008 (L.N. 135)

75. The Notice is made by the Secretary for Development under section 3(1) of the Antiquities and Monuments Ordinance (Cap. 53) after consultation with the Antiquities Advisory Board and with the approval of the Chief Executive to declare that certain buildings and the adjoining land situated within the Maryknoll Convent School at No. 5 Ho Tung Road and No. 130 Waterloo Road, Kowloon, as historical buildings. The effect of the Notice is that no person shall excavate in, demolish or interfere with the buildings except in accordance with a permit granted by the Authority.

76. The Notice has come into operation on 16 May 2008.

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

Noise Control Ordinance (Cap. 400)

Noise Control (Construction Work Designated Areas) (Amendment) Notice 2008 (L.N. 136)

78. The Amendment Notice is made by the Secretary for the Environment under section 8A(1) of the Noise Control Ordinance (Cap. 400) (the principal Ordinance) to establish new designated areas for the purposes of the principal Ordinance and updates the list of designated areas in the Schedule to the Noise Control (Construction Work Designated Areas) Notice (Cap. 400 sub. leg. L).

79. Under the principal Ordinance, construction works using powered mechanical equipment can be carried out between 7 pm and 7 am (restricted hours) or at any time on a general holiday only with a valid construction noise permit (CNP). For CNP applications to conduct construction works using any specified powered mechanical equipment in the designated area, the noise limit will be 15dB(A) more stringent than those in non-designated areas. For prescribed construction work conducted during the restricted hours in the designated areas with CNP, quiet construction methods or substantial barriers are required.

80. The designated areas were first established in 2001. In view of the development in Hong Kong since 2001, the Administration considered it appropriate to further expand the coverage of the designated areas to include newly developed populated built-up areas¹¹. The community in the new designated areas will be subject to the same protection against construction noise under the principal Ordinance as those in the existing designated areas.

81. According to the Administration, the trades concerned have been consulted and they are generally supportive of the present amendments. Certain trades have expressed their concerns on various aspects including the methodology and demarcation for the designated areas, the impact on ongoing construction works, etc. The Advisory Council on the Environment was consulted on 14 February 2008 and supported the proposal.

82. The proposal to update and extend the coverage of "Designated Areas" under the principal Ordinance was discussed by the Panel on Environmental Affairs at its meeting on 18 March 2008. There was no objection to the proposal. Members however noted with concern that the general public had not been consulted on the proposal. To this end, the Administration had undertaken that public consultation would be conducted after the relevant subsidiary legislation came into effect. Public views would be taken into account in the next (usually annual) update of the coverage of "Designated Areas".

¹¹ Such areas include certain areas of Hong Kong Island, Lamma Island, Kowloon West, Kwai Chung, Tsuen Wan, Kowloon East, Tseung Kwan O, Yuen Long, Tin Shui Wai, Mai Po, Shek Kwong, Kwu Tung, Tai Po, Sheung Shui, and Sha Tau Kok.

83. Members may refer to the LegCo Brief issued by the Environmental Protection Department in May 2008 for further information.

84. The Amendment Notice shall come into operation on 1 January 2009.

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

PART VI MISCELLANEOUS

Telecommunications Ordinance (Cap. 106)

Telecommunications (Carrier Licences) (Amendment) Regulation 2008 (L.N. 132)

Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) (Amendment) Regulation 2008 (L.N. 133)

86. L.N. 132 is made by the Secretary for Commerce and Economic Development (the Secretary) under section 7(2) of the Telecommunications Ordinance (Cap. 106) (principal Ordinance) to amend the Telecommunications (Carrier Licences) Regulation (Cap. 106 sub. leg. V) to introduce a new type of carrier licence, namely, a unified carrier licence (UCL) and to make provisions for—

- (a) the period of validity of the licence, including those issued on the surrender of the relevant licence defined in the amendment Regulation;
- (b) the fees payable for a unified carrier licence and the time for payment;
- (c) the interpretation of certain terms used in the carrier licences.

87. L.N. 133 is made by the Secretary under section 32I of the principal Ordinance to make amendments to the Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) Regulation (Cap. 106 sub. leg. AA) consequential to the making of L.N. 132 on the spectrum utilization fees under a unified carrier licence.

88. At the meeting of the Information Technology and Broadcasting Panel held on 13 May 2008, the Administration briefed members on the outcome of the public consultations on the proposed creation of UCL under the principal Ordinance and the legislative proposal to introduce the new type of carrier licence. While some members supported in principle the Administration's legislative proposal, some other members expressed concern about the proposed number fee and the divergent views among industry players.

89. No LegCo Brief has been issued for L.N. 132 and L.N. 133. Members may refer to the paper issued by the Commerce and Economic Development Bureau and the Office of the Telecommunication Authority to the Information Technology and Broadcasting Panel in May 2008 (LC Paper No. CB(1)1456/07-08(06)) for further information.

90. L.N. 132 and 133 shall come into operation on 1 August 2008

91. No difficulties relating to the legal and drafting aspects of L.N. 132 and L.N. 133 have been identified.

Registration of Persons Ordinance (Cap. 177)

Registration of Persons (Invalidation of Identity Cards) Order 2008 (L.N. 134)

92. The Commissioner of Registration has appointed 23 June 2003 as the date on which Smart Identity Cards may be issued on or after that date. The replacement exercise has been completed in March 2007. The Secretary for Security has made orders in May 2006, September 2006 and May 2007 respectively to declare Identity Cards issued to holders born between and including 1943 and 1979 to be invalid.

93. The Order was made by the Secretary for Security under section 7C of the Registration of Persons Ordinance (Cap. 177) to declare that Identity Cards—

- (a) issued before 23 June 2003 or issued on or after that date as a result of an application made before that date; and
- (b) bearing a date of birth in any year before or in 1942, or in any year in 1980 up to 2003,

shall cease to be valid on 30 November 2008.

94. The Order shall come into operation on 10 July 2008.

95. Members may refer to the LegCo Brief issued by the Security Bureau on 14 May 2008 for further information.

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

PART VII COMMENCEMENT NOTICES

Companies (Amendment) Ordinance 2003 (28 of 2003)

Companies (Amendment) Ordinance 2003 (Commencement) Notice 2008 (L.N. 138)

97. The Secretary for Financial Services and the Treasury appoints 11 July 2008 as the date on which section 67 of the Companies (Amendment) Ordinance 2003 (28 of 2003) (the Amendment Ordinance) will come into operation.

98. The Amendment Ordinance contains amendments to the Companies Ordinance (Cap. 32) (CO) in relation to prospectuses, group accounts, overseas companies and shareholders' remedies.

99. Section 67 of the Amendment Ordinance amends section 158C of the CO to require the Registrar of Companies to keep an index of directors. The provision can only be implemented after the completion of the necessary enhancements to the Companies Registry's Integrated Companies Registry Information System (ICRIS). According to the Administration, the ICRIS is now ready.

100. Other provisions of the Amendment Ordinance have already come into operation.

Companies (Amendment) Ordinance 2004 (30 of 2004)

Companies (Amendment) Ordinance 2004 (Commencement) Notice 2008 (L.N. 139)

101. The Secretary for Financial Services and the Treasury appoints 11 July 2008 as the date on which certain provisions of the Companies (Amendment) Ordinance 2004 (30 of 2004) (the Amendment Ordinance) will come into operation.

102. The Amendment Ordinance introduces, among other things, new terms of "subsidiary undertaking", "parent company" and "parent undertaking".

103. The provisions which will come into operation are related to introduction of incorporation forms for local companies. Those provisions can only be implemented after the completion of the necessary enhancements to the Companies Registry's Integrated Companies Registry Information System (ICRIS). The ICRIS is now ready.

104. Other provisions of the Amendment Ordinance have already come into operation.

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 2008 (L.N. 140)

105. The Secretary for Labour and Welfare appoints 1 September 2008 as the date on which certain provisions of the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006 (16 of 2006) (the Amendment Ordinance) will come into operation.

106. The Amendment Ordinance amends the Employment Ordinance (Cap. 57), the Employees' Compensation Ordinance (Cap. 282) and the Pneumoconiosis (Compensation) Ordinance (Cap. 360) to, among other things, provide for the recognition of certification in various forms given by, and medical examination and treatment conducted or given by, a registered Chinese medicine practitioner for the purposes of entitlement to certain employee benefits under those Ordinances.

107. The provisions which will come into operation relate to amendments to the Employees' Compensation Ordinance and the Pneumoconiosis (Compensation) Ordinance, except for the provisions on an employer's liability to pay cost of medicine relating to any proprietary Chinese medicine under the Employees' Compensation Ordinance and a person's entitlement to cost of medicine relating to any proprietary Chinese medicine under the Pneumoconiosis (Compensation) Ordinance. Other provisions of the Amendment Ordinance have commenced operation under the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006 (Commencement) Notice 2006 (L.N. 203 of 2006).

Copyright (Amendment) Ordinance 2007 (15 of 2007)
Copyright (Amendment) Ordinance 2007 (Commencement) (No. 3) Notice 2008 (L.N. 141)
Copyright (Amendment) Ordinance 2007 (15 of 2007)
Copyright (Amendment) Ordinance 2007 (Commencement) (No. 4) Notice 2008 (L.N. 142)

108. In L.N. 141, the Secretary for Commerce and Economic Development (the Secretary) appoints 11 July 2008 as the date on which sections 68 and 69 (insofar as they are related to act of circumvention) of the Copyright (Amendment) Ordinance 2007 (15 of 2007) (the Amendment Ordinance) will come into operation.

109. In L.N. 142, the Secretary appoints 11 July 2008 as the date on which section 31(5) (relating to directors' or partners' liability in relation to "possession offence" of business end-user) of the Amendment Ordinance will come into operation.

110. Upon enquiry by the Legal Service Division, the Administration has explained that the reasons for having two separate Commencement Notices (i.e. L.N. 141 and L.N. 142) instead of one are as follows. The Administration has consulted some LegCo Members as regards the commencement of the relevant provisions (i.e. those related to act of circumvention and the directors' or partners' liability in relation to the "possession offence") and some of the feedbacks relating to the directors' or partners' liability in relation to the "possession offence" were only available on the day when the Administration was about to publish the Commencement Notices in the gazette. To ensure that the commencement of the relevant provisions would not be affected by the consultation process, the Administration had separated the Commencement Notices into two. The Administration also explained that separation would also have an added merit of allowing Members to scrutinise the provisions in a more focused manner.

111. At the meeting of the Panel on Commerce and Industry held on 19 February 2008, the Administration briefed members on the publicity and public education activities conducted by the Administration following the enactment of the Amendment Ordinance, proposed "Safe Harbour" Regulation in relation to the new business end-user copying and distribution offence, the First List of Exceptions on Act of Circumvention, the commencement timetable for provisions that were yet to come into operation, and its response to views expressed by the industry on rental rights for films. The Panel was in principle supportive of the Administration's proposed commencement timetable for the provisions under the Amendment Ordinance that were yet to come into operation.

**Mandatory Provident Fund Schemes (Amendment) Ordinance 2008 (1 of 2008)
Mandatory Provident Fund Schemes (Amendment) Ordinance 2008
(Commencement) Notice (L.N. 143)**

112. The Secretary for Financial Services and the Treasury appoints 1 November 2008 as the date on which certain provisions (which are related to unclaimed benefits treatment, definition of relevant income and recovery of arrears) of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2008 (1 of 2008) (the Amendment Ordinance) will come into operation.

113. The Amendment Ordinance amends the Principal Ordinance to, among other things, enhance the enforcement of the Mandatory Provident Fund System.

114. In the course of scrutiny, the Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2007 noted that employers and the trustees industry had requested to be given sufficient lead time to implement changes to their systems and procedures so as to comply with the new legislative requirements, such as the computation of relevant income and the treatment of unclaimed benefits. To enable the parties concerned to make the necessary preparation, the Administration agreed to defer the commencement of relevant provisions of the Bill. The Bills Committee had no objection to the arrangement. For details, please refer to paragraphs 37 and 38 of the Report of the Bills Committee (LC Paper No. CB(1)470/07-08).

115. Other provisions of the Amendment Ordinance have already come into operation upon gazettal of the Amendment Ordinance.

116. No difficulties have been identified in relation to the legal or drafting aspects of L.N. 138 to L.N. 143.

Encl

Prepared by

Arthur CHEUNG Ping-kam (L.N. 119 and L.N. 120)

Senior Assistant Legal Adviser

LEE Ka-yun, Kelvin (L.N. 116 to L.N. 118, L.N. 121 to L.N. 123 and L.N. 126 to
L.N. 136)

LAM Ping-man, Stephen (L.N. 124 and 125 and L.N. 137 to L.N. 143)

Assistant Legal Advisers

Legislative Council Secretariat

22 May 2008

Summary of key changes – Amendment Regulation on Barrier Free Access

(19.5.2008)

Third Schedule / Section		Provisions for Physical Impairment	Provisions for Hearing Impairment	Provisions for Visual Impairment
PART 1 Interpretation	S1	<ul style="list-style-type: none"> ● A new term “accessible” is introduced. ● “Persons with ambulant disabilities” is introduced. ● “Wheelchair users” is introduced 	“Assistive listening system” is introduced.	
PART 2 Division 1 Auditorium and related facilities	<ul style="list-style-type: none"> ● S2 ● S4(8) ● S6 	<ul style="list-style-type: none"> ● New obligatory design requirement on access to auditoriums, stages, backstage facilities, changing rooms, rehearsal rooms, dressing rooms, rest rooms, toilets and shower rooms is added. ● Removable seats can be installed when wheelchair spaces are not occupied. 	Nil	New obligatory design requirements of tactile warning strips and Braille and tactile maps are added. (S6)
Division 2 Hotels, hostels and guesthouses	S7 + Division 12	New obligatory design requirements for bathroom and shower facilities to accessible guest room are introduced.	Nil	Nil
Division 3 Carparks	S8 to S10	Detailed requirements for accessible carparks in terms of number, size, signage and size of loading / unloading area have been introduced.	Nil	Nil
Division 4 Access route	<ul style="list-style-type: none"> ● S11(3) ● S12(1) 	<ul style="list-style-type: none"> ● Alternative vehicular access from lot boundary is introduced to cater for sloping site or steep road. ● Minimum clear access route requirement of 1050mm and free from barriers are added. 	Nil	Detailed requirements of tactile tiles / blocks are provided. (Fig 4 of PART 3)
Division 5 Ramps	● S17	● A ramp at 1:10 or 1:8 in gradient is to be accepted for minor rises of 150mm and 75mm respectively.	Nil	Nil
Division 6 Dropped kerbs	<ul style="list-style-type: none"> ● S21(c) ● S22 + 23 	<ul style="list-style-type: none"> ● Maximum gradient changed from 1:6 to 1:10. ● The recommended design requirements of DM 1997 on location of dropped kerb and avoidance of raised traction strip have been moved to mandatory section. 	Nil	Nil
Division 7 Steps and staircases	<ul style="list-style-type: none"> ● S25(7) ● S25(1)(b) & (5)(b) 	<ul style="list-style-type: none"> ● The provision of handrails should be on both sides instead of at least one side previously. ● The requirements for external steps & stairs are introduced. 	Nil	Requirements of tactile warning strips at landings in PNAP 247 have been incorporated in the mandatory section. (Fig 6 of PART 3)
Division 8 Handrails	<ul style="list-style-type: none"> ● S28(4) ● S30 	Maximum diameter of handrails relaxed from 40mm to 50mm.	Nil	Braille and tactile information shall be provided.
Division 9 Corridors, lobbies and paths	<ul style="list-style-type: none"> ● S33 ● S36 	<ul style="list-style-type: none"> ● The requirements for gratings are added. ● The requirements for headroom are added. 	Nil	Nil
Division 10 Doors	<ul style="list-style-type: none"> ● S38 ● S39(1)(a) ● S42(a) ● S45 	<ul style="list-style-type: none"> ● Door width increased from 750mm to 800mm. ● Unobstructed area adjacent to the door handle adjusted from 380mm to 330mm. ● Door threshold reduced from 25mm to 20mm high. 	Nil	Location of the marking on frameless glass doors is added. (S44)

		<ul style="list-style-type: none"> ● New requirement on automatic main entrance door to one of the common main entrances of some buildings. 		
Division 11 Toilets & W.C. cubicles	<ul style="list-style-type: none"> ● S47 ● S49(2) ● S55 	<ul style="list-style-type: none"> ● Accessible unisex toilet is introduced. ● New requirement clear manoeuvring space of 1.5m x 1.5m measured at 350mm level within the accessible water closet cubicle is introduced. ● The requirement of urinal is added. 	Nil	Nil
Division 12 Bathrooms and shower compartments	S56 to S63	A new section on bathrooms and shower compartments with requirements of bathtubs, faucets and controls, shower heads, shower stalls grab rails, thresholds and shower seats is introduced.	Nil	Nil
Division 13 Signs	S64 to S68	The requirements of international symbol are elaborated. (S64)	<ul style="list-style-type: none"> ● Requirements of sign for persons with hearing impairment are added. (S67) ● Special obligatory design requirements to assist person with hearing impairment enhanced. (Division 14) 	<ul style="list-style-type: none"> ● Braille and tactile requirements are added. (S68) ● Special obligatory design requirements to assist person with visual impairment enhanced. (Division 14)
Division 15 Public information / service counters	S70 & S71	More detailed requirements for service / information counters are incorporated.	At least one information/service counter is provided with an assistive listening system for noisy background or screened counter.	Nil
Division 16 Illumination	S72 to S74	Nil	Nil	New obligatory requirements of 85/120 lux at various locations of an accessible building are introduced.
Division 17 Emergency call bells in accessible toilets	S75 to S76	Emergency call bell relocated and with detailed requirements.	Nil	Nil
Division 18 Assistive listening systems	S77	Nil	The term “assistive listening system” is introduced and covers the current “induction loop system”.	Nil
Division 19 Lifts	<ul style="list-style-type: none"> ● S78(1)(b) & (2)(b) ● S78(2)(a) 	<ul style="list-style-type: none"> ● Clear door width increased from 750mm to 850mm. ● A larger disabled lift required where there are more than 3 lifts. 	Nil	<ul style="list-style-type: none"> ● New requirements of audible signals to signify door closing. (S79(2)) ● More detailed requirements for lift button. (location, Braille etc) (S80) ● Putonghua has been added to signify the stopping floor in addition to Cantonese and English. (S82(3))
Division 20 Escalators and passenger conveyors	S85 & Fig 8 of PART 3	Nil	Nil	New requirement of tactile warning strips at top and bottom of escalator is added.
Division 21 Extent of application of additional assistive provisions	S86	Extent of application is introduced in the form of a table for various uses of buildings.		

PART 4		Buildings with limited application and exempted areas pursuant to Building (Planning) Regulation 72 are covered in this part. All types of buildings are covered.
--------	--	---