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**Paper for the House Committee Meeting
on 10 July 2009**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 3 July 2009**

Date of tabling in LegCo : 8 July 2009

Amendment to be made by : 21 October 2009 (or 11 November 2009 if extended by resolution)

PART I SCHEDULE OF ROUTES OF PUBLIC BUSES

Background

Under section 5(1) of the Public Bus Services Ordinance (Cap. 230) (the Ordinance), the Chief Executive in Council may grant to the existing franchised public bus companies the right to operate public bus service on such routes as specified by order. To meet the changing transport needs of the community, section 15(1) of the Ordinance provides that the Commissioner for Transport may, after consultation with bus companies, require them to introduce new routes and make alternations to specified routes on a temporary basis. Such changes may take effect for a period up to 24 months unless they are specified in orders made by the Chief Executive in Council under section 5(1).

2. The existing orders were made by the Chief Executive in Council in February 2008 formalising changes to bus routes up to 2 December 2007. L.N. 150 to L.N. 155 are made to enable the service changes introduced between 3 December 2007 and 31 March 2009 to continue to take effect.

3. Members may wish to refer to the LegCo Brief (File Ref: THB(T)L 2/4/115) issued by the Transport and Housing Bureau in June 2009 for background information.

Public Bus Services Ordinance (Cap. 230)
Schedule of Routes (Citybus Limited) Order 2009 (L.N. 150)

4. L.N. 150 repeals the Schedule of Routes (Citybus Limited) Order 2008 (L.N. 36 of 2008) 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 its franchise for Hong Kong Island and cross-harbour bus services, Citybus Limited cancelled two routes and made alterations to 20 routes.

Public Bus Services Ordinance (Cap. 230)
Schedule of Routes (Citybus Limited) (North Lantau and Chek Lap Kok Airport)
Order 2009 (L.N. 151)

5. L.N. 151 repeals the Schedule of Routes (Citybus Limited) (North Lantau and Chek Lap Kok Airport) Order 2008 (L.N. 37 of 2008) 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, Citybus Limited made alterations to 11 routes.

Public Bus Services Ordinance (Cap. 230)
Schedule of Routes (Kowloon Motor Bus Company (1933) Limited) Order 2009
(L.N. 152)

6. L.N. 152 repeals the Schedule of Routes (Kowloon Motor Bus Company (1933) Limited) Order 2008 (L.N. 38 of 2008) and updates the schedule of bus routes operated by the Kowloon Motor Bus Company (1933) Limited. According to the LegCo Brief, Kowloon Motor Bus Company (1933) Limited cancelled three routes and made alterations to 53 routes.

Public Bus Services Ordinance (Cap. 230)
Schedule of Routes (Long Win Bus Company Limited) Order 2009 (L.N. 153)

7. L.N. 153 repeals the Schedule of Routes (Long Win Bus Company Limited) Order 2008 (L.N. 39 of 2008) and updates the schedule of bus routes operated by the Long Win Company Limited. According to the LegCo Brief, Long Win Bus Company Limited made alterations to 10 routes.

Public Bus Services Ordinance (Cap. 230)
Schedule of Routes (New Lantao Bus Company (1973) Limited) Order 2009
(L.N. 154)

8. L.N. 154 repeals the Schedule of Routes (New Lantao Bus Company (1973) Limited) Order 2008 (L.N. 40 of 2008) and updates the schedule of bus routes operated by the New Lantao Bus Company (1973) Limited. According to the LegCo Brief, New Lantao Bus Company (1973) Limited made alterations to one route.

**Public Bus Services Ordinance (Cap. 230)
Schedule of Routes (New World First Bus Services Limited) Order 2009
(L.N. 155)**

9. L.N. 155 repeals the Schedule of Routes (New World First Bus Services Limited) Order 2008 (L.N. 41 of 2008) and updates the schedule of bus routes operated by the New World First Bus Services Limited. According to the LegCo Brief, New World First Bus Services Limited introduced one new route, cancelled four routes and made alterations to 12 routes.

10. According to the LegCo Brief, the District Councils concerned were consulted on the major changes before the changes were introduced and they generally supported the changes which have been implemented.

11. The Panel on Transport has not been consulted on the Orders.

12. The Orders will come into operation on 1 December 2009.

13. No difficulties have been identified in the legal or drafting aspects of the Orders.

**PART II ELECTORAL MATTERS AND RELATED COMMENCEMENT
NOTICE**

Electoral Affairs Commission Ordinance (Cap. 541)

Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) (Amendment) Regulation 2009 (L.N. 156)

Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) (Amendment) Regulation 2009 (L.N. 157)

Electoral Affairs Commission (Registration of Electors) (Village Representative Election) (Amendment) Regulation 2009 (L.N. 158)

14. The Amendment Regulations in L.N. 156 to L.N. 158 were made by the Electoral Affairs Commission under section 7 of the Electoral Affairs Commission Ordinance (Cap. 541) to make necessary changes to electoral registration arrangements consequential upon the enactment of the Voting by Imprisoned Persons Ordinance (7 of 2009) on 24 June 2009.

15. The Amendment Regulations consist of amendments for the purposes of –

- (a) including into the definition of "principal residential address" a prescribed address used by prisoners who do not maintain a home in

Hong Kong outside the prison for electoral registration purposes under new section 28(1B) of the Legislative Council Ordinance (Cap. 542);

- (b) empowering the Electoral Registration Officer (ERO) to enter the name and principal residential address of an elector on the geographical constituencies omissions list if the ERO is satisfied on reasonable grounds that the elector has used a prescribed address for electoral registration and left the prison without reporting his new residential address to the ERO;
- (c) enabling the ERO to make available for inspection by prisoners or remanded unconvicted persons (persons in custody) a copy of a specific part of the functional constituencies omissions list, the subsector omissions list or the Election Committee omissions list as the ERO considers it appropriate to do so; and
- (d) allowing prisoners or persons in custody to deliver to the office of the ERO a notice of objection to the registration of another person or a notice of claim for his own registration by post instead of in person so that they will not be deprived of the opportunity to lodge an objection or claim.

16. The Amendment Regulations comes into operation on a day to be appointed by the Chairman of the Electoral Affairs Commission by notice published in the Gazette.

17. Members may wish to refer to the LegCo Brief (File Ref: REO 14/32/5(CR)) issued by the Registration and Electoral Office on 2 July 2009 for background and further information.

18. At its meeting on 18 May 2009, the Panel on Constitutional Affairs was consulted on the practical arrangements to facilitate registration of prisoners and persons in custody. During the scrutiny of the Voting by Imprisoned Persons Bill, issues relating to the practical arrangements for prisoners to be registered as electors including the registered addresses of prisoner-electors and inclusion of their names on the omissions lists were discussed.

19. A subcommittee has been formed to consider another set of five Amendment Regulations (gazetted on 19 June 2009) relating to the practical arrangements for voting by the prisoners and persons in custody. At the meeting of the House Committee held on 26 June 2009, members agreed to have these three Amendment Regulations scrutinised by the same Subcommittee. The Legal Service Division is still scrutinising the legal and drafting aspects of the Amendment Regulations and will make a further report if necessary.

Voting by Imprisoned Persons Ordinance (7 of 2009)

Voting by Imprisoned Persons Ordinance (Commencement) Notice 2009 (L.N. 162)

20. By L.N. 162 made under section 2 of the Voting by Imprisoned Persons Ordinance (7 of 2009) (the Ordinance), the Secretary for Constitutional and Mainland Affairs has appointed 3 July 2009 as the day on which sections 1, 2, 5, 6, 7 and 11 of the Ordinance come into operation.

21. Sections 1 and 2 relate to the short title and commencement of the Ordinance. Sections 5 and 6 relate to the address to be used by a prisoner for registration purposes. Sections 7 and 11 repeal the provisions disqualifying prisoners from being registered as electors in the Legislative Council Ordinance (Cap. 542) and the Village Representative Election Ordinance (Cap. 576) respectively.

22. Before the passage of Voting by Imprisoned Persons Bill (the Bill) at the Council meeting on 24 June 2009, the Bill had been scrutinized by a Bills Committee. The Bill contained no commencement clause. During the scrutiny, the Administration proposed to add a commencement clause to the Bill to the effect that the Ordinance shall come into operation on a day to be appointed by the Secretary for Constitutional and Mainland Affairs by notice published in the Gazette. The Bills Committee raised no query on this provision. Members may wish to refer to the report of the Bills Committee (LC Paper No. CB(2)1896/08-09) for further information. Neither the public nor any LegCo Panel has been consulted on the Notice.

23. No difficulties have been identified in the legal or drafting aspects of the Notice.

PART III MISCELLANEOUS

Securities and Futures Ordinance (Cap. 571)

Securities and Futures (Contracts Limits and Reportable Positions) (Amendment) Rules 2009 (L.N. 159)

24. Section 35(1) of the Securities and Futures Ordinance (Cap. 571) provides that the Securities and Futures Commission (the Commission) may prescribe limits on the number of futures contracts that may be held or controlled by any person. It may also prescribe the reportable positions in respect of such contracts. The prescribed limits and reportable positions are set out in Schedule 1 to the Securities and Futures (Contracts Limits and Reportable Positions) Rules (Cap. 571 sub. leg. Y) (the Rules).

25. According to the LegCo Brief, on 20 October 2008, the Hong Kong Futures Exchange Limited, a subsidiary of the Hong Kong Exchanges and Clearing Limited, launched a new futures contract on gold in response to the recommendation of the Government's Economic Summit Report.

26. The Amendment Rules were made by the Commission to amend the Rules by adding the prescribed limit and reportable position (500 open contracts for any one contract month) for a gold futures contract as item 5B to Schedule 1 to the Rules. According to the LegCo Brief, the prescribed limit and reportable position mirror those specified in the rules of the Hong Kong Futures Exchange Limited.
27. The Amendment Rules will come into operation on 20 November 2009.
28. According to the LegCo Brief, the Commission does not consider it necessary to conduct any public consultation.
29. The Panel on Financial Affairs has not been consulted on the Amendment Rules.
30. Members may wish to refer to the LegCo Brief (with no file reference) dated 29 June 2009 issued by the Commission for further information.
31. No difficulties have been identified in the legal or drafting aspects of the Amendment Rules.

Smoking (Public Health) Ordinance (Cap. 371)

Smoking (Public Health) (Designation of No Smoking Areas) Notice (L.N. 160)

32. The Notice was made by the Director of Health (the Director) under section 3(1AB) of the Smoking (Public Health) Ordinance (Cap. 371), which provides that the Director may by notice published in the Gazette, designate as a no smoking area (NSA) the whole or a part of a public transport interchange or bus terminus (PTI). The intention is that the boarding and waiting areas of PTIs, as well as areas passengers will pass by in the course of accessing and interchanging between different modes of public transport should be designated as NSAs to protect the public from exposure to second-hand smoke.
33. The Notice designates 48 PTIs as NSAs in its Schedule. According to the Administration, as the physical conditions of each PTI are different, each PTI will be delineated by reference to a plan deposited in the Land Registry. The plans of the 48 PTIs will also be published in the Gazette as Government Notices, displayed at the Tobacco Control Office (TCO) as well as posted on TCO's website for public inspection before the designation takes effect.
34. The Notice will come into operation on 1 September 2009 which is the target date for implementing the fixed penalty system for smoking offences¹. According to the Administration, if the implementation of the new smoking ban at the 48 PTIs is satisfactory, the Administration will proceed to prepare for the designation

¹ The fixed penalty system is introduced by the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600).

of about 120 open-air potential PTIs in the beginning of 2010.

35. According to the Administration, the Chairman and Deputy Chair of District Councils were briefed in May 2009.

36. At the meeting on 20 April 2009, the Panel on Health Services was briefed by the Administration on its plan to designate the 48 PTIs as NSAs. The Panel was supportive of the plan. Members may wish to refer to the minutes of the meeting (LC Paper No. CB(2)1739/08-09) for further information.

37. No LegCo Brief has been issued by the Administration. However, Members may wish to refer to the paper issued by the Food and Health Bureau in April 2009 for the above Panel's meeting (LC Paper No. CB(2)1324/08-09(07)) for further information.

38. No difficulties have been identified in the legal or drafting aspects of the Notice.

Travel Agents Ordinance (Cap. 218)

Travel Agents Ordinance (Specification of Fund Levy) (Amendment) Notice 2009 (L.N. 161)

39. The Notice was made by the Secretary for Commerce and Economic Development (the Secretary) under section 32H(2) of the Travel Agents Ordinance (Cap. 218) (TAO) to –

- (a) amend section 1(1) of the Travel Agents Ordinance (Specification of Fund Levy) Notice (Cap. 218 sub. leg. D) (the Specification Notice) to reduce the Travel Industry Compensation Fund (the Fund) levy rate from 0.15% to 0%; and
- (b) amend section 1(2) of the Specification Notice to the effect that the new rate is applicable to outbound fares received on or after 3 July 2009.

40. The Fund was established in 1993 under TAO to provide ex gratia payments to outbound travellers of up to 90% of the loss in outbound package tour fares in case of default of travel agents. The scope and protection of the Fund were extended in 1996. The Fund is held, managed and applied by the Travel Industry Compensation Fund Management Board (the Board). Its income is derived from the levy contributed by travel agents in accordance with section 32H of TAO. The rate of Levy is stipulated in the Specification Notice, which is at present 0.15% of every outbound fare received.

41. The Board commissions a professional actuarial consultant to conduct risk assessment study every five years. The latest study was completed in 2008. Having taken into account of various factors, including the balance of the Fund standing at \$527 million in May 2009, the Board proposed, among other things, to

suspend the collection of the Fund levy. The Secretary accepted the Board's recommendations. L.N. 161 was made to implement the levy rate suspension.

42. According to the LegCo Brief, the Board has conducted a public consultation exercise from 13 March to 30 April 2009. Over 80% of the respondents supported, among other things, the proposal to suspend the collection of the Fund levy.

43. The Panel on Economic Development was consulted on 22 June 2009 regarding the Board's proposals. Members considered that the suspension of the Fund levy should be welcomed by the travel industry.

44. Members may wish to refer to the LegCo Brief (with no file reference) issued by the Tourism Commission of the Commerce and Economic Development Bureau in June 2009 for further information.

45. No difficulties have been identified in the legal or drafting aspects of the Notice.

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