

立法會

Legislative Council

LC Paper No. LS122/08-09

Paper for the House Committee Meeting on 9 October 2009

Legal Service Division's Report on Subsidiary Legislation gazetted between 10 July and 2 October 2009

This paper annexes five Legal Service Division's reports on a total of 11 items of subsidiary legislation gazetted between 10 July and 2 October 2009 (indexed at **Appendix**). Among the items reported, Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Amendment of Schedule 1) Notice 2009 (L.N. 173 of 2009), Western Harbour Crossing Ordinance (Amendment of Schedule 1) Notice 2009 (L.N. 174 of 2009) and Volunteer and Naval Volunteer Pensions Ordinance (Amendment of Schedules) Order 2009 (L.N. 175 of 2009) are not required to be tabled in the Legislative Council (the Council). The remaining 8 items are to be tabled before the Council on 14 October 2009. Under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), the Council may amend the tabled items of subsidiary legislation by 11 November 2009 or 2 December 2009 if extended by resolution.

2. All the five reports have already been separately submitted to Members during the summer recess. They are annexed to this paper to facilitate consideration by the House Committee.

3. Members may consider whether it is necessary to set up a subcommittee to study any of the items of subsidiary legislation covered by these five reports. It does not appear that any of the subsidiary legislation involves a new policy or a change of policy.

4. No difficulties relating to the legal and drafting aspects of the items covered by the reports have been identified.

Encl

Prepared by

Legal Service Division
Legislative Council Secretariat
6 October 2009

LS/S/43/08-09

Appendix

Subsidiary Legislation gazetted between 10 July and 2 October 2009 to be tabled in the Legislative Council on 14 October 2009

| <u>L.N. No</u> | <u>Item</u> |
|----------------|--|
| 163 | Foreign Lawyers Registration (Amendment) Rules 2009 |
| 164 | Legal Practitioners (Risk Management Education) Rules (Commencement) Notice |
| 165 | Legal Practitioners (Risk Management Education) Rules (Appointment of Commencement Date) Notice 2009 |
| 166 | Race Discrimination Ordinance (Commencement) Notice 2009 |
| 167 | Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation (Commencement) Notice |
| 172 | Tax Reserve Certificates (Rate of Interest) (No. 4) Notice 2009 |
| 173* | Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Amendment of Schedule 1) Notice 2009 |
| 174* | Western Harbour Crossing Ordinance (Amendment of Schedule 1) Notice 2009 |
| 175* | Volunteer and Naval Volunteer Pensions Ordinance (Amendment of Schedules) Order 2009 |
| 176 | Mutual Legal Assistance in Criminal Matters (Japan) Order (Commencement) Notice |
| 177 | Antiquities and Monuments (Declaration of Monuments) Notice 2009 |

*Not required to be tabled and not subject to amendment

立法會
Legislative Council

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 10 July 2009**

Date of tabling in LegCo : 14 October 2009

Amendment to be made by : 11 November 2009 (or 2 December 2009 if extended by resolution)

**Legal Practitioners Ordinance (Cap. 159)
Foreign Lawyers Registration (Amendment) Rules 2009 (L.N. 163)**

At present, under section 5 of the Foreign Lawyers Registration Rules (Cap. 159 sub. leg. S) (the principal Rules) made by the Council of The Law Society of Hong Kong under section 73 of the Legal Practitioners Ordinance (Cap. 159) with the prior approval of the Chief Justice, if a person with less than two years of post-qualification experience in the full-time practice of foreign law applies for a certificate of registration as a foreign lawyer, The Law Society of Hong Kong may specify conditions as to supervision under which that person may practise foreign law as an employee of a Hong Kong firm.

2. L.N. 163 amends the principal Rules to extend the supervision requirement in section 5 of the principal Rules to a person who practises foreign law as an employee of a foreign firm. L.N. 163 also specifies that a lawyer who provides the required supervision must be a lawyer admitted to practise the foreign law concerned in the same jurisdiction as the foreign lawyer. This applies to practice of a foreign lawyer as an employee of a Hong Kong firm as well as to practice as an employee of a foreign firm.

3. L.N. 163 will come into operation on a day to be appointed by the President of The Law Society of Hong Kong by notice published in the Gazette.

4. The Panel on Administration of Justice and Legal Services has not been consulted on L.N. 163.

**Legal Practitioners (Risk Management Education) Rules (Cap. 159 sub. leg. Z)
Legal Practitioners (Risk Management Education) Rules (Commencement)
Notice (L.N. 164)
Legal Practitioners (Risk Management Education) Rules (Appointment of
Commencement Date) Notice 2009 (L.N. 165)**

5. The Legal Practitioners (Risk Management Education) Rules (Cap. 159 sub. leg. Z) (the RME Rules) provide for the implementation of a programme of

training courses on risk management for solicitors, foreign lawyers and trainee solicitors. The Law Society of Hong Kong has applied the RME Rules to different categories of lawyers by different phases: to solicitors who are principals (L.N. 146 and L.N. 154 of 2005); solicitors who are not principals and who were admitted as solicitors of the High Court before 1 January 2001 (L.N. 187 of 2006); solicitors who are not principals and who were admitted as solicitors of the High Court on or after 1 January 2001 (L.N. 174 of 2007); and trainee solicitors whose first trainee solicitor contracts commence on or after 1 November 2008 (L.N. 212 of 2008).

6. Section 11 of the RME Rules amends the Foreign Lawyers Registration Rules (Cap. 159 sub. leg. S) (the Registration Rules) by adding section 6A to the Registration Rules. The new section 6A provides that a certificate of registration as a foreign lawyer is subject to the condition that during any period for which the foreign lawyer is employed by a Hong Kong firm to practise foreign law, he shall comply with the RME Rules. Under section 12(2) of the RME Rules, in relation to a foreign lawyer, the RME Rules shall not take effect until such date as the Council of The Law Society of Hong Kong may appoint by notice published in the Gazette.

7. By L.N. 164, the President of The Law Society of Hong Kong appoints 1 November 2009 as the day on which section 11 of the RME Rules comes into operation.

8. By L.N. 165, the Council of The Law Society of Hong Kong appoints 1 November 2009 as the day on which the RME Rules take effect in relation to a foreign lawyer.

9. The Panel on Administration of Justice and Legal Services has not been consulted on the above two Notices.

Race Discrimination Ordinance (29 of 2008)

Race Discrimination Ordinance (Commencement) Notice 2009 (L.N. 166)

10. The Race Discrimination Ordinance (29 of 2008) (RDO) was enacted by the Legislative Council in July 2008. By L.N. 222 of 2008 made under section 1(2) of RDO, the Acting Secretary for Constitutional and Mainland Affairs has appointed 3 October 2008 as the day on which sections 1, 59, 61, 62, 63, 82, 83, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105 and 106 of RDO came into operation. These sections relate to the short title and commencement, functions and powers of the Equal Opportunities Commission (EOC), restrictions on delegation by EOC, protection of members of EOC, codes of practices issued by EOC, power of EOC to make rules, regulations to empower EOC to bring certain proceedings and consequential and related amendments to the Sex Discrimination Ordinance (Cap. 480), Disability Discrimination Ordinance (Cap. 487) and Family Status Discrimination Ordinance (Cap. 527).

11. By L.N. 166 made under section 1(2) of RDO, the Secretary for Constitutional and Mainland Affairs appoints 10 July 2009 as the day on which the uncommenced provisions of RDO come into operation. This also has the effect of commencing the Race Discrimination (Formal Investigations) Rules (L.N. 94 of 2009) and Race Discrimination (Investigation and Conciliation) Rules (L.N. 95 of 2009).

Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation (L.N. 145 of 2009)

Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation (Commencement) Notice (L.N. 167)

12. The Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation (the Regulation), made by the Secretary for Constitutional and Mainland Affairs under section 83 of RDO, was approved by the Legislative Council on 24 June 2009 and published in the Gazette on 26 June 2009 (L.N. 145 of 2009).

13. The Regulation, modelled on the Sex Discrimination (Proceedings by Equal Opportunities Commission) Regulation (Cap. 480 sub. leg. C) and Family Status Discrimination (Proceedings by Equal Opportunities Commission) Regulation (Cap. 527 sub. leg. C), provides that:-

- (a) EOC may bring proceedings where the case raises a question of principle and it is in the interests of justice to do so and it appears to EOC that the claim is well-founded; and
- (b) in any such proceedings EOC may apply for any remedy available to a claimant, including a declaration or an injunction or both.

14. By L.N. 167, the Secretary for Constitutional and Mainland Affairs appoints 10 July 2009 as the day on which the Regulation comes into operation.

15. After the enactment of RDO, the Administration informed the Panel on Constitutional Affairs in October 2008 that it aimed at bringing RDO into full operation by mid-2009. The Administration subsequently informed the Subcommittee formed to study the Regulation that it was the Administration's plan to bring into operation the substantive provisions of RDO around mid-July 2009, together with the Regulation at the same time.

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

Prepared by

TSO Chi-yuen, Timothy
Assistant Legal Adviser
Legislative Council Secretariat
17 July 2009

立法會
Legislative Council

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 31 July 2009**

Date of tabling in LegCo : 14 October 2009

Amendment to be made by : 11 November 2009 (or 2 December 2009 if extended by resolution)

PART I INTEREST ON TAX RESERVE CERTIFICATES

**Tax Reserve Certificates (Fourth Series) Rules (Cap. 289 sub. leg. A)
Tax Reserve Certificates (Rate of Interest) (No. 4) Notice 2009 (L.N. 172)**

This Notice was 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). By this Notice, the rate of interest payable on tax reserve certificates issued on or after 3 August 2009 is fixed at 0.0833% per annum. The Schedule to the Tax Reserve Certificates (Rate of Interest) (Consolidation) Notice (Cap. 289 sub. leg. B) is also amended correspondingly.

2. The amendment of rate of interest has not been referred to the Panel on Financial Affairs for discussion.

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

**Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474)
Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Amendment of Schedule 1) Notice 2009 (L.N. 173)**

3. The Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474) (the Ordinance) provides for a specified toll adjustment mechanism in respect of the Tai Lam Tunnel and Yuen Long Approach Road. Under section 39(1) of the Ordinance, the franchisee (Route 3 (CPS) Company Limited) may give effect to toll increases on each of the three specified dates (i.e. 1 January 2003, 1 January 2010 and 1 January 2017) referred to in Schedule 3 to the Ordinance. However, if the franchisee's actual net revenue (ANR) for any year, which is not a year ending immediately before a specified date, is less than the minimum estimated net revenue

(MENR) for that year as specified in Schedule 4 to the Ordinance, the franchisee may advance an anticipated toll increase under section 40(1). Where the franchisee has effected all the anticipated toll increases pursuant to section 39(1) or 40(1) and its ANR for any year occurring before the expiry of the franchise period is less than its MENR for that year, the franchisee may apply to the Secretary for Transport and Housing under section 42 of the Ordinance to give effect to an additional toll increase.¹

4. Schedule 1 to the Ordinance specifies the Tai Lam Tunnel and Yuen Long Approach Road Tolls. Under section 45(1), where a toll is increased under the Ordinance, the Commissioner for Transport shall by notice published in the Gazette amend Schedule 1. Section 45(3) provides that section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply in respect of such notice. Accordingly, the notice is not required to be tabled before the Legislative Council and is not subject to amendment by the Legislative Council.

5. This Notice, which came into operation on 1 August 2009, replaces Schedule 1 to the Ordinance with a new Schedule 1 to reflect the increase of tolls effected under section 42 of the Ordinance. The amounts of increase are in accordance with the maximum amounts permitted under Schedule 2 to the Ordinance. The last toll increase came into effect on 28 December 2008 (L.N. 284 of 2008).

6. A comparison of the statutory tolls before the increase effected by this Notice and with effect from 1 August 2009 is as follows:

Tai Lam Tunnel and Yuen Long Approach Road Tolls

| Category | Vehicle | Toll (\$) before increase | Toll (\$) (as from 1 August 2009) |
|----------|--|---------------------------|-----------------------------------|
| 1. | Motorcycles, motor tricycles | 40 | 45 |
| 2. | Private cars, electrically powered passenger vehicles, taxis | 45 | 50 |
| 3. | Public and private light buses | 120 | 135 |
| 4. | (a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes | 120 | 135 |

¹ This is the 7th time the statutory tolls are revised.

| | | | |
|----|---|-----|-----|
| | (b) In a vehicle specified in paragraph (a), each additional axle in excess of 2 | 50 | 55 |
| 5. | (a) Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes | 130 | 145 |
| | (b) In a vehicle specified in paragraph (a), each additional axle in excess of 2 | 50 | 55 |
| 6. | (a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes | 150 | 165 |
| | (b) In a vehicle specified in paragraph (a), each additional axle in excess of 2 | 50 | 55 |
| 7. | Public and private single-decked buses | 120 | 135 |
| 8. | Public and private double-decked buses | 135 | 150 |

7. The Transport and Housing Bureau has provided background information about this Notice and L.N. 174 (new statutory tolls for Western Harbour Crossing) in an information paper which was circulated to members of the Panel on Transport on 31 July 2009 (LC Paper No. CB(1)2415/08-09(01)) (the paper). No comments on the paper have been received from members. As stated in paragraph 6 of the paper, since the operation of the Tai Lam Tunnel and Yuen Long Approach Road in 1998, the franchisee's net revenue has consistently fallen short of the specified levels. According to paragraph 7 of the paper, the current toll increase is based on the franchisee's 2004/05 Net Revenue Statement (NRS) submitted in August 2005.² As required under the specified toll adjustment mechanism, the Administration carefully examined the NRS and noted that the franchisee's net revenue of \$371 million was lower than the MENR of \$762 million for that year specified in Schedule 4 to the Ordinance and is therefore entitled to an additional toll increase. Notwithstanding the statutory toll increase with effect from 1 August 2009, the franchisee will continue to offer concessions for all types of vehicles despite the statutory toll increase, so that the current toll levels will be maintained. Details of the new concessionary tolls are set out in Annex D to the paper.

8. The Notice has not been discussed by the Panel on Transport.

² Since the operation of the Tai Lam Tunnel and Yuen Long Approach Road in 1998, the franchisee's ANR has consistently fallen short of the specified levels. However, the statutory tolls have not been revised in each and every year since its operation. The current toll increase is therefore based on the 7th consecutive year of MENR of the franchisee since 1998, which is lower than the specified levels.

Western Harbour Crossing Ordinance (Cap. 436)
Western Harbour Crossing Ordinance (Amendment of Schedule 1) Notice 2009
(L.N. 174)

9. The Western Harbour Crossing Ordinance (Cap. 436) (the Ordinance) provides for a specified toll adjustment mechanism. Under section 45 of the Ordinance, the Western Harbour Tunnel Company Limited (the franchisee) may effect toll increase on six specified dates (i.e., 1 January 2001, 1 January 2005, 1 January 2009, 1 January 2013, 1 January 2017 and 1 January 2021) referred to in Schedule 4. However, under section 46(1), whenever the franchisee's net revenue in any year (not being a year ending immediately before a specified date) is less than the minimum estimated net revenue (MENR) for that year as specified in Schedule 5 to the Ordinance, the franchisee may apply to the Secretary for Transport and Housing (the Secretary) to give effect to the next anticipated toll increase. Under section 48(1), where the franchisee has given effect to all the anticipated toll increases and the net revenue of the franchisee in respect of any year before the expiry of the franchise period is less than the MENR for that year, the franchisee may apply to the Secretary to give effect to an additional toll increase.³ The maximum levels of increase in respect of different categories of vehicles, from the operating date up to 31 December 2010 or during the period of 13 years beginning on the operating date, are specified in Schedule 2 to the Ordinance.

10. Schedule 1 to the Ordinance specifies the Western Harbour Crossing tolls. Under section 52(1) of the Ordinance, when a toll is increased in accordance with the Ordinance and the project agreement, the Commissioner for Transport shall by notice published in the Gazette amend Schedule 1 to vary the relevant tolls. Section 52(2) stipulates that the franchisee shall not give effect to more than one increase in the tolls in one year. Section 52(3) of the Ordinance provides that section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply in respect of such notice. Consequently, such notice is not required to be tabled before the Legislative Council and is not subject to amendment by the Legislative Council.

11. This Notice, which came into operation on 31 July 2009, replaces Schedule 1 to the Ordinance with a new Schedule 1 to reflect the increase of tolls effected under section 48 of the Ordinance. The amounts of increase are in accordance with the maximum amounts permitted under Schedule 2 to the Ordinance. The last statutory toll increase came into effect on 31 July 2008 (L.N. 207 of 2008).

12. A comparison of the statutory tolls before the increase effected by this Notice and with effect from 31 July 2009 is as follows:

³ This is the 8th time the statutory tolls are revised.

Western Harbour Crossing Tolls

| Category | Vehicle | Toll (\$) before increase | Toll (\$) (as from 31 July 2009) |
|----------|---|---------------------------|----------------------------------|
| 1. | Motorcycles, motor tricycles | 50 | 55 |
| 2. | Private cars, electrically powered passenger vehicles, taxis | 100 | 110 |
| 3. | Public and private light buses | 110 | 120 |
| 4. | (a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes | 150 | 165 |
| | (b) In a vehicle specified in paragraph (a), each additional axle in excess of 2 | 100 | 110 |
| 5. | (a) Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes | 205 | 225 |
| | (b) In a vehicle specified in paragraph (a), each additional axle in excess of 2 | 100 | 110 |
| 6. | (a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes | 305 | 335 |
| | (c) In a vehicle specified in paragraph (a), each additional axle in excess of 2 | 100 | 110 |
| 7. | Public and private single-decked buses | 110 | 120 |
| 8. | Public and private double-decked buses | 160 | 175 |

13. As stated in paragraph 3 of the information paper (LC Paper No. CB(1)2415/08-09(01)) (the paper), since the commissioning of WHC in 1997, the franchisee's net revenue has consistently fallen short of the specified levels. According to paragraph 4 of the paper, the current toll increase is based on the

franchisee's 2005/06 Net Revenue Statement (NRS) submitted in August 2006.⁴ As required under the specified toll adjustment mechanism, the Administration carefully examined the NRS of Western Harbour Crossing and noted that the franchisee's net revenue of \$567 million was lower than the minimum estimated net revenue of \$1,455 million for that year specified in Schedule 5 to the Ordinance and is therefore entitled to an additional toll increase. Notwithstanding the statutory toll increase with effect from 31 July 2009, the franchisee will continue to offer concessions for all types of vehicles despite the statutory toll increase, so that the current toll levels will be maintained. Details of the new concessionary tolls are set out in Annex C to the paper.

14. This Notice has not been discussed by the Panel on Transport.

15. No difficulties have been identified relating to the legal and drafting aspects of the above items of subsidiary legislation.

Prepared by

LAM Ping-man, Stephen
Assistant Legal Adviser
Legislative Council Secretariat
26 August 2009

LS/S/39/08-09

⁴ Since the operation of the Western Harbour Crossing in 1997, the franchisee's net revenue has consistently fallen short of the specified levels. However, the statutory tolls have not been revised in each and every year since its operation. The current toll increase is based on the 9th consecutive year of MENR of the franchisee since 1997, which is less than the specified levels. It is noted that the first statutory toll increase was based on the 1998/99 NRS instead of the 1997/98 NAR, i.e. the 1st year of operation of the Western Harbour Crossing.

立法會
Legislative Council

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 14 August 2009**

**LEGAL NOTICE NOT REQUIRED TO BE TABLED AND NOT SUBJECT TO
AMENDMENT**

**Volunteer and Naval Volunteer Pensions Ordinance (Cap. 202)
Volunteer and Naval Volunteer Pensions Ordinance (Amendment of Schedules)
Order 2009 (L.N. 175)**

Under section 35(2) of the Volunteer and Naval Volunteer Pensions Ordinance (Cap. 202) (the Ordinance), the Secretary for Labour and Welfare may, by order, amend the monthly rates set out in Schedules 3 to 8 to the Ordinance in accordance with the percentage of increase declared in a notice made under section 4(1C) of the Pensions (Increase) Ordinance (Cap. 305). These rates are in relation to the payment of pensions, gratuities and other allowances under the Ordinance to the officers and volunteers of the Hong Kong Volunteer Defence Corps and members of the Hong Kong Naval Volunteer Force who fought in Hong Kong during the Second World War and their surviving spouses. Section 35(4) of the Ordinance provides that an order made under section 35(2) shall take effect on the same date as specified in the notice made under the Pensions (Increase) Ordinance. Section 35(5) provides that section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) does not apply to an order made under section 35(2) of the Ordinance. Accordingly, such order is not required to be tabled in the Legislative Council and is not subject to amendment.

2. By the Declaration of Increase in Pensions Notice 2009 (L.N. 126 of 2009) (the Pensions Increase Declaration Notice) gazetted on 12 June 2009 made under the Pensions (Increase) Ordinance, an increase of 2.5% is declared in respect of a basic pension with effect from 1 April 2009 in accordance with the percentage of increase in the average monthly Consumer Price Index (A) (the Average Index) of the 12 months ending on 31 March 2009 over the Average Index of the immediately preceding 12 months.

3. This Order is made under section 35(2) of the Ordinance to amend the monthly rates set out in Schedules 3 to 8 to the Ordinance in accordance with the percentage of increase (2.5%) in respect of a basic pension declared in the Pensions Increase Declaration Notice. The relevant rates were last revised in 2008 (L.N. 210 of 2008).

4. This Order is deemed to have come into operation on 1 April 2009.
5. The Panel on Welfare Services has not been consulted on this Order. No difficulties in relation to the legal and drafting aspects of the Order have been identified.

Prepared by

Kitty CHENG
Assistant Legal Adviser
Legislative Council Secretariat
28 August 2009

立法會
Legislative Council

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 11 September 2009**

Date of tabling in LegCo : 14 October 2009

Amendment to be made by : 11 November 2009 (or 2 December 2009 if extended by resolution)

Mutual Legal Assistance in Criminal Matters (Japan) Order (L.N. 43 of 2009)
Mutual Legal Assistance in Criminal Matters (Japan) Order (Commencement) Notice (L.N. 176)

The Mutual Legal Assistance in Criminal Matters (Japan) Order (L.N. 43 of 2009) (the Order) has been made by the Chief Executive in Council under section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) (the Ordinance). Pursuant to section 1 of the Order and by this Notice, the Secretary for Security appoints 24 September 2009 as the day on which the Order shall come into operation.

2. The Order sets out the scope and procedures in relation to the provision of mutual legal assistance in criminal matters applicable between Hong Kong and Japan, and the modifications to the Ordinance. The Order is made in consequence of the agreement for mutual legal assistance entered into by Hong Kong and Japan which was signed on 23 May 2008. The agreement is reproduced in Schedule 1 to the Order, and the modifications are set out in Schedule 2 to the Order.

3. The Order has been scrutinized by a Subcommittee which recommended that the Order be supported. Members may wish to refer to the report of the Subcommittee to the House Committee (LC Paper No. CB(2) 755/08-09) for further information.

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

Prepared by

LO Wing-yee, Winnie
Assistant Legal Adviser
Legislative Council Secretariat
16 September 2009

立法會
Legislative Council

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 18 September 2009**

Date of tabling in LegCo : 14 October 2009

Amendment to be made by : 11 November 2009 (or 2 December 2009 if extended by resolution)

**Antiquities and Monuments Ordinance (Cap. 53)
Antiquities and Monuments (Declaration of Monuments) Notice 2009
(L.N. 177)**

Under section 3(1) of the Antiquities and Monuments Ordinance (Cap. 53) (the Ordinance), the Secretary for Development (the Authority) may, after consultation with the Antiquities Advisory Board and with the approval of the Chief Executive, by notice in the Gazette, declare any place, building, site or structure, which the Authority considers to be of public interest by reason of its historical, archaeological or palaeontological significance, to be a monument, historical building or archaeological or palaeontological site or structure.

2. By this Notice, the Authority declares that certain buildings and structures constructed in connection with six groups of reservoirs in Hong Kong, namely, Wong Nai Chung Reservoir, Pok Fu Lam Reservoir, Tai Tam Group of Reservoirs, Aberdeen Reservoir, Kowloon Reservoir and Shing Mun Reservoir, to be monuments under the Ordinance. The effect of the Notice is that no person shall excavate or carry on building or other works on or in the monuments, or demolish, remove, obstruct, deface or interface with the monuments, except in accordance with a permit granted by the Authority.

3. Members may refer to paragraph 19 of the paper on "Progress Report on Heritage Conservation Initiatives" (LC Paper No. CB(1)2342/08-09(04)) issued by the Development Bureau in July 2009 for background information. The Panel on Development noted the Administration's proposal for declaring certain historic waterworks structures in the above-mentioned reservoirs as six groups of monuments at its meeting held on 28 July 2009. Members of the Panel did not make any comments on the proposal.

4. The Notice has come into operation on 18 September 2009.
5. No difficulties relating to the legal or drafting aspects of the Notice have been identified.

Prepared by

YICK Wing-kin
Assistant Legal Advisers
Legislative Council Secretariat
23 September 2009

LS/S/42/08-09