

立法會
Legislative Council

LC Paper No. LS25/08-09

**Paper for the House Committee Meeting
on 2 January 2009**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 12 December 2008**

Date of tabling in LegCo : 17 December 2008

Amendment to be made by : 14 January 2009 (or 4 February 2009 if extended by resolution)

PART I RATE OF INTEREST ON LIMITATION FUNDS

**Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434)
Merchant Shipping (Limitation of Shipowners Liability) (Rate of Interest)
(Amendment) (No. 3) Order 2008 (L.N. 261)**

The Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434) provides that the Convention on Limitation of Liability for Maritime Claims, 1976 (the Convention) shall have the force of law in Hong Kong. Under Article 11 of the Convention, a shipowner or salvor alleged to be liable may constitute a fund with the court or other competent authority. The fund comprises of the amounts set out in the Convention together with interest from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Section 19(1) of the Ordinance empowers the Monetary Authority to prescribe from time to time the rate of interest to be applied to such a fund.

2. By this Order, a new rate of interest applicable to the limitation funds on or after 12 December 2008 is prescribed at 5.2%. The rate of interest applicable to the limitation funds before 12 December 2008 was 5.88%.

3. Members may wish to refer to the LegCo Brief dated 12 December 2008 and issued by the Financial Services and the Treasury Bureau for background information. Neither the public nor the Legislative Council has been consulted on the Order.

PART II PUBLIC HEALTH AND MUNICIPAL SERVICES

**Public Health and Municipal Services Ordinance (Cap. 132)
Public Health and Municipal Services (Setting Aside Places for Use as Public
Pleasure Grounds and Cessation of Setting Aside Places for Use as Public
Pleasure Grounds) (No. 2) Order 2008 (L.N. 262)**

Public Health and Municipal Services Ordinance (Amendment of Fourth Schedule) (No. 3) Order 2008 (L.N. 263)

4. L.N. 262 sets aside the 35 places specified in Schedule 1 to the Order for use as public pleasure grounds, and provides that the two places specified in Schedule 2 to the Order cease to be set aside for use as public pleasure grounds. Under section 107 of the Public Health and Municipal Services Ordinance (Cap. 132), the general control and management of these places so set aside are vested in the Director of Leisure and Cultural Services.

5. L.N. 263 amends the Fourth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132) in order to -

- (a) update the list of public pleasure grounds; and
- (b) rename -
 - (i) "Stanley Waterfront Playground" as "Stanley Promenade"; and
 - (ii) "Tai Wo Hau Road Park" as "Kwai Chung San Kui Park".

6. The above two items of subsidiary legislation came into operation on the date of publication in the Gazette, i.e. 12 December 2008.

7. Members may refer to the LegCo Brief (File Ref: (47) in LCS 19/HQ 813/00(11)) issued by the Leisure and Cultural Services Department on 11 December 2008 for background information. According to the LegCo Brief, the respective District Councils have been consulted on the proposals on the addition, deletion and renaming of the relevant public pleasure grounds, and the District Councils supported the proposals.

PART III COMMENCEMENT NOTICES

Trade Descriptions (Amendment) Ordinance 2008 (19 of 2008)

Trade Descriptions (Amendment) Ordinance 2008 (Commencement) Notice (L.N. 264)

Trade Descriptions (Definition of Fei Cui and Natural Fei Cui) Regulation (L.N. 42 of 2008)

Trade Descriptions (Definition of Fei Cui and Natural Fei Cui) Regulation (Commencement) Notice (L.N. 265)

Trade Descriptions (Definition of Diamond) Regulation (L.N. 43 of 2008)

Trade Descriptions (Definition of Diamond) Regulation (Commencement) Notice (L.N. 266)

Trade Descriptions (Provision of Information on Natural Fei Cui) Order (L.N. 79 of 2008)

Trade Descriptions (Provision of Information on Natural Fei Cui) Order (Commencement) Notice (L.N. 267)

Trade Descriptions (Provision of Information on Diamond) Order (L.N. 80 of 2008)

Trade Descriptions (Provision of Information on Diamond) Order (Commencement) Notice (L.N. 268)

Trade Descriptions (Provision of Information on Regulated Electronic Products) Order (L.N. 81 of 2008)

Trade Descriptions (Provision of Information on Regulated Electronic Products) Order (Commencement) Notice (L.N. 269)

Trade Descriptions (Marking) (Gold and Gold Alloy) (Amendment) Order 2008 (L.N. 82 of 2008)

Trade Descriptions (Marking) (Gold and Gold Alloy) (Amendment) Order 2008 (Commencement) Notice (L.N. 270)

Trade Descriptions (Marking) (Platinum) (Amendment) Order 2008 (L.N. 83 of 2008)

Trade Descriptions (Marking) (Platinum) (Amendment) Order 2008 (Commencement) Notice (L.N. 271)

Trade Descriptions (Definition of Platinum) (Amendment) Regulation 2008 (L.N. 84 of 2008)

Trade Descriptions (Definition of Platinum) (Amendment) Regulation 2008 (Commencement) Notice (L.N. 272)

L.N. 264

8. By L.N. 264, the Secretary for Commerce and Economic Development has appointed 2 March 2009 as the day on which the Trade Description (Amendment) Ordinance 2008 (19 of 2008) (the Amendment Ordinance) shall come into operation.

9. The Trade Descriptions (Amendment) Bill 2007 had been scrutinized by a Bills Committee and members may wish to refer to the report of the Bills Committee (LC Paper No. CB(1)1738/07-08) for further information. The Amendment Ordinance (a) expands the original definition of "trade description" to include certain matters relating to the warranty and after-sale repair and maintenance service for goods, (b) adds three new offences prohibiting retailers from giving misleading price indications and making false or misleading representations to deceive consumers and (c) aligns the level of penalties for the new offences with existing provisions.

L.N. 265 to L.N. 272

10. By L.N. 265 to 272, the Secretary for Commerce and Economic Development has appointed 2 March 2009 as the day on which the Trade Descriptions

(Definition of Fei Cui and Natural Fei Cui) Regulation (L.N. 42 of 2008), Trade Descriptions (Definition of Diamond) Regulation (L.N. 43 of 2008), Trade Descriptions (Provision of Information on Natural Fei Cui) Order (L.N. 79 of 2008), Trade Descriptions (Provision of Information on Diamond) Order (L.N. 80 of 2008), Trade Descriptions (Provision of Information on Regulated Electronic Products) Order (L.N. 81 of 2008), Trade Descriptions (Marking) (Gold and Gold Alloy) (Amendment) Order 2008 (L.N. 82 of 2008), Trade Descriptions (Marking) (Platinum) (Amendment) Order 2008 (L.N. 83 of 2008) and Trade Descriptions (Definition of Platinum) (Amendment) Regulation 2008 (L.N. 84 of 2008) shall come into operation.

11. The Trade Descriptions (Definition of Fei Cui and Natural Fei Cui) Regulation and the Trade Descriptions (Definition of Diamond) Regulations were tabled at the LegCo meeting on 5 March 2008. No Subcommittee has been formed to study these two Regulations. They define the expression of "fei cui" (and the expression "natural" when used to describe fei cui in the course of any trade or business) and "diamond" respectively.

12. Trade Descriptions (Provision of Information on Natural Fei Cui) Order (L.N. 79 of 2008), Trade Descriptions (Provision of Information on Diamond) Order (L.N. 80 of 2008), Trade Descriptions (Provision of Information on Regulated Electronic Products) Order (L.N. 81 of 2008), Trade Descriptions (Marking) (Gold and Gold Alloy) (Amendment) Order 2008 (L.N. 82 of 2008), Trade Descriptions (Marking) (Platinum) (Amendment) Order 2008 (L.N. 83 of 2008) and Trade Descriptions (Definition of Platinum) (Amendment) Regulation 2008 (L.N. 84 of 2008), have been scrutinized by a Subcommittee. Members may wish to refer to the report of the Subcommittee to the House Committee (LC Paper No. CB(1)1665/07-08).

13. The first five items of the Legal Notices referred to in the last paragraph require retailers of articles of natural fei cui, diamond, gold or gold alloy, platinum or platinum alloy and five types of regulated electronic products (i.e. digital audio player, digital camcorder, digital camera, mobile phone and portable multimedia player) to issue to consumers invoices or receipts containing specified information and product description and to retain a copy of such invoice or receipt for a period of not less than three years. The retailers are also required to display prominently at the point of supply prescribed notices informing customers respectively of the definitions of natural fei cui, diamond, gold, gold alloy, platinum or platinum alloy and the supplier's obligation to issue a detailed invoice or receipt.

14. Trade Descriptions (Definition of Platinum) (Amendment) Regulation 2008 (L.N. 84 of 2008) assigns definition to the expression "platinum" used in relation to any goods in the course of trade or business.

15. With a view to improving the clarity of the first five items of the Legal Notices referred to in paragraph 12 and facilitating retailer's compliance, the Administration had, with the support of the Subcommittee, proposed to make certain technical and drafting amendments to such items. The relevant resolutions for the amendments were passed at the meeting of the Legislative Council on 11 June 2008 and published in the Gazette on 13 June 2008.

16. At the meeting of the Panel on Economic Development on 24 November 2008, the Administration briefed the Panel on the implementation of the Trade Descriptions (Amendment) Ordinance 2008 and the above eight pieces of subsidiary legislation. Panel members were generally supportive of the new provisions.

Allowances to Jurors (Amendment) Order 2008 (L.N. 240 of 2008)

Allowances to Jurors (Amendment) Order 2008 (Commencement) Notice (L.N. 273)

17. By L.N. 273 the Chief Justice has appointed 19 January 2009 as the day on which the Allowances to Jurors (Amendment) Order 2008 (L.N. 240 of 2008) (the Amendment Order) shall come into operation. The Amendment Order increases the rate of allowance that shall be paid to a juror, and the maximum rate of addition allowance that may be paid to a juror, in criminal or civil cases or in Coroner's inquests.

Criminal Procedure (Witnesses' Allowances) (Amendment) Rules 2008 (L.N. 258 of 2008)

Criminal Procedure (Witnesses' Allowances) (Amendment) Rules 2008 (Commencement) Notice (L.N. 274)

Coroners (Witnesses' Allowances) (Amendment) Rules 2008 (L.N. 260 of 2008)

Coroners (Witnesses' Allowances) (Amendment) Rules 2008 (Commencement) Notice (L.N. 275)

18. By L.N. 274 and L.N. 275 the Chief Justice has appointed 19 January 2009 as the day on which the Criminal Procedure (Witnesses' Allowances) (Amendment) Rules 2008 (L.N. 258 of 2008) and the Coroners (Witnesses' Allowances) (Amendment) Rules 2008 (L.N. 260 of 2008) (the Amendment Rules) shall come into operation. The Amendment Rules increase the maximum rate of allowances that may be allowed in respect of professional or expert witnesses, and witnesses (other than professional or expert witness), in criminal proceedings and Coroner's inquests. The relevant resolution on the Amendment Rules was passed at the meeting of the Legislative Council on 3 December 2008.

PART IV LEGAL NOTICES NOT REQUIRED TO BE TABLED AND NOT SUBJECT TO AMENDMENT

United Nations Sanctions Ordinance (Cap. 537)

United Nations Sanctions (Côte d'Ivoire) (No. 2) Regulation 2008 (L.N. 276)

19. The Regulation was made by the Chief Executive on the instruction of the Ministry of Foreign Affairs of the People's Republic of China issued in November 2008 and after consultation with the Executive Council to give effect to certain decisions of the Security Council of the United Nations (UNSC) in Resolution 1842 (2008) as adopted by UNSC on 29 October 2008.

20. The Regulation provides for implementation of the following sanctions imposed by UNSC -

- (a) prohibition against any unauthorised supply, delivery, and carriage of arms or related materials to Côte d'Ivoire;
- (b) prohibition against the provision of advice, assistance or training related to military activities to certain persons;
- (c) prohibition against making available any funds, other financial assets or economic resources to or for the benefit of certain persons or entities;
- (d) prohibition against importation of rough diamonds from Côte d'Ivoire into Hong Kong Special Administrative Region; and
- (e) prohibition against entry into or transit through Hong Kong Special Administrative Region of certain persons or entities specified by the Chief Executive under section 31 of the Regulation by notice published in the Gazette.

21. The Regulation came into effect on 12 December 2008 and will expire at midnight on 31 October 2009.

22. The Panel on Commerce and Industry has not been consulted on the Regulation. Members may refer to the information paper issued by the Commerce and Economic Development Bureau in December 2008 to the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions (the Subcommittee) on the Côte d'Ivoire (No. 2) Regulation (LC Paper No. CB(1)418/08-09(01)).

23. Under section 3(5) of the United Nations Sanctions Ordinance (Cap. 537) (the principal Ordinance), sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to regulations made under the principal Ordinance. Therefore, the Regulation is not subject to amendment by the Legislative Council. However, since the Regulation comes within the terms of reference of the Subcommittee, Members may consider referring it to the Subcommittee for its consideration.

Concluding Observation

24. No difficulties have been observed in the legal or drafting aspects of the above items of subsidiary legislation.

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