

# **立法會**

## ***Legislative Council***

LC Paper No. LS2/08-09

**Paper for the House Committee Meeting  
on 10 October 2008**

**Legal Service Division Report on  
Subsidiary Legislation tabled in the Legislative Council  
between 25 June and 16 July and  
gazetted between 25 July and 3 October 2008**

### **Purpose**

The purpose of this paper is to present our reports on subsidiary legislation for Members' consideration, the Legislative Council's power to amend the subsidiary legislation and the timing of scrutiny of such subsidiary legislation.

### **Background**

2. All items (with two exceptions mentioned in paragraph 3(b) below) of subsidiary legislation currently submitted to Members are subject to section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) (the Ordinance). The section empowers the Council to amend an item of subsidiary legislation in such a manner consistent with the power to make such subsidiary legislation.

3. The subsidiary legislation currently submitted may be divided into two main groups:

- (a) Items tabled between 25 June and 16 July 2008 before the Third Legislative Council (Appendix I)

Under section 34(2) and (3) of the Ordinance, the scrutiny period of these items is deemed to extend to and expire on the day after the second meeting of the Council (i.e. 15 October 2008 will be the last day of the normal scrutiny period). The scrutiny period could be further extended under the Ordinance by resolution of the Council to the meeting of 5 November 2008.

(b) Items gazetted between 25 July and 3 October 2008 (Appendix II)

These items have been made and gazetted after the last meeting of the Third Legislative Council on 16 July 2008. They will be tabled at the meeting on 8 October 2008, and the Council may by resolution amend them by 5 November 2008, or by 26 November 2008 if extended by resolution. The only exceptions are-

- (i) Western Harbour Crossing Ordinance (Replacement of Schedule 1) Notice 2008 (L.N. 207) made under Western Harbour Crossing Ordinance (Cap. 436); and
- (ii) Volunteer and Naval Volunteer Pensions Ordinance (Amendment of Schedules) Order 2008 (L.N. 210) made under Volunteer and Naval Volunteer Pensions Ordinance (Cap. 202),

to which section 34 of the Ordinance does not apply.

4. The Legal Services Division had issued reports on subsidiary legislation gazetted from 4 July to 19 September 2008 to Members of the Third Legislative Council and a report on subsidiary legislation gazetted on 23 September 2008 to Members of the Third and Fourth Legislative Council. Members may view the gazette version of these items at the following website : <http://www.gld.gov.hk/egazette/> or obtain their hard copies from the Legislative Council Library. Where a Legislative Council Brief has been issued by the Administration on a particular item, the Brief is appended to the report on the relevant item. Members may wish to refer to the LegCo Brief for background information.

**Items for Particular Attention**

5. Members may wish to pay particular attention to the following items on account of the concern that has been expressed by the public or by the relevant panels:

(a) Food Business (Amendment) Regulation 2008 (L.N. 185)

The Amendment Regulation amends the Food Business Regulation (Cap. 132 sub. leg. X) to-

- (i) require the slaughtering of all live poultry remaining at retail premises before 8 p.m. each day; and
- (ii) require that there is no live poultry at retail premises between 8 pm each day and 5 am the next day.

The Amendment Regulation was tabled in LegCo on 2 July 2008 and came into operation on the same day. Hon Albert CHAN moved a motion to repeal the Amendment Regulation at the Council's meeting of 9 July 2008, but the motion was negated.

The deadline for amending the Amendment Regulation will expire by 15 October 2008 or 5 November 2008 (if extended by a LegCo resolution).

At the House Committee's meeting on 4 July 2008, members formed a subcommittee to study the Amendment Regulation. The Subcommittee held one meeting. The Subcommittee is of the view that, as the Third Term LegCo shall stand prorogued on 19 July 2008 and it is not feasible for the Subcommittee to hold another meeting to deliberate on the Amendment Regulation within the remaining few days of the session, scrutiny work of the Amendment Regulation should best be left to Members of the Fourth LegCo. Members may refer to the Subcommittee's Report issued vide LC Paper No. CB(2)2626/07-08 for background information.

The Subcommittee strongly recommends that the Fourth LegCo should set up a subcommittee to scrutinize the Amendment Regulation.

(b) Employees Retraining Ordinance (Amendment of Schedule 3) Notice 2008 (L.N. 208)

The Amendment Notice suspends the obligation to pay the Employees Retraining Levy (\$400 per month for each employee) by employers of foreign domestic helpers and all other employers of labour imported under an approved labour importation scheme for a period of two years from 1 August 2008 to 31 July 2010. Subsequent to the Legal Service Division Report dated 13 August 2008, a LegCo Brief was issued by the Labour and Welfare Bureau on 30 September 2008 (File Ref.: LWB(MP) CR 2/12/3051/08 Pt.5) setting out, among other things, the considerations of the Administration and the special arrangements in relation to premature termination and advance renewal of foreign domestic helper's contracts.

(c) Harmful Substances in Food (Amendment) Regulation 2008 (L.N. 215)

The Amendment Regulation adds melamine to the First Schedule (which is a list of substances the maximum concentration of which in specified foods is prescribed) to the Harmful Substances in Food Regulations (Cap. 132 sub. leg. AF). Subsequent to the Legal Service Division Report dated 24 September 2008, a LegCo Brief was issued by the Food

and Health Bureau (File Ref.: FH CR 1/1886/08) setting out, among other things, incidents of detecting melamine in dairy products, and the standard for melamine adopted by the Administration in the Amendment Regulation.

(d) Building (Planning) (Amendment) Regulation 2008 (Commencement) Notice 2008 (L.N. 217)

The Secretary for Development has appointed 1 December 2008 as the day on which the Building (Planning) (Amendment) Regulation 2008 (L.N. 124 of 2008) will come into operation.

The purpose of L.N. 124 of 2008 is to enhance the design requirements governing the provision of facilities for access to and the use of buildings and their facilities by persons with a disability.

The Subcommittee considered that L.N. 124 of 2008 should come into force as early as possible, while they agreed that it would be for Members of the Fourth LegCo to decide whether a subcommittee should be formed to study the Commencement Notice after it is tabled in LegCo.

(e) Tate's Cairn Tunnel Ordinance (Replacement of Schedule) Notice 2008 (L.N. 220)

This Notice replaces the Schedule to Tate's Cairn Tunnel Ordinance (Cap. 393) (TCTO) with a new Schedule to reflect the increase of the tolls payable under TCTO. The increases range from 9% to 20%.

Tate's Cairn Tunnel Company Limited (TCTC)'s original application with the increases ranging from 13% to 28% was discussed at the meeting of the Panel on Transport on 25 April 2008. The Panel was concerned about the traffic implications of the proposed toll increases, as the toll disparity between Tate's Cairn Tunnel (TCT) and the Lion Rock Tunnel (LRT) would further increase and vehicles would be diverted to LRT as a result. Panel members urged the Administration to map out other measures to obviate the need for toll increase, such as by extending TCTC's franchise, or by buying back TCT at reasonable price. Panel members considered the rate of the proposed toll increases, at over 20% on average, too significant and unacceptable to the public. The Panel passed the following motion at the meeting on 25 April 2008:

"That this Panel strongly opposes the substantial increase in tolls for Tate's Cairn Tunnel, and urges the Government to reject it."

After the Panel meeting, the Administration continued to urge TCTC to

consider its toll increase proposal in the light of public acceptability, and TCTC agreed in July 2008 to revise the application with the increases ranging from 9% to 20%. In parallel, the Administration has commenced discussion with TCTC to explore the option of franchise extension.

Encl

Prepared by

Legal Service Division  
Legislative Council Secretariat  
8 October 2008

**Legal Service Division Report on  
Subsidiary Legislation tabled between 25 June and 16 July 2008**

<b><u>L.N. No</u></b>	<b><u>Item</u></b>
172	Inland Revenue (Double Taxation Relief on Income from Aircraft Operations) (United Mexican States) Order
173	Inland Revenue (Double Taxation Relief on Income from Aircraft Operations) (Republic of Finland) Order
174	Specification of Arrangements (Government of the Republic of Finland) (Avoidance of Double Taxation on Income from Aircraft Operation) (Revocation) Order
178	Official Languages (Alteration of Text under Section 4D) (Advocate and Advocacy) Order
179	Public Health and Municipal Services (Markets) Declaration 2008
180	Market (Cessation of Application of the Public Health and Municipal Services Ordinance) Declaration 2008
181	Public Health and Municipal Services (Cessation of Designation as Public Market) Order 2008
182	Public Health and Municipal Services Ordinance (Amendment of Tenth Schedule) Order 2008
183	Public Health and Municipal Services (Markets) (No. 2) Declaration 2008
184	Domestic Violence (Amendment) Ordinance 2008 (Commencement) Notice
185	Food Business (Amendment) Regulation 2008
190	Country Parks (Lantau North (Extension) Country Park Designation) Order 2008
191	Public Health and Municipal Services (Designation of Public Markets) Order 2008

<b><u>L.N. No</u></b>	<b><u>Item</u></b>
192	Public Health and Municipal Services (Designation of Public Markets) (No. 2) Order 2008
193	Public Health and Municipal Services Ordinance (Amendment of Tenth Schedule) (No. 2) Order 2008
194	Public Health and Municipal Services Ordinance (Amendment of Tenth Schedule) (No. 3) Order 2008
195	Mainland Judgments (Reciprocal Enforcement) Ordinance (Commencement) Notice
200	Antiquities and Monuments (Withdrawal of Declaration of Proposed Monument) (No. 45 Stubbs Road) Notice
201	Antiquities and Monuments (Declaration of Historical Buildings) (No. 2) Notice 2008
202	Prevention and Control of Disease Ordinance (Commencement) Notice
203	Prevention and Control of Disease Regulation (Commencement) Notice

**立法會**  
**Legislative Council**

**Paper for the House Committee Meeting  
on 27 June 2008**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 20 June 2008**

**Date of tabling in LegCo** : 25 June 2008

**Amendment to be made by** : 15 October 2008 (or 5 November 2008  
if extended by resolution)

**Inland Revenue Ordinance (Cap. 112)**

**Inland Revenue (Double Taxation Relief on Income from Aircraft Operations)  
(United Mexican States) Order (L.N. 172)**

**Inland Revenue (Double Taxation Relief on Income from Aircraft Operations)  
(Republic of Finland) Order (L.N. 173)**

**Specification of Arrangements (Government of the Republic of Finland)  
(Avoidance of Double Taxation on Income from Aircraft Operation) (Revocation)  
Order (L.N. 174)**

On 20 November 2006, the Government of the Hong Kong Special Administrative Region of the People's Republic of China (the HKSAR Government) and the Government of the United Mexican States signed an agreement concerning air services (the Mexican Agreement), which contains a provision on avoidance of double taxation relating to income or profits derived from aircraft operations.

2. L.N. 172 specifies the arrangements in Article 11 of the Mexican Agreement as double taxation relief arrangements under section 49 of the Inland Revenue Ordinance (Cap. 112) (IRO) and declares that it is expedient that those arrangements should have effect. The effect of the declaration is that the arrangements have effect in relation to tax under IRO notwithstanding anything in any enactment.

3. The double taxation relief arrangements for income or profits derived from aircraft operations agreed between the HKSAR Government and the Government of the Republic of Finland (the Finland Government) were originally covered in a double taxation avoidance (DTA) article to be included in the agreement between the two Governments concerning air services (the Air Services Agreement).



The Specification of Arrangements (Government of the Republic of Finland) (Avoidance of Double Taxation on Income from Aircraft Operation) Order (Cap. 112 sub. leg. AR) (the original Order) was made in 2005 to specify the arrangements in the DTA article as double taxation relief arrangements under section 49 of IRO and to declare that the arrangements should have effect.

4. After the making of the original Order, the HKSAR Government received a notification from the Finland Government that it would not be able to approve the insertion of the DTA article in the Air Services Agreement. Subsequently, on 19 November 2007, the two Governments signed an agreement for the avoidance of double taxation with respect to taxes on income from aircraft operation (the Finland Agreement), which is a stand-alone air services DTA agreement modelled on the DTA article.

5. L.N. 173 specifies the arrangements in Articles 1 to 6 of the Finland Agreement as double taxation relief arrangements under section 49 of IRO and declares that it is expedient that those arrangements should have effect. The effect of the declaration is that the arrangements have effect in relation to tax under IRO notwithstanding anything in any enactment.

6. L.N. 174 is made under section 49(4) of IRO to revoke the original Order. According to paragraph 6 of the LegCo Brief (File Ref: THB CR 17/936/89(04)) issued by the Transport and Housing Bureau on 18 June 2008, the revocation is necessary following the signing of the Finland Agreement.

7. According to paragraph 14 of the LegCo Brief, the Hong Kong aircraft operator holding the relevant licence to operate services to Mexico and Finland has been consulted on the double taxation relief arrangements and it supports the arrangements.

8. The Panel on Economic Development has not been consulted on the above Orders.

9. L.N. 172 to L.N. 174 will come into operation on 26 November 2008.

10. No difficulties in relation to the legal and drafting aspects of the above items of subsidiary legislation have been identified.

Prepared by

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Legislative Council Secretariat  
23 June 2008  
LS/S/36/07-08

## **LEGISLATIVE COUNCIL BRIEF**

Inland Revenue Ordinance  
(Cap 112)

### **INLAND REVENUE (DOUBLE TAXATION RELIEF ON INCOME FROM AIRCRAFT OPERATIONS) (UNITED MEXICAN STATES) ORDER**

### **INLAND REVENUE (DOUBLE TAXATION RELIEF ON INCOME FROM AIRCRAFT OPERATIONS) (REPUBLIC OF FINLAND) ORDER**

### **SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE REPUBLIC OF FINLAND) (AVOIDANCE OF DOUBLE TAXATION ON INCOME FROM AIRCRAFT OPERATION) (REVOCATION) ORDER**

## **INTRODUCTION**

At the meeting of the Executive Council on 10 June 2008, the Council ADVISED and the Chief Executive ORDERED that the following orders should be made under section 49 of the Inland Revenue Ordinance (Cap 112) ó

- (a) the Inland Revenue (Double Taxation Relief on Income from Aircraft Operations) (United Mexican States) Order (õthe Mexican Orderö), at **Annex A**;
- (b) the Inland Revenue (Double Taxation Relief on Income from Aircraft Operations) (Republic of Finland) Order (õthe Finland Orderö), at **Annex B**; and

A

B

- (c) the Specification of Arrangements (Government of the Republic of Finland) (Avoidance of Double Taxation on Income from Aircraft Operation) (Revocation) Order (the Revocation Order), at **Annex C** (the Orders).

C

## JUSTIFICATIONS

2. Under section 49(1) of the Inland Revenue Ordinance (Cap 112), the Chief Executive in Council may, by order, declare that arrangements have been made with the government of any territory outside Hong Kong, with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory. Under section 49(4) of the Inland Revenue Ordinance (Cap 112), any order made under section 49(1) may be revoked by a subsequent order.

3. The Government of the Hong Kong Special Administrative Region (HKSARG) entered into an Agreement Concerning Air Services between the HKSARG of the People's Republic of China and the Government of the United Mexican States (the Mexican Agreement) in November 2006, which contains a provision on avoidance of double taxation. In November 2007, the HKSARG and the Government of the Republic of Finland also signed an Agreement for the Avoidance of Double Taxation with respect to Taxes on Income from Aircraft Operation (the Finland Agreement).

4. It is necessary to declare by order that the arrangements in the Mexican Agreement and the Finland Agreement on double taxation relief in respect of income from air services have been made, so as to put the arrangements into effect.

5. The double taxation relief arrangements agreed with Finland were originally covered in a double taxation avoidance (DTA) article to be included in our air services agreement with Finland (the ASA with Finland). Cap 112 sub. leg. AR was made in 2005 to specify the arrangements in the DTA article as double taxation relief arrangements under section 49 of the Inland Revenue Ordinance (Cap 112) and to declare that the arrangements should have effect.

6. After the making of the Order, we received a notification from the Government of the Republic of Finland that it would not be able to approve the insertion of the DTA article in the ASA with Finland. In response to its proposal and after consultation with the Department of Justice

and the Inland Revenue Department, we negotiated and entered into the Finland Agreement, which is a standalone air services DTA agreement modelled on the DTA article. We therefore consider it necessary to revoke Cap 112 sub. leg. AR.

## **The Orders**

7. **Section 2** of the Mexican Order declares that the arrangements specified in section 3 for double taxation relief in respect of income tax and any tax of a similar character have been made with the Government of the United Mexican States and that such arrangements should take effect. **Section 3** states that the arrangements are specified in the Schedule to the Mexican Order. The **Schedule** sets out the article containing the arrangements in the Mexican Agreement.

8. **Section 2** of the Finland Order declares that the arrangements specified in section 3 for double taxation relief in respect of income tax and any tax of a similar character have been made with the Government of the Republic of Finland and that such arrangements should take effect. **Section 3** states that the arrangements are specified in the Schedule to the Finland Order. The **Schedule** sets out the text of the Finland Agreement.

9. The Revocation Order, upon coming into operation, revokes Cap. 112 sub. leg. AR.

## **LEGISLATIVE TIMETABLE**

10. The Orders will be gazetted on 20 June 2008 and tabled in the Legislative Council on 25 June 2008.

## **IMPLICATIONS OF THE PROPOSAL**

11. The Orders are in conformity with the Basic Law, including the provisions concerning human rights. The proposal will not affect the binding effect of the existing provisions of the Inland Revenue Ordinance (Cap 112) and its subsidiary legislation. They have no civil service, productivity, sustainability or environmental implications.

12. As to financial implications, the revenue forgone on non-resident aircraft operators will be compensated by the revenue of resident aircraft operators brought to charge in Hong Kong by operation of section 23C(2A) of the Inland Revenue Ordinance (Cap 112). Therefore, the revenue implication, if any, will be insignificant.

13. As to economic implications, aircraft operators of Hong Kong, Mexico and Finland will benefit from the avoidance of double taxation. Double taxation relief arrangements should help lower cost of operation, improve income and indirectly efficiency as well.

## **PUBLIC CONSULTATION**

14. The Hong Kong aircraft operator holding the relevant licence to operate services to Mexico and Finland has been consulted on the double taxation relief arrangements. It supports the arrangements.

## **PUBLICITY**

15. We will issue a press release on 18 June 2008. A spokesperson will be available to handle enquiries.

## **BACKGROUND**

16. Due to the international nature of airline operations, airlines are more susceptible to double taxation than other taxpayers. It is therefore Government's policy to negotiate double taxation relief arrangements for airline income with our aviation partners, either by including a DTA article in the bilateral air services agreements (ASAs) or by concluding standalone DTA agreements. Apart from Mexico and Finland, we have concluded such relief arrangements on airline income with Bangladesh, Belgium, Canada, Croatia, Denmark, Estonia, Germany, Iceland, Israel, Jordan, Kenya, Kuwait, the Mainland of China, the Macao Special Administrative Region, Mauritius, the Netherlands, New Zealand, Norway, the Republic of Korea, Russia, Sweden, Switzerland and the United Kingdom. We have also concluded agreements with Singapore and Sri Lanka on the avoidance of double taxation on income from air services and shipping transportation.

17. DTA articles in the ASAs usually provide that
- (a) income or profits derived from the operation of aircraft in air services by an airline of a Party, including participation in a pool service, a joint business or international operating agency, shall be exempt from income tax, profits tax and all other taxes on income or profits imposed in the area of the other Party;
  - (b) on the basis of reciprocity, capital and assets of an airline of a Party relating to the operation of aircraft in air services shall be exempt from all taxes on capital and assets imposed in the area of the other Party; and
  - (c) gains from the alienation of aircraft operated in air traffic and movable property pertaining to the operation of such aircraft which are received by an airline of a Party shall be exempt from any tax on gains imposed in the area of the other Party.
18. In accordance with the ASAs, each Party shall notify the other of the completion of the procedures required by its law for the bringing into effect of the DTA Articles.

## **ENQUIRIES**

19. Any enquiry on this brief should be directed to Mr Sam Hui, Principal Assistant Secretary (Transport) (telephone number: 2810 2674).

**Transport and Housing Bureau**  
**18 June 2008**

**INLAND REVENUE (DOUBLE TAXATION RELIEF  
ON INCOME FROM AIRCRAFT OPERATIONS)  
(UNITED MEXICAN STATES) ORDER**

(Made by the Chief Executive in Council under section 49 of the Inland  
Revenue Ordinance (Cap. 112))

**1. Commencement**

This Order shall come into operation on 26 November 2008.

**2. Declaration under section 49**

For the purposes of section 49 of the Ordinance, it is declared ó

- (a) that the arrangements specified in section 3 have been made with the Government of the United Mexican States with a view to affording relief from double taxation in relation to income tax and other taxes of a similar character imposed by the laws of the States; and
- (b) that it is expedient that those arrangements should have effect.

**3. Arrangements specified**

The arrangements specified for the purposes of section 2(a) are the arrangements in Article 11 of the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the United Mexican States concerning Air Services done in duplicate at Hong Kong on 20 November 2006 in the English and Spanish languages, the English text of which Article is reproduced in the Schedule.

## SCHEDULE

[s. 3]

ARTICLE 11 OF THE AGREEMENT BETWEEN THE  
GOVERNMENT OF THE HONG KONG SPECIAL  
ADMINISTRATIVE REGION OF THE  
PEOPLE'S REPUBLIC OF CHINA  
AND THE GOVERNMENT OF  
THE UNITED MEXICAN STATES  
CONCERNING AIR SERVICES

ARTICLE 11

**Avoidance of Double Taxation**

- (1) Income or profits derived from the operation of aircraft in international traffic by an airline of one Contracting Party, including participation in a pool service, a joint air transport operation or an international operating agency, which are subject to tax in the area of that Contracting Party, shall be taxable only in the area of that Contracting Party.
- (2) Capital and assets of an airline of one Contracting Party relating to the operation of aircraft in international traffic shall be taxable only in the area of that Contracting Party.
- (3) Gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft which are received by an airline of one Contracting Party shall be taxable only in the area of that Contracting Party.
- (4) For the purposes of this Article:



- (a) the term "income or profits" includes revenues and gross receipts from the operation of aircraft for the carriage of persons, livestock, goods, mail or merchandise in international traffic including:
  - (i) the charter or rental of aircraft;
  - (ii) the sale of tickets or similar documents, and the provision of services connected with such carriage, either for the airline itself or for any other airline, but in the latter case only if such sales or provisions of services are incidental to the operation of aircraft in international traffic; and
  - (iii) interest on funds directly connected with the operation of aircraft in international traffic;
- (b) the term "international traffic" means any carriage by an aircraft except when such carriage is solely between places in the area of the other Contracting Party;
- (c) the term "airline of one Contracting Party" means, in the case of the Hong Kong Special Administrative Region, an airline incorporated and having its principal place of business in the Hong Kong Special Administrative Region and, in the case of the United Mexican States, any airline which under the laws of the United Mexican States is liable to tax therein by reason of domicile, residence, place of management, place of incorporation or any other criterion of a similar nature. This term, however, does not include any airline which is liable to tax in that Contracting Party in respect only of income from sources in that Party;

- (d) the term "competent authority" means, in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorized representative, or any person or body authorized to perform any functions at present exercisable by the Commissioner or similar functions, and, in the case of the United Mexican States, the Ministry of Finance and Public Credit or his authorized representative.
- (5) Income, profits or gains referred to in the preceding paragraphs do not include income, profits or gains derived by the provision of overnight accommodation.
- (6) The competent authorities of the Contracting Parties shall, through consultation, endeavour to resolve by mutual agreement any dispute regarding the interpretation or application of this Article. Article 20 (Settlement of Disputes) shall not apply to any such dispute.
- (7) The taxes to which this Article shall apply are:
  - (a) the federal income tax in the United Mexican States; and
  - (b) the profits tax in the Hong Kong Special Administrative Region.

This Article shall also apply to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their taxation laws.

(8) Notwithstanding Article 24 (Entry into Force) the Government of the Hong Kong Special Administrative Region shall notify the Government of the United Mexican States of the completion of the procedures required by its law for the bringing into force of this Article and the Article shall thereupon enter into force on the date of the notification. The Article shall then be applied:

- (a) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after the first day of April in the calendar year next following that in which this Agreement or this Article enters into force, whichever is the later;
- (b) in the United Mexican States, for any taxation year beginning on or after the first day of January in the calendar year next following that in which this Agreement or this Article enters into force, whichever is the later.

(9) Notwithstanding Article 22 (Termination) where notice of termination of this Agreement is given under that Article, this Article shall cease to have effect:

- (a) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after the first day of April in the calendar year next following that in which notice is given;
- (b) in the United Mexican States, for any taxation year beginning on or after the first day of January in the calendar year next following that in which notice is given.

(10) This Article shall cease to have effect if an Agreement for the avoidance of double taxation with respect to taxes on income, providing for similar exemptions to those in this Article, has effect between the Contracting Parties.

Clerk to the Executive Council

COUNCIL CHAMBER

2008

### **Explanatory Note**

The Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the United Mexican States signed an agreement concerning air services on 20 November 2006 ("Agreement"). This Order specifies the arrangements in Article 11 of the Agreement as double taxation relief arrangements under section 49 of the Inland Revenue Ordinance (Cap. 112) and declares that it is expedient that those arrangements should have effect. The effect of the declaration is that the arrangements have effect in relation to tax under the Inland Revenue Ordinance (Cap. 112) notwithstanding anything in any enactment.

**INLAND REVENUE (DOUBLE TAXATION RELIEF  
ON INCOME FROM AIRCRAFT OPERATIONS)  
(REPUBLIC OF FINLAND) ORDER**

(Made by the Chief Executive in Council under section 49 of the Inland  
Revenue Ordinance (Cap. 112))

**1. Commencement**

This Order shall come into operation on 26 November 2008.

**2. Declaration under section 49**

For the purposes of section 49 of the Ordinance, it is declared <sup>6</sup>

- (a) that the arrangements specified in section 3 have been made with the Government of the Republic of Finland with a view to affording relief from double taxation in relation to income tax and other taxes of a similar character imposed by the laws of the Republic; and
- (b) that it is expedient that those arrangements should have effect.

**3. Arrangements specified**

The arrangements specified for the purposes of section 2(a) are the arrangements in Articles 1 to 6 of the Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Republic of Finland for the Avoidance of Double Taxation with respect to Taxes on Income from Aircraft Operation done in duplicate at Hong Kong on 19 November 2007 in the English language. The text of those Articles is reproduced in the Schedule.

## SCHEDULE

[s. 3]

ARTICLES 1 TO 6 OF THE AGREEMENT BETWEEN THE HONG  
KONG SPECIAL ADMINISTRATIVE REGION OF THE  
PEOPLE'S REPUBLIC OF CHINA AND THE REPUBLIC  
OF FINLAND FOR THE AVOIDANCE OF DOUBLE  
TAXATION WITH RESPECT TO TAXES ON  
INCOME FROM AIRCRAFT OPERATION

**Article 1****Taxes covered**

- (1) The existing taxes to which this Agreement shall apply are:
  - (a) in the case of the Hong Kong Special Administrative Region:  
profits tax (hereinafter referred to as "Hong Kong Special Administrative Region tax");
  - (b) in the case of Finland:  
the corporate income tax, (hereinafter referred to as "Finnish tax")
- (2) This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any substantial changes which have been made in their taxation laws and which may affect the application of this Agreement.

**Article 2****General Definitions**

- (1) For the purposes of this Agreement, unless the context otherwise requires:

- (a) the terms "the Hong Kong Special Administrative Region" and "Finland" mean the Hong Kong Special Administrative Region of the People's Republic of China and the Republic of Finland respectively;
- (b) the term "a Contracting Party" means the Hong Kong Special Administrative Region or Finland, as the context requires;
- (c) the term "income and profits" includes revenues and gross receipts from the operation of aircraft for the carriage of persons, livestock, goods, mail or merchandise in international traffic including:
  - (i) the charter or rental of aircraft if such charter or rental is incidental to the operation of aircraft in international traffic;
  - (ii) the sale of tickets or similar documents, and the provision of services connected with such carriage, for the airline itself or for other airlines, but in the latter case only if such sale or provision of services are incidental to the operation of aircraft in international traffic; and
  - (iii) interest on funds directly connected with the operation of aircraft in international traffic;
- (d) the term "international traffic" means any carriage by an aircraft except when such carriage is solely between places in the area of the other Contracting Party;
- (e) the term "airline of one Contracting Party" means,

- (i) in the case of the Hong Kong Special Administrative Region, an airline incorporated and having its principal place of business in the Hong Kong Special Administrative Region; and
  - (ii) in the case of Finland, any airline which, under the laws of Finland, is liable to tax therein by reason of domicile, residence, place of management, place of incorporation (including registration required by internal law), or any other criterion of a similar nature;
- (f) the term "competent authority" means,
  - (i) in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorised representative, or any person or body authorised to perform any functions at present exercisable by the Commissioner or similar functions; and
  - (ii) in the case of Finland, the Ministry of Finance, its authorised representative or the authority which by the Ministry of Finance, is designated as a competent authority for the purposes of this Agreement.

(2) As regards the application of this Agreement at any time by a Contracting Party, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has at that time under the laws of that Contracting Party for the purposes of the taxes to which the Agreement applies,



any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the terms under other laws of that Contracting Party.

### **Article 3**

#### **Avoidance of Double Taxation**

(1) Income and profits derived from the operation of aircraft in international traffic by an airline of one Contracting Party, including participation in a pool service, a joint air transport operation or an international operating agency, which are subject to tax in the area of that Contracting Party shall be exempt from income tax, profits tax and all other taxes on income and profits imposed in the area of the other Contracting Party.

(2) Capital and assets of an airline of one Contracting Party relating to the operation of aircraft in international traffic shall be exempt from taxes on capital and assets imposed in the area of the other Contracting Party.

(3) Gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft which are received by an airline of one Contracting Party, the income and profits of which according to paragraph (1) are exempt from income tax, profits tax and all other taxes on income and profits imposed in the area of the other Contracting Party, shall be exempt from any tax on gains imposed in the area of the other Contracting Party.

### **Article 4**

#### **Mutual Agreement Procedure**

The competent authorities of the Contracting Parties shall, through consultation, endeavour to resolve by mutual agreement any disputes regarding the interpretation or application of this Agreement.

## **Article 5**

### **Entry into Force**

Each Contracting Party shall in writing notify the other of the completion of the relevant procedures required by its law to bring this Agreement into force. This Agreement shall enter into force on the date on which the last notification is received and shall thereupon have effect:

- (a) in the Hong Kong Special Administrative Region, in respect of Hong Kong Special Administrative Region tax, from the year of assessment beginning on or after 1 April 2002;
- (b) in Finland, in respect of Finnish tax, from the tax year beginning on or after 1 January 2002.

## **Article 6**

### **Termination**

This Agreement shall remain in force indefinitely but either Contracting Party may terminate the Agreement by giving written notice of termination at least six months before the end of any calendar year. In such event, this Agreement shall cease to have effect:

- (a) in the Hong Kong Special Administrative Region, in respect of Hong Kong Special Administrative Region tax, from the year of

assessment beginning on or after 1 April in the calendar year next following that in which the notice is given;

- (b) in Finland, in respect of Finnish tax, from the tax year beginning on or after 1 January in the calendar year next following that in which the notice is given.

Clerk to the Executive Council

COUNCIL CHAMBER

2008

### **Explanatory Note**

The Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Finland signed an agreement for the avoidance of double taxation with respect to taxes on income from aircraft operation on 19 November 2007 (öAgreementö). This Order specifies the arrangements in Articles 1 to 6 of the Agreement as double taxation relief arrangements under section 49 of the Inland Revenue Ordinance (Cap. 112) and declares that it is expedient that those arrangements should have effect. The effect of the declaration is that the arrangements have effect in relation to tax under the Inland Revenue Ordinance (Cap. 112) notwithstanding anything in any enactment.

**SPECIFICATION OF ARRANGEMENTS  
(GOVERNMENT OF THE REPUBLIC OF  
FINLAND) (AVOIDANCE OF DOUBLE  
TAXATION ON INCOME FROM  
AIRCRAFT OPERATION)  
(REVOCATION) ORDER**

(Made by the Chief Executive in Council under section 49 of the Inland  
Revenue Ordinance (Cap. 112))

**1. Commencement**

This Order shall come into operation on 26 November 2008.

**2. Order revoked**

The Specification of Arrangements (Government of the Republic of Finland) (Avoidance of Double Taxation on Income from Aircraft Operation) Order (Cap. 112 sub. leg. AR) is revoked.

Clerk to the Executive Council

COUNCIL CHAMBER

2008

**Explanatory Note**

The object of this Order is to revoke the Specification of Arrangements (Government of the Republic of Finland) (Avoidance of Double Taxation on Income from Aircraft Operation) Order (Cap. 112 sub. leg. AR).

**立法會**  
***Legislative Council***

**Paper for the House Committee Meeting  
on 4 July 2008**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 27 June 2008**

**Date of tabling in LegCo** : 2 July 2008

**Amendment to be made by** : 15 October 2008 (or 5 November 2008  
if extended by resolution)

**PART I OFFICIAL LANGUAGES ORDINANCE**

**Official Languages Ordinance (Cap. 5)**

**Official Languages (Alteration of Text under Section 4D) (Advocate and Advocacy) Order (L.N. 178)**

**Background**

Section 4D of the Official Languages Ordinance (Cap. 5) empowers the Secretary for justice to make formal alterations to the text of an Ordinance in one official language to achieve consistency between a word, expression or phrase and another word, expression or phrase where such words, expressions or phrases purport to be the equivalent of the same word, expression or phrase in the other official language in the same context. The Secretary for Justice has authorized the Law Draftsman pursuant to section 7 of the Legal Officers Ordinance (Cap. 87) to make such formal alterations.

2. This Order (except clause 21) was originally Part 2 of the Official Languages (Alteration of Text under section 4D)(Miscellaneous) Order 2007 (L.N. 136 of 2007) (the 2007 Order). The 2007 Order was laid before the Legislative Council on 4 July 2007 and a Subcommittee was formed to study that Order. At its meeting on 26 July 2007, the Subcommittee took the view that since the words “advocacy” and “advocate” relate to the legal profession and the work of legal practitioners, the relevant bodies in the legal field should be consulted before a decision was made regarding the Chinese equivalents for those words. Part 2 of the 2007 Order was therefore repealed and the Department of Justice agreed to conduct a consultation exercise. The report on the consultation results (LC Paper No. CB(2)2283/07-08(1)) was submitted to the Panel on Administration of Justice and

Legal Services in June 2008. It was circulated to the Panel on 13 June 2008. The Panel did not raise any queries and endorsed the Administration's proposal.

3. The Order is technical. It makes formal alterations to the Chinese text of various items of legislation by—

- (a) repealing “出庭代訟人”，“代言人”，“代訟人” and “出庭代言人” and substituting “訟辯人”; and
- (b) repealing “出庭代訟” and “代訟” and substituting “訟辯”.

The alterations will achieve consistency between the respective Chinese equivalents of “advocates” and “advocacy” in the Chinese text of those items of legislation and those in the Chinese text of other items of legislation.

4. The Order is to come into operation on 1 January 2009.

## **PART II PUBLIC MARKETS**

**Public Health and Municipal Services Ordinance (Cap. 132)**

**Public Health and Municipal Services (Markets) Declaration 2008 (L.N. 179)**

**Market (Cessation of Application of the Public Health and Municipal Services Ordinance) Declaration 2008 (L.N. 180)**

**Public Health and Municipal Services (Cessation of Designation as Public Market) Order 2008 (L.N. 181)**

**Public Health and Municipal Services Ordinance (Amendment of Tenth Schedule) Order 2008 (L.N. 182)**

**Public Health and Municipal Services (Markets) (No. 2) Declaration 2008 (L.N. 183)**

### Background

5. The Director of Food and Environmental Hygiene (DFEH) is empowered under section 79(1) of the Ordinance to declare a market a venue to which the Public Health and Municipal Services Ordinance (Cap. 132) (the Ordinance) applies and, under section 79(3) of the Ordinance, to designate it a public market. The management and control of a venue designated a public market will then in accordance with section 79A of the Ordinance be vested in DFEH. Consequently, the Tenth Schedule to the Ordinance, which specifies the designated public markets, must also be amended.

### L.N. 179

6. By this Declaration, DFEH declares with effect from 1 August 2008 the Aldrich Bay Market at 15 Aldrich Bay Road, Hong Kong (ABM) to be a market to which the Ordinance applies. Consequentially, the Schedule to the Declaration of Markets Notice (Cap. 132 sub. leg. AN) (the Declaration Schedule) is amended to

include ABM.

7. ABM is a new market and is scheduled for commissioning on 1 August 2008. The Declaration is the first of three pieces of subsidiary legislation made by DFEH in respect of ABM. Members may wish to refer to the LegCo Brief issued in respect of the subsidiary legislation relating to ABM by the Food and Health Bureau (FHB) in June 2008 for further information.

#### L.N. 180 to L.N. 183

8. The existing Wan Chai Market at 264 Queen's Road East, Wan Chai (the Old Market) will be replaced by the new Wan Chai Market at G/F, 258 Queen's Road East, Wan Chai (the New Market). The Old Market will be decommissioned immediately before the commission of the New Market on 1 September 2008. For the purposes of the Ordinance, DFEH has to make six pieces of subsidiary legislation. Four of them are gazetted last Friday, 27 June 2008. The remaining two will be gazetted on 4 July 2008. Members may wish to refer to the LegCo Brief issued in respect of the subsidiary legislation relating to the Old and New Markets by FHB in June 2008 for background and further information.

9. L.N. 180 declares the cessation of the Old Market to be a market to which the Ordinance applies. The Declaration Schedule is amended by repealing the entry of the Old Market. L.N. 181 cancels the designation of the Old Market as a public market. L.N. 182 amends the Tenth Schedule to the Ordinance by repealing the entry of the Old Market.

10. L.N. 183 declares the New Market to be a market to which the Ordinance applies. The Declaration Schedule is amended by adding the entry of the New Market.

11. The four legal notices are to come into operation immediately before the commencement of 1 September 2008.

12. Neither the public nor the Panel on Food Safety and Environmental Hygiene has been consulted on these five pieces of subsidiary legislation.

### **PART III COMMENCEMENT NOTICE**

#### **Domestic Violence (Amendment) Ordinance 2008 (17 of 2008)**

#### **Domestic Violence (Amendment) Ordinance 2008 (Commencement) Notice (L.N. 184)**

13. By this Notice made under section 2 of the Domestic Violence (Amendment) Ordinance 2008 (17 of 2008) (the Amendment Ordinance), the Secretary for Labour and Welfare has appointed 1 August 2008 as the day on which

the Amendment Ordinance is to come into operation.

14. Before the enactment of the Amendment Ordinance, the Bill has been scrutinized by a Bills Committee. Members may wish to refer to the report of the Bills Committee to the House Committee (LC Paper No. CB(2)2097/07-08) for further information. The Amendment Ordinance enables injunction to be granted against molestation by spouse or former spouse, partner or former partner in cohabitation relationship, or relatives or relatives of a spouse and extend the Court's power to attach authorization of arrest.

#### *Concluding Observation*

15. No difficulties in relation to the legal and drafting aspects of the subsidiary legislation above reported have been identified.

## **PART IV PUBLIC HEALTH AND MUNICIPAL SERVICES**

### **Public Health and Municipal Services Ordinance (Cap. 132)**

#### **Food Business (Amendment) Regulation 2008 (L.N. 185)**

16. This Amendment Regulation amends the Food Business Regulation (Cap. 132 sub. leg. X) to—

- (a) require the slaughtering of all live poultry remaining at retail premises before 8:00 p.m. each day; and
- (b) require that there is no live poultry at retail premises between 8:00 p.m. each day and 5:00 a.m. the next day.

17. Offenders will be subject to cancellation of the permission, a maximum penalty of level 5, i.e. a fine of \$50,000 and imprisonment for six months.

18. Members may refer to the LegCo Brief (with no file reference on it) issued by the Food and Health Bureau in June 2008 for background information.

19. When the Administration briefed the Panel on Food Safety and Environmental Hygiene (the Panel) on the precautionary measures taken to prevent possible spread of avian flu virus among poultry at its special meeting on 16 June 2008, the Panel noted that the Administration was considering the implementation of an enhanced measure against avian flu virus, i.e. the clearing of all live poultry from the wholesale market and retail outlets every day. Deputations from the live poultry trades attending the meeting had expressed objection to the proposed measure.

20. At its special meeting held on 27 June 2008, the Panel was briefed on



the Amendment Regulation. The Amendment Regulation would come into operation on 2 July 2008 upon the resumption of the sale of live chickens. According to the Administration, banning overnight stocking of live poultry at retail outlets and requiring retail outlets to be free of any live poultry between 8:00pm each day and 5:00am could avoid accumulation of virus at the retail level. It could also help the Administration monitor whether there were smuggled chickens at the retail level.

21. Mr Fred LI expressed support for the legislative proposal and Miss CHAN Yuen-han indicated that she did not object to it. Mr Tommy CHEUNG, however, questioned the effectiveness of banning overnight stocking of live poultry at retail outlets as a measure to prevent the possible spread of avian flu virus by smuggled chickens. The Panel noted that Mr Albert CHAN had given notice of moving a motion to repeal the Amendment Regulation at the Council meeting on 9 July 2008. Deputations from the live poultry retailers and transport operators who attended the meeting expressed objection to the proposed ban. Live poultry retailers indicated that implementation of the proposed ban would very likely force most of them to cease business.

22. Members asked whether there would be any measures to complement the proposed ban and facilitate live poultry wholesalers, retailers and transport operators to run their business under the new mode of operation, such as allowing delivery service to be arranged from the wholesale market to retail outlets on a need basis (i.e. more than one-delivery of live chickens per day). The Administration explained that, at present, the wholesalers would have completed their dispatch and delivery of all their live chickens to the retailers before 7:00am everyday. The Administration would not prohibit them to arrange more than one-delivery per day. However, the daily throughput in the wholesale market would be monitored closely to guard against any over-stocking of live poultry for public health and environmental hygiene considerations.

23. Members expressed concern that the withdrawal of a majority of live poultry retailers from the market would force local farmers and wholesalers to cease their operation. As a result, live chickens would no longer be available in the market in future. The Administration explained that it would liaise with poultry importers and local farmers to adjust appropriately the number of live poultry channeled to the wholesale market if there was evidence to support that the live poultry trade had shrunk.

24. We have clarified with the Administration on certain legal and drafting points relating to the Amendment Regulation. In relation to paragraphs 5 - 10 of the Administration's reply, we agree to the Administration's legal analysis that the new requirement in the Amendment Regulation is consistent with Articles 6 and 105 (which relate to protection of private property) of the Basic Law. Copies of the correspondence are attached to this Report for Members' reference.

25. Members may note that the President has directed that Hon Albert

CHAN Wai-yip's motion to repeal the Amendment Regulation is to be placed on the Agenda of the Council's meeting of 9 July 2008.

26. The Amendment Regulation came into operation on 2 July 2008.

27. No difficulties in relation to the legal and drafting aspects of L.N. 185 have been identified.

Encl.

Prepared by

KAU Kin-wah (L.N. 178 to L.N. 184)  
LAM Ping-man, Stephen (L.N. 185)  
Assistant Legal Advisers  
Legislative Council Secretariat  
3 July 2008

LS/S/37/07-08

LS/S/37/07-08  
2869 9468  
2877 5029

By Fax (2136 3281)

30 June 2008

Mr Francis HO  
Prin AS for Food and Health (Food)2  
Food and Health Bureau  
Food Branch  
20/F, Murray Building  
Garden Road  
Hong Kong

Dear Mr HO,

**Food Business (Amendment) Regulation 2008 (L.N. 185)**

We are scrutinising the legal and drafting aspects of the Amendment Regulation. We would be grateful for your clarification of the following questions.

Question 1

Paragraph 11 of the LegCo Brief on the Amendment Regulation says that a total of 469 permittees are affected, of which 260 are tenants of public markets run by the Food and Environmental Hygiene Department (FEHD) while the remaining 209 tenants are holders of fresh provision shop (FPS) licences issued by FEHD. Are the markets under The Link Management Ltd. included in the 469 permittees? If yes, are they regarded as FPSs?

Question 2

Is there any power given to the Director of FEHD in the permission, referred to under section 30(2) of the Food Business Regulation (Cap. 132 sub. leg. X), to add new conditions to or vary the conditions of such permission during its validity period?

Question 3

If the answer to Question 2 is negative, what are the legal justifications for introducing legislative amendments which add new conditions to or vary the conditions of the permission during its validity period?

Question 4

Is there any local legislative precedents empowering the licensing authority to add new conditions to or vary the conditions of a licence during its validity period? If yes, what are the circumstances in which such power can be exercised?

Question 5

Is a permittee, who has slaughtered a live poultry under the new section 30AA, allowed to sell the slaughtered poultry in a fresh, chilled or frozen condition? If yes, what is the legal basis for so doing?

Question 6

The term "poultry" is defined under section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132) to mean "any bird commonly used for human consumption and also any other bird which is sold or offered for sale for human consumption". Therefore, the term "poultry" is not confined to mean chickens only. In practice, what kind of poultry is now commonly sold on the permittees' premises?

In facilitating us to report on this item to the House Committee's meeting to be held on 4 July 2008, we would be grateful for your reply, in both languages, to reach us by mid-noon of 2 July 2008.

Yours sincerely,

(Stephen LAM)  
Assistant Legal Adviser

c.c LA  
SALA1



中華人民共和國香港特別行政區政府總部食物及衛生局  
Food and Health Bureau, Government Secretariat  
The Government of the Hong Kong Special Administrative Region  
The People's Republic of China

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Your ref.: LS/S/37/07-08  
Tel No.: 2973 8232  
Fax No.: 2136 3281

2 July 2008

Mr Stephen Lam  
Assistant Legal Adviser  
Legislative Council Secretariat  
Legal Service Division  
Legislative Council Building  
8 Jackson Road  
Central, Hong Kong

Dear Mr. Lam,

Thank you for your letter of 30 June 2008. On the six questions raised therein, our response is set out as follows.

**Question 1**

2. Live poultry stalls in markets under The Link Management Ltd. are issued with fresh provision shop licences, and are therefore included in the 469 permittees.

**Question 2**

3. Currently, live poultry (except those on a poultry farm or in wholesale markets) is listed as "restricted food" in Schedule 2 to the Food Business Regulation (Cap 132X), and the sale of which is prohibited save with Director of Food and Environmental Hygiene's (DFEH) written permission given under section 30 of Cap 132X. In practice, DFEH's written permission takes the form of a permit attached to a tenancy agreement with public market tenant or a fresh provision shop licence issued under Part IV of Cap 132X.

4. Although DFEH may amend the tenancy conditions for public market stalls from time to time with immediate effect, licensing conditions of fresh provision shops could only be amended by DFEH upon renewal of the licence by giving not less than 90 days' written notice in accordance with section 125 (1B)(a)(ii) of the Public Health and Municipal Services Ordinance (Cap 132).

Coupled with the fact that some fresh provision shops have just renewed their 12-month licence, it would take as long as 15 months to ban the overnight stocking of live poultry at all fresh provision shops if only licensing conditions were amended. This is unacceptable in view of the need to implement the new requirement of “no poultry overnight” at the retail level when retail outlets are allowed to sell live poultry again on 2 July 2008. Hence, legislative amendments are necessary.

### **Question 3**

5. We have sought legal advice on the new requirement as reflected in the Food Business (Amendment) Regulation 2008, and have come to a conclusion that the new requirement is consistent with provisions in the Basic Law (BL).

#### *Necessity of the new requirement*

6. The new requirement is essential to the protection of public health through minimizing the risk of avian influenza outbreak at the retail level, especially after the retail sale of live poultry is resumed. Scientific research showed that when a chicken is infected by the avian influenza virus, there is an incubation period of one to five days when the virus would multiply to a sufficient number to be detectable in the excreta. The compulsory slaughtering of live poultry by 8:00 p.m. each day under the new requirement will help avoid the accumulation of virus in the environment of the retail outlets.

#### *Feasibility of the new requirement*

7. The Administration has duly considered the operational requirements of the live poultry trade in tailoring the new requirement. To allow adequate time for thorough cleansing and disinfection, permittees are required to ensure that their stalls and shops are free of any live poultry between 8:00 p.m. each day and 5:00 a.m. the next day. Whilst the new requirement will have some adverse impact on the trade's operation, the new requirement is nonetheless feasible.

#### *Trade has been notified well in advance*

8. The Administration's intention to impose the “no live poultry overnight” requirement was announced on 12 June 2008 and put to the trade several times during our discussion with retailers on arrangements after lifting of the “infected place order”. The trade has been given ample advance notice of the new requirement.



New requirement unlikely to give rise to BL concerns

9. On whether the adverse impact on the permittees' business brought about by the new requirement would amount to deprivation of private property under BL 105 (assuming for the present purpose that a wide meaning is adopted for the term "deprivation" to mean any act of extinguishing the property in question and further that the economic benefit derived from the businesses carried out under the DFEH's written permission under section 30 of Cap 132X amounts to property rights protected under BL 105), we note that there will not be any formal deprivation of property under the new requirement. Nor would the new requirement give rise to any *de facto* deprivation of property given that such a *de facto* deprivation is unlikely to arise unless the property affected is left without any meaningful alternative use or the restrictions have denied all economically viable use of the property, and that from comparative constitutional jurisprudence the courts in general would be cautious to find a *de facto* deprivation. The remaining issue then is whether the new requirement would amount to disproportionate interference with private property under the fair balance or proportionality test which is arguably implicit in BL 6 and BL 105 given the public interest served by the new requirement.

10. As explained above, not only is the new requirement essential to the protection of public health, it is also reasonably practical from the permittees' point of view. The permittees have been notified well in advance, and they will also be able to carry on with their business after the new requirement has been put in place. The fact that their profits may be affected by the new requirement should not in itself invalidate the new requirement under the fair balance test. Indeed, as the permittees grow accustomed to the new requirement, and if the permittees are able to time the supply of live poultry from wholesalers properly, the permittees can carry on their businesses subject to complying with the new requirement. As detailed under question 5 below, carcass resulted from the compulsory slaughtering under the new requirement will not be rendered worthless. Permittees will still be able to sell such carcasses, as all permittees permitted to sell live poultry are now endorsed to sell fresh poultry carcass at the same time. We are therefore of the view that the new requirement strikes a reasonable balance between the public interest that it intends to serve, and the alleged interference with private property. Hence, in sum, we consider that the new requirement is consistent with BL 6 and BL 105.

**Question 4**

11. We have located a few examples of legislative provisions empowering an authority to add new conditions to or vary conditions from time to time. They are section 12 of Non-local Higher and Professional Education (Regulation) Ordinance (Cap 493), By-law 41F of Mass Transit Railway By-laws (Cap 556B), and section 8(7) of the Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Cap 354N). They all specify that the relevant authority may from time to time vary or add permit/certificate/exemption account conditions.

### **Question 5**

12. According to the new section 30AA of Cap 132X, a permittee (a person permitted to sell live poultry by DFEH under section 30) must ensure that all live poultry remaining at the relevant permitted premises are slaughtered by 8:00pm each day. It is the Administration's intention that all live poultry remaining at any retail outlet must be slaughtered, and how to deal with the poultry carcasses remains the permittees' decision.

13. In case a permittee wishes to sell the carcasses as food afterwards, he/she is subject to provisions in the Public Health and Municipal Services Ordinance (Cap 132) that govern the quality of food for sale, such as sections 52(1) and 54(1).

14. It should be noted that all public market stalls or FPS permitted to sell live poultry are currently endorsed to sell fresh poultry carcass at the same time. Fresh poultry carcass includes carcasses of poultry that is slaughtered at retail outlets but are refrigerated afterwards. Some public market stalls or FPS are also allowed to sell chilled poultry or frozen poultry, which are poultry subjected to refrigerating process at specified temperatures (i.e. about 4°C for chilled and -18°C for frozen poultry) immediately upon slaughtering and kept at those temperatures throughout the supply chain until the product reaches the final consumer.

15. Fresh or frozen poultry carcass are currently listed as "restricted foods" in Scheduled 2 to Cap 132X and the sale of which is prohibited save with DFEH's written permission given under section 30 of Cap 132X.

### **Question 6**

16. Other commonly sold live poultry includes small quantities of pigeons (鴿), silky chicken (竹絲雞), guinea fowls (珍珠雞), chukars (石雞) and pheasants (雉). Live water birds such as live geese, ducks and quails are currently not available in Hong Kong.

Yours sincerely,



( Francis Ho )  
for Secretary for Food and Health



# **LEGISLATIVE COUNCIL BRIEF**

Public Health and Municipal Services Ordinance  
(Cap. 132)

## **PUBLIC HEALTH AND MUNICIPAL SERVICES (MARKETS) DECLARATION 2008**

## **PUBLIC HEALTH AND MUNICIPAL SERVICES (DESIGNATION OF PUBLIC MARKETS) ORDER 2008**

## **PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE (AMENDMENT OF TENTH SCHEDULE)(No.2) ORDER 2008**

### **INTRODUCTION**

A new public market will commence operation on 1 August 2008 at 15 Aldrich Bay Road, Hong Kong. This paper briefs Members on the three pieces of subsidiary legislation made by the Director of Food and Environmental Hygiene (DFEH) to designate the Aldrich Bay Market as a public market under the Public Health and Municipal Services Ordinance (Cap.132) (“the Ordinance”).

### **BACKGROUND**

2. For the proper regulation and control of markets, DFEH is empowered, under section 79(1) of the Ordinance, to declare a venue to be a market to which the Ordinance applies. DFEH may then, under section 79(3) of the Ordinance, designate such market as a public market so that by virtue of section 79A, the management and control of which will be vested in DFEH. DFEH is also empowered under section 79(5) of the Ordinance to amend, add to or delete from the Tenth Schedule of the Ordinance, which specifies designated public markets.

3. The new Aldrich Bay Market is located at 15 Aldrich Bay Road, Hong Kong and comprises 67 market stalls and four cooked food stalls. It is tentatively scheduled for commissioning on 1 August 2008, and the stalls will be let out by open auction.

4. To ensure proper management and control of the Aldrich Bay Market, it is necessary for DFEH to first declare it as a market to which the Ordinance applies, and then designate it as a public market and enlist it in the Tenth Schedule to the Ordinance.

## THE SUBSIDIARY LEGISLATION

5. DFEH has made the **Public Health and Municipal Services (Markets) Declaration 2008** at Annex A to declare the Aldrich Bay Market as a market to which the Ordinance applies. The Declaration will be gazetted on 27 June 2008.

6. After the publication of the Declaration, DFEH will proceed to designate the Aldrich Bay Market as a public market by making the following two Orders -

- (a) the **Public Health and Municipal Services (Designation of Public Markets) Order 2008** at Annex B to designate the Aldrich Bay Market as a public market; and
- (b) the **Public Health and Municipal Services Ordinance (Amendment of Tenth Schedule) (No.2) Order 2008** at Annex C to include the Aldrich Bay Market in the Schedule on public markets.

## LEGISLATIVE TIMETABLE

8. The legislative timetable is as follows –

	Publication in the Gazette	Tabling at the Legislative Council
Public Health and Municipal Services (Markets) Declaration 2008	27 June 2008	2 July 2008
Public Health and Municipal Services (Designation of Public Markets) Order 2008	4 July 2008	9 July 2008

	Publication in the Gazette	Tabling at the Legislative Council
Public Health and Municipal Services Ordinance (Amendment of Tenth Schedule) (No.2) Order 2008	4 July 2008	9 July 2008

## **IMPLICATIONS OF THE SUBSIDIARY LEGISLATION**

10. The three pieces of subsidiary legislation are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the current binding effect of the Ordinance and have no civil service, economic, productivity or environmental implications. The additional expenditure incurred in the management of the new market will be absorbed by the Food and Environmental Hygiene Department.

## **PUBLIC CONSULTATION**

11. The declaration and designation of Aldrich Bay Market as a public market will confer upon DFEH a statutory duty to manage and control the venue as a public market in accordance with the Ordinance. The market stalls therein will be leased out for operation. The Eastern District Council has been consulted on the project and is agreeable.

## **PUBLICITY**

12. As relevant stakeholders are well informed of the project, further publicity on the designation is considered unnecessary.

## **ENQUIRIES**

13. Enquiries on this brief can be addressed to Miss Ivy CHAN, Assistant Secretary for Food and Health (Food) (Tel No.: 2973 8255).

**Food and Health Bureau**  
**June 2008**

# PUBLIC HEALTH AND MUNICIPAL SERVICES (MARKETS) DECLARATION 2008

(Made by the Director of Food and Environmental Hygiene under  
section 79(1) of the Public Health and Municipal  
Services Ordinance (Cap. 132))

## 1. Market to which the Public Health and Municipal Services Ordinance applies

The Aldrich Bay Market at 15 Aldrich Bay Road, Hong Kong is declared to be a market to which the Public Health and Municipal Services Ordinance (Cap. 132) applies with effect from 1 August 2008.

## 2. Schedule amended

The Schedule to the Declaration of Markets Notice (Cap. 132 sub. leg. AN) is amended by adding –

“Aldrich Bay Market 愛秩序灣街市”。

Director of Food and Environmental Hygiene

2008

### Explanatory Note

This Declaration declares the Aldrich Bay Market at 15 Aldrich Bay Road, Hong Kong to be a market to which the Public Health and Municipal Services Ordinance (Cap. 132) applies.

**PUBLIC HEALTH AND MUNICIPAL SERVICES  
(DESIGNATION OF PUBLIC MARKETS)  
ORDER 2008**

(Made by the Director of Food and Environmental Hygiene under  
section 79(3) of the Public Health and Municipal  
Services Ordinance (Cap. 132))

**3. Commencement**

This Order shall come into operation on 1 August 2008.

**4. Designation of a public market**

The Aldrich Bay Market at 15 Aldrich Bay Road, Hong Kong, being a market to which the Public Health and Municipal Services Ordinance (Cap. 132) applies, is designated as a public market.

Director of Food and Environmental Hygiene

2008

**Explanatory Note**

This Order designates the Aldrich Bay Market at 15 Aldrich Bay Road, Hong Kong as a public market.

**PUBLIC HEALTH AND MUNICIPAL SERVICES  
ORDINANCE (AMENDMENT OF TENTH  
SCHEDULE) (No.2) ORDER 2008**

(Made by the Director of Food and Environmental Hygiene under  
section 79(5) of the Public Health and Municipal  
Services Ordinance (Cap. 132))

## 5. Commencement

This Order shall come into operation on 1 August 2008.

## 6. Public markets

The Tenth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132) is amended by adding –

“Aldrich Bay Market 愛秩序灣街市”。

Director of Food and Environmental Hygiene

2008

### Explanatory Note

Consequent upon the designation of the Aldrich Bay Market as a public market, this Order amends the Tenth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132) to reflect the designation.

## **LEGISLATIVE COUNCIL BRIEF**

Public Health and Municipal Services Ordinance  
(Cap. 132)

**MARKET (CESSATION OF APPLICATION OF THE PUBLIC HEALTH  
AND MUNICIPAL SERVICES ORDINANCE) DECLARATION 2008**

**PUBLIC HEALTH AND MUNICIPAL SERVICES (CESSATION OF  
DESIGNATION AS PUBLIC MARKET) ORDER 2008**

**PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE  
(AMENDMENT OF TENTH SCHEDULE) ORDER 2008**

**PUBLIC HEALTH AND MUNICIPAL SERVICES (MARKETS) (NO. 2)  
DECLARATION 2008**

**PUBLIC HEALTH AND MUNICIPAL SERVICES (DESIGNATION OF  
PUBLIC MARKET) (NO. 2) ORDER 2008**

**PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE  
(AMENDMENT OF TENTH SCHEDULE) (NO. 3) ORDER**

### **INTRODUCTION**

The existing Wan Chai Market at 264 Queens's Road East, Wan Chai ("the Old Wan Chai Market") will soon be replaced by the new Wan Chai Market at G/F, 258 Queen's Road East, Wan Chai ("the New Wan Chai Market"). This paper briefs Members on the six pieces of subsidiary legislation made by the Director of Food and Environmental Hygiene (DFEH) to cease the designation of the Old Wan Chai Market and to designate the New Wan Chai Market as a public market under the Public Health and Municipal Services Ordinance (Cap.132) ("the Ordinance").



## BACKGROUND

2. For the proper regulation and control of markets, DFEH is empowered, under section 79(1) of the Ordinance, to declare a venue to be a market to which the Ordinance applies. DFEH may then, under section 79(3) of the Ordinance, designate such market as a public market under section 79(3) so that by virtue of section 79A, the management and control of which will be vested in DFEH. DFEH is also empowered under section 79(5) of the Ordinance to amend, add to or delete from the Tenth Schedule of the Ordinance, which specifies the designated public markets.

3. The Old Wan Chai Market, which is currently a designated public market will be decommissioned just before 1 September 2008. Therefore, it is necessary for DFEH to declare its cessation as a market to which the Ordinance applies, cease to designate it as a public market; and amend the Tenth Schedule of the Ordinance accordingly with effect from 1 September 2008.

4. The New Wan Chai Market has been developed to replace the Old Wan Chai Market. The New Wan Chai Market will comprise three meat stalls, ten fish stalls and 37 wet goods stalls. It is scheduled for commissioning on 1 September 2008 and the stalls will be let out to Old Wan Chai Market tenants through restricted auction.

5. In order to ensure proper management and control of the New Wan Chai Market, it is necessary for DFEH to first declare it as a market to which the Ordinance applies; designate it as a public market; and enlist the New Wan Chai Market in the Tenth Schedule of the Ordinance.

## THE SUBSIDIARY LEGISLATION

6. For the decommissioning of the Old Wan Chai Market with effect from 1 September 2008, DFEH has made the following Declaration and Orders.

- (a) the **Market (Cessation of Application of the Public Health and Municipal Services Ordinance) Declaration 2008** at **Annex A** to declare the cessation of the Old Wan Chai Market as a market to which the Ordinance applies;
- (b) the **Public Health and Municipal Services (Cessation of Designation as Public Market) Order 2008** at **Annex B** to cease the designation of the Old Wan Chai Market as a public market; and
- (c) the **Public Health and Municipal Services Ordinance (Amendment of**

**Tenth Schedule) Order 2008** at **Annex C** to take out the Old Wan Chai Market from the Schedule on public markets.

7. For the commissioning of the New Wan Chai Market on 1 September 2008, DFEH has made the **Public Health and Municipal Services (Markets) (No. 2) Declaration 2008** at **Annex D** to declare the New Wan Chai Market as a market to which the Ordinance applies.

8. After the publication of the above Declaration, DFEH will proceed to designate the New Wan Chai Market as a public market by making the following two Orders -

- (a) the **Public Health and Municipal Services (Designation of Public Markets) (No. 2) Order 2008** at **Annex E** to designate the New Wan Chai Market as a public market; and
- (b) the **Public Health and Municipal Services Ordinance (Amendment of Tenth Schedule) (No. 3) Order 2008** at **Annex F** to include the New Wan Chai Market in the Schedule of public markets.

## **LEGISLATIVE TIMETABLE**

9. The legislative timetable is as follows –

	Publication in the Gazette	Tabling at the Legislative Council
Market (Cessation of Application of the Public Health and Municipal Services Ordinance) Declaration 2008	27 June 2008	2 July 2008
Public Health and Municipal Services (Cessation of Designation as Public Market) Order 2008	27 June 2008	2 July 2008
Public Health and Municipal Services Ordinance (Amendment of Tenth Schedule) Order 2008	27 June 2008	2 July 2008

	Publication in the Gazette	Tabling at the Legislative Council
Public Health and Municipal Services (Markets) (No. 2) Declaration 2008	27 June 2008	2 July 2008
Public Health and Municipal Services (Designation of Public Markets) (No. 2) Order 2008	4 July 2008	9 July 2008
Public Health and Municipal Services Ordinance (Amendment of Tenth Schedule) (No. 3) Order 2008	4 July 2008	9 July 2008

## **IMPLICATIONS OF THE SUBSIDIARY LEGISLATION**

10. The six pieces of subsidiary legislation are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the current binding effect of the Ordinance and have no civil service, economic, productivity or environmental implications. The additional expenditure incurred in the management of the New Wan Chai Market will be absorbed by the Food and Environmental Hygiene Department.

## **PUBLIC CONSULTATION**

11. The declaration and designation of the New Wan Chai Market as a public market will confer upon DFEH a statutory duty to manage and control the venue as a public market in accordance with the Ordinance. The market stalls therein will be leased out for operation. The Wan Chai District Council and the existing tenants of the Old Wan Chai Market have been consulted and are supportive.

## **PUBLICITY**

12. As the relevant stakeholders are well informed of the project, further publicity on the designation is considered not unnecessary.

## **ENQUIRIES**

13. Enquiries on this brief can be addressed to Miss Ivy CHAN, Assistant Secretary for Food and Health (Food) (Tel No.: 2973 8255)

**Food and Health Bureau**  
**June 2008**

**Annex A**

**MARKET (CESSATION OF APPLICATION OF THE  
PUBLIC HEALTH AND MUNICIPAL SERVICES  
ORDINANCE) DECLARATION 2008**

(Made by the Director of Food and Environmental Hygiene under section 79(1)  
of the Public Health and Municipal Services Ordinance (Cap. 132))

**1. Commencement**

This Declaration shall come into operation immediately before the commencement of 1 September 2008.

**2. Market to which the Public Health and  
Municipal Services Ordinance no longer  
applies**

It is declared that the Wan Chai Market at 264 Queen's Road East, Wan Chai, Hong Kong ceases to be a market to which the Public Health and Municipal Services Ordinance (Cap. 132) applies.

**3. Schedule amended**

The Schedule to the Declaration of Markets Notice (Cap. 132 sub. leg. AN) is amended by repealing –

“Wan Chai Market                      灣仔街市”.

Director of Food and Environmental Hygiene

2008

### **Explanatory Note**

This Declaration declares that the Wan Chai Market at 264 Queen's Road East, Wan Chai, Hong Kong ceases to be a market to which the Public Health and Municipal Services Ordinance (Cap. 132) applies.

**Annex B**

**PUBLIC HEALTH AND MUNICIPAL SERVICES  
(CESSATION OF DESIGNATION AS PUBLIC  
MARKET) ORDER 2008**

(Made by the Director of Food and Environmental Hygiene under section 79(3)  
of the Public Health and Municipal Services Ordinance (Cap. 132))

**1. Commencement**

This Order shall come into operation immediately before the commencement of 1 September 2008.

**2. Cessation of designation as a public market**

The Wan Chai Market at 264 Queen's Road East, Wan Chai, Hong Kong ceases to be designated as a public market.

Director of Food and Environmental Hygiene

2008

### **Explanatory Note**

This Order cancels the designation of the Wan Chai Market at 264 Queen's Road East, Wan Chai, Hong Kong as a public market.



**PUBLIC HEALTH AND MUNICIPAL SERVICES  
ORDINANCE (AMENDMENT OF TENTH  
SCHEDULE) ORDER 2008**

(Made by the Director of Food and Environmental Hygiene under section 79(5)  
of the Public Health and Municipal Services Ordinance (Cap. 132))

**1. Commencement**

This Order shall come into operation immediately before the  
commencement of 1 September 2008.

**2. Public markets**

The Tenth Schedule to the Public Health and Municipal Services  
Ordinance (Cap. 132) is amended by repealing –

“Wan Chai Market                      灣仔街市”.

Director of Food and Environmental Hygiene

2008

### **Explanatory Note**

Consequent upon the cancellation of the designation of the Wan Chai Market at 264 Queen's Road East, Wan Chai, Hong Kong as a public market, this Order amends the Tenth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132) to reflect the cancellation.

**Annex D**

**PUBLIC HEALTH AND MUNICIPAL SERVICES  
(MARKETS) (NO. 2) DECLARATION 2008**

(Made by the Director of Food and Environmental Hygiene under section 79(1)  
of the Public Health and Municipal Services Ordinance (Cap. 132))

**1. Market to which the Public Health and  
Municipal Services Ordinance applies**

The Wan Chai Market on the Ground Floor, 258 Queen's Road East, Wan Chai, Hong Kong is declared to be a market to which the Public Health and Municipal Services Ordinance (Cap. 132) applies with effect from 1 September 2008.

**2. Schedule amended**

The Schedule to the Declaration of Markets Notice (Cap. 132 sub. leg. AN) is amended by adding –

“Wan Chai Market                      灣仔街市”.

Director of Food and Environmental Hygiene

2008

### **Explanatory Note**

This Declaration declares the Wan Chai Market on the Ground Floor, 258 Queen's Road East, Wan Chai, Hong Kong to be a market to which the Public Health and Municipal Services Ordinance (Cap. 132) applies.

**PUBLIC HEALTH AND MUNICIPAL SERVICES  
(DESIGNATION OF PUBLIC MARKETS) (NO. 2)  
ORDER 2008**

(Made by the Director of Food and Environmental Hygiene under section 79(3)  
of the Public Health and Municipal Services Ordinance (Cap. 132))

**1. Commencement**

This Order shall come into operation on 1 September 2008.

**2. Designation of a public market**

The Wan Chai Market on the Ground Floor, 258 Queen's Road East, Wan Chai, Hong Kong, being a market to which the Public Health and Municipal Services Ordinance (Cap. 132) applies, is designated as a public market.

Director of Food and Environmental Hygiene

2008

### **Explanatory Note**

This Order designates the Wan Chai Market on the Ground Floor, 258 Queen's Road East, Wan Chai, Hong Kong as a public market.

**PUBLIC HEALTH AND MUNICIPAL SERVICES  
ORDINANCE (AMENDMENT OF TENTH  
SCHEDULE) (NO. 3) ORDER 2008**

(Made by the Director of Food and Environmental Hygiene under section 79(5)  
of the Public Health and Municipal Services Ordinance (Cap. 132))

**1. Commencement**

This Order shall come into operation on 1 September 2008.

**2. Public markets**

The Tenth Schedule to the Public Health and Municipal Services  
Ordinance (Cap. 132) is amended by adding –

“Wan Chai Market                      灣仔街市”.

Director of Food and Environmental Hygiene

2008

### **Explanatory Note**

Consequent upon the designation of the Wan Chai Market on the Ground Floor, 258 Queen's Road East, Wan Chai, Hong Kong as a public market, this Order amends the Tenth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132) to reflect the designation.



# **LEGISLATIVE COUNCIL BRIEF**

## **Public Health and Municipal Services Ordinance (Cap 132)**

### **FOOD BUSINESS (AMENDMENT) REGULATION 2008**

#### **Introduction**

In exercise of the power under section 56 of the Public Health and Municipal Services Ordinance (Cap. 132), the Director of Food and Environmental Hygiene (DFEH) has made the Food Business (Amendment) Regulation 2008 (“the Amendment Regulation”), at Annex, to require that there should be no live poultry at retail outlets overnight in order to protect public health and further reduce the risk posed by avian influenza.

#### **Background and Justifications**

2. Since 1998, the Government has put in place a comprehensive preventive and surveillance programme to reduce the risk of avian influenza outbreaks in Hong Kong. These measures included tightened biosecurity measures at local farms, enhanced import control and hygiene requirements for wholesale and retail markets, etc. In 2003, we introduced a vaccination programme for all local chicken farms and we also required all imported live chickens to be vaccinated against the disease. The World Health Organisation has publicly commented that our preventive and surveillance programme is one of the most advanced systems that they have seen.

3. However, these measures are not foolproof. The recent detection of H5N1 avian influenza virus in environmental swabs from four retail markets in Hong Kong on 7 and 11 June 2008 indicated that despite all the preventive and control measures that we have put in place, they are inadequate in containing the public health risks posed by avian influenza, especially at the retail level. Immediately following detection of the virus at the four retail markets, the Director of Agriculture, Fisheries and Conservation declared on 11 June 2008 all retail outlets where live poultry were sold as infected places and ordered the culling of all poultry in these retail outlets. We have also

decided to suspend temporarily live chicken imports from the Mainland for 21 days with effect from 11 June 2008, with reference to the guidelines of the World Organisation for Animal Health. At the same time, local farms would stop dispatching chickens to the market.

4. Whilst we are actively tracing the source of the virus, we may not be able to pinpoint any one particular reason to account for the detection of the virus in the retail markets. Whatever is the cause, the reality is we are still subject to the menace of avian influenza outbreak in Hong Kong. There is therefore an imperative need to enhance our ability to arrest any possible spread of avian influenza virus in Hong Kong in future, thereby reducing the risks of human infection of avian influenza.

5. Past experience has shown that the principal mode of transmission of the avian influenza virus from poultry to human is through contact with live poultry or their faeces. Hence, the most effective way to minimize the health risk posed by avian influenza is to reduce as much as possible the contact between human and live poultry.

#### *No live poultry at the retail level overnight*

6. Scientific research showed that when a chicken is infected by the avian influenza virus, there is an incubation period of one to five days when the virus would multiply to a sufficient number to be detectable in the excreta. If we require that there should be no live poultry at retail outlets overnight, the chicken will be slaughtered to avoid accumulation of virus in the environment of the retail outlets. Furthermore, prohibition of overnight stocking of live poultry at retail level will make it easier for the Administration to monitor whether there are smuggled chickens at the retail level. Retailers will be discouraged to sell smuggled chickens as any unsold chicken at the end of the day has to be slaughtered and the value of a dressed chicken is much diminished. We therefore propose to require all live poultry retailers to slaughter any live poultry in their premises by 8:00 p.m. each day. To allow adequate time for thorough cleansing and disinfection, we further require retail outlets to be free of any live poultry between 8:00 p.m. each day and 5:00 a.m. the next day. This has taken account of the opening hours and operational requirements of poultry retail outlets. Whilst this proposed new measure will have an adverse impact on the trade's operation, we consider it feasible and should be put in place if live poultry is allowed to be sold again at retail outlets.

7. We have considered other alternatives, such as increasing the markets rests days from two per month to once every week, to reduce the health

risks posed by avian influenza at the retail level. However, we consider that such measure is not an effective way to arrest the possible spread of avian influenza. In the avian influenza incident in June 2008, the second market rest day in May was 25 May 2008 whereas the environmental samples tested positive of H5N1 virus were collected on 3 June 2008, i.e. about one week from the market rest day. This indicated that merely increasing the number of market rest days to once per week might not be able to significantly reduce the amount of virus load in the environment. Besides, when a chicken is infected by avian influenza virus, it may only take a couple of days or less for the virus to multiply to a sufficient number to be detectable in its excreta. The close proximity between the chickens at the retail outlets and their excreta allow the rapid spread of avian influenza from one infected chicken to others. Similar incremental arrangement of increasing market rest days, for example twice a week, would not be sufficient to safeguard public health.

8. Apart from the no overnight stocking of live poultry, we will also enhance other preventive measures at the retail end. These include requiring the retailers to thoroughly cleanse and disinfect the retail premises every night and strict enforcement of existing measures like requiring retailers to wear protective gears. Not observing these requirements shall result in cancellation of the licence or tenancy.

9. In the wholesale market, we will closely monitor its daily throughput to ensure there is no over-stocking which poses a public health risk and environmental hygiene problem. We will liaise with the poultry importers and local farmers to appropriately adjust the number of poultry channelled to the wholesale market, if there is evidence to support that the live poultry trade has shrunk further because of this new requirement at the retail level and the reduction of retailer in the trade.

### **The Amendment Regulation**

10. Live poultry (except those on a poultry farm or in a wholesale market) is listed as “restricted food” in Schedule 2 to the Food Business Regulation (Cap 132X), and the sale of which is prohibited save with DFEH’s written permission given under section 30 of Cap 132X.

11. A total of 469 permittees are given permission to sell live poultry, of which 260 are tenants of public markets run by the Food and Environmental Hygiene Department (FEHD) while the remaining 209 are holders of fresh provision shop licences issued by FEHD.

12. The Amendment Regulation provides that permittees with permission under section 30 of the Food Business Regulation to sell live poultry (including public market stall tenants and fresh provision shop licensees) must slaughter any live poultry remaining in their stalls/shops by 8:00 p.m. everyday. Moreover, live poultry would not be allowed at such premises from 8:00 p.m. to 5:00 a.m. daily. Offenders will be subject to cancellation of the permission, a maximum penalty of level 5 (i.e. a fine of \$50,000) and imprisonment for six months.

### **Legislative Timetable**

13. The legislative timetable is as follows -

Publication in the Gazette	27 June 2008
Tabling in the Legislative Council and commencement of operation of the amendment regulation	2 July 2008

14. The amendment regulation will have to commence operation on 2 July 2008 because of public health reasons. We need to put in place this enhanced safeguard measure when live poultry is allowed to be sold at retail outlets again on that day. The 21-day period subsequent to the declaration of all retail outlets where live poultry were sold as infected places would end on 1 July. Subject to the poultry stalls and shops being properly cleansed and disinfected, the Director of Agriculture, Fisheries and Conservation shall declare the premises to be free from infection.

### **Public Consultation**

15. Following the recent avian influenza incident in Hong Kong and finding itself difficult to adapt to the “no live poultry overnight” requirement, the live poultry retailers have expressed a strong wish for the Government to buy out their business so that they can leave the live poultry trade for good. Given the position of the retailers, the other traders in the live poultry trade will also be affected. Given the above, we are now negotiating a buyout package with all the different sectors of the live poultry trade. Provided around 90% of the retailers would leave the trade, we would offer a chance for local poultry framers, wholesalers, retailers, transporters and workers to take up the buyout package. We intend to seek funding approval from the Finance Committee of the Legislative Council on 4 July 2008 for the proposed buyout package.

### **Implications of the Proposal**

16. The Amendment Regulation is in conformity with the Basic Law, including the provisions concerning human rights.

17. The Amendment Regulation will not affect the current binding effects of the existing provisions of the Cap. 132. Financial and civil service implications arising from the enforcement of the Amendment Regulation will be absorbed by FEHD through redeployment of existing resources.

### **Enquiry**

18. Enquiries on this brief may be directed to Mr Francis HO, Principal Assistant Secretary (Food) 2 of the Food and Health Bureau, at 2973 8232 or Ms CHU Lan-ying, Assistant Director (Operations) 3 of the Food and Environmental Hygiene Department, at 2867 5288.

**Food and Health Bureau**  
**June 2008**

**FOOD BUSINESS (AMENDMENT)  
REGULATION 2008**

(Made by the Director of Food and Environmental Hygiene under section 56 of  
the Public Health and Municipal Services Ordinance (Cap. 132))

**1. Commencement**

This Regulation shall come into operation on 2 July 2008.

**2 Restriction on sale, etc. of specified articles**

(1) Section 30(2)(a) of the Food Business Regulation (Cap. 132 sub. leg. X) is amended by adding “, subject to section 30AA(2),” before “be valid”.

(2) Section 30(2)(b) is amended by adding “, subject to section 30AA(2),” before “be valid”.

(3) Section 30(2)(c) is amended by adding “subject to section 30AA(2),” before “be valid”.

**3. Section added**

The following is added after section 30 –

**“30AA. No live poultry at retail premises overnight**

(1) A permittee shall ensure that –

- (a) each day, before 8:00 p.m., all live poultry remaining at the relevant permitted premises (whether sold or unsold) is slaughtered; and
- (b) there is no live poultry at the permitted premises between 8:00 p.m. each day and 5:00 a.m. the next day.

(2) Without limiting any other powers the Director has in respect of the revocation of a permission, the Director may revoke the relevant permission if subsection (1) is contravened.

(3) In this section –

“permission” (准許) means a permission granted under section 30(1)(a) in respect of any food specified in item 4(a) and (b) of Schedule 2;

“permitted premises” (獲准許處所), in relation to a permission, means the premises at which the relevant permittee is permitted to sell or offer or expose for sale, or possess for sale or for use in the preparation of any article of food for sale, any food specified in item 4(a) and (b) of Schedule 2;

“permittee” (獲准許人士) means a person who has been granted a permission.”.

#### **4. Offences and penalties**

(1) Section 35(1)(a) is amended by adding “30AA(1),” before “30A”.

(2) Section 35(3)(a) is amended, in the English text, by repealing “31(1)” and substituting “31(1),”.

(3) Section 35(3) is amended by adding after paragraph (a) –

“(aaa) in the case of an offence under section 30AA(1), a fine at level 5 and imprisonment for 6 months;”.

(4) Section 35(3)(aa) is amended, in the English text, by repealing “30C(1)” and substituting “30C(1),”.

#### **5. Restricted foods**

Schedule 2 is amended, within the square brackets, by adding “, 30AA” after “ss. 30”.

Director of Food and Environmental  
Hygiene

2008

### **Explanatory Note**

This Regulation amends the Food Business Regulation (Cap. 132 sub. leg. X)  
to –

- (a) require the slaughtering of all live poultry remaining at retail premises before 8:00 p.m. each day; and
- (b) require that there is no live poultry at retail premises between 8:00 p.m. each day and 5:00 a.m. the next day.



# **立法會**

## ***Legislative Council***

### **Legal Service Division Report on Subsidiary Legislation Gazetted on 4 July 2008**

**Date of tabling in LegCo** : 9 July 2008

**Amendment to be made by** : 15 October 2008 (or 5 November 2008  
if extended by resolution)

#### **PART I COUNTRY PARK DESIGNATION**

##### **Country Parks Ordinance (Cap. 208)**

##### **Country Parks (Lantau North (Extension) Country Park Designation) Order 2008 (L.N. 190)**

This Order designates as the Lantau North (Extension) Country Park certain areas to the north, north-east and east of the existing Lantau North Country Park. The effect of this designation is that the control and management of the designated areas are vested in the Country and Marine Parks Authority, who is the Director of Agriculture, Fisheries and Conservation under the Country Parks Ordinance (Cap. 208).

2. This Order will come into operation on 7 November 2008.

3. Members may refer to the LegCo Brief (File Ref.: EP 86/21/36(08) Pt. 12) issued by the Environmental Protection Department on 2 July 2008 for background information.

#### **PART II PUBLIC MARKETS**

##### **Public Health and Municipal Services Ordinance (Cap. 132)**

##### **Public Health and Municipal Services (Designation of Public Markets) Order 2008 (L.N. 191)**

##### **Public Health and Municipal Services (Designation of Public Markets) (No. 2) Order 2008 (L.N. 192)**

##### **Public Health and Municipal Services Ordinance (Amendment of Tenth Schedule) (No. 2) Order 2008 (L.N. 193)**

##### **Public Health and Municipal Services Ordinance (Amendment of Tenth Schedule) (No. 3) Order 2008 (L.N. 194)**

#### **Background**

4. The Director of Food and Environmental Hygiene (DFEH) is empowered under section 79(1) of the Ordinance to declare a market a venue to which the Public Health and Municipal Services Ordinance (Cap. 132) (the Ordinance)

applies and, under section 79(3) of the Ordinance, to designate it a public market. The management and control of a venue designated a public market will then in accordance with section 79A of the Ordinance be vested in DFEH. Consequently, the Tenth Schedule to the Ordinance, which specifies the designated public markets, must also be amended.

#### L.N.191

5. This Order designates the Aldrich Bay Market at 15 Aldrich Bay Road, Hong Kong as a public market.

6. L.N.191 will come into operation on 1 August 2008.

#### L.N.192

7. This Order designates the Wan Chai Market on the Ground Floor, 258 Queen's Road East, Wan Chai, Hong Kong as a public market.

8. L.N.192 will come into operation on 1 September 2008.

#### L.N.193

9. Consequent upon the designation of the Aldrich Bay Market as a public market by L.N.191, this Order amends the Tenth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132) to reflect the designation.

10. L.N.193 will come into operation on 1 August 2008.

#### L.N.194

11. Consequent upon the designation of the Wan Chai Market on the Ground Floor, 258 Queen's Road East, Wan Chai, Hong Kong as a public market by L.N.192, this Order amends the Tenth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132) to reflect the designation.

12. L.N.194 will come into operation on 1 September 2008.

13. Members may refer to two LegCo Briefs (with no file reference) issued by the Food and Health Bureau in June 2008 for background information.

### **PART III COMMENCEMENT NOTICE**

#### **Mainland Judgments (Reciprocal Enforcement) Ordinance (9 of 2008)**

#### **Mainland Judgments (Reciprocal Enforcement) Ordinance (Commencement) Notice (L.N. 195)**

14. By this notice, the Secretary for Justice appoints 1 August 2008 as the day on which the Mainland Judgments (Reciprocal Enforcement) Ordinance (9 of 2008) will come into operation.

15. Before the enactment of the Mainland Judgments (Reciprocal Enforcement) Ordinance, the Bill has been scrutinized by a Bills Committee. Members may refer to the report of the Bills Committee to the House Committee (LC Paper No. CB(2)1521/07-08) for further information.

16. The Administration advised the Bills Committee that it would provide a copy of the judicial interpretation promulgated by the Supreme People's Court of the Mainland for reference of Members when available. The Bill, as amended, was passed by the Council on 23 April 2008. On 2 July 2008, the Administration advised the Panel on Administration of Justice and Legal Services (the Panel) in writing that -

- (a) the two sides have discussed and agreed that the *Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements between Parties Concerned* (the Arrangement) shall come into effect on 1 August 2008. The Secretary for Justice will publish a notice in the Gazette on 4 July 2008 appointing 1 August 2008 as the day when the Ordinance shall come into operation; and
- (b) it has yet to receive a copy of the judicial interpretation but is given to understand that it will basically repeat the terms of the Arrangement as in the case of giving effect to the Arrangement on the Mutual Enforcement of Arbitral Awards. The Administration will provide a copy of the relevant judicial interpretation to the Panel upon receipt.

The Administration's letter was issued to the Panel and all other Members for information vide LC Paper No. CB(2)2494/07-08 on 3 July 2008.

#### *Concluding Observation*

17. No difficulties in relation to the legal and drafting aspects of the above items of subsidiary legislation have been identified.

Prepared by  
TSO Chi-yuen, Timothy  
Assistant Legal Adviser  
Legislative Council Secretariat  
7 July 2008

## **LEGISLATIVE COUNCIL BRIEF**

### **Country Parks Ordinance (Chapter 208)**

### **COUNTRY PARKS (LANTAU NORTH (EXTENSION) COUNTRY PARK DESIGNATION) ORDER 2008**

#### **INTRODUCTION**

At the meeting of the Executive Council on 24 June 2008, the Council ADVISED and the Chief Executive ORDERED that the Country Parks (Lantau North (Extension) Country Park Designation) Order 2008 (the Order), at **Annex A**, should be made under section 14 of the Country Parks Ordinance (Cap. 208) (the Ordinance).

#### **JUSTIFICATIONS**

##### **The Proposal**

2. In the Policy Address 2007-08, the Chief Executive announced that the Government would initiate the statutory procedures to designate Hong Kong's 24<sup>th</sup> country park in North Lantau, so as to step up our ecological conservation efforts and provide Hong Kong people with more open space in a natural environment. The proposed Lantau North (Extension) Country Park (the proposed Country Park) covers a total area of about 2,360 hectares to the north, northeast and east of the existing Lantau North Country Park. It is largely mountainous and comprises upland valleys covered with natural woodland and unspoiled stream courses, which provide a scenic backdrop to the urban development at the North Lantau New Town. The area has high conservation and landscape value.

3. The Country and Marine Parks Authority (the Authority), i.e. the Director of Agriculture, Fisheries and Conservation, prepared a draft map of the proposed Country Park under section 8(1) of the Ordinance. On 4 January 2008, a notice was published in the Gazette informing the public that a copy of the draft map of the proposed Country Park was available for inspection for a period of 60 days in accordance with section 9 of the Ordinance.

4. During the 60-day period of public inspection from 4 January 2008, the Authority received one objection against the draft map. The objection was lodged by a mountain biker. He opined that the proposed Country Park would affect his enjoyment of mountain biking activity in Mui Wo area.

5. The Authority's representation to the objection is that the objective of the designation of the proposed Country Park is to conserve and manage habitats of high

conservation and landscape value in North Lantau. The proposed Country Park will be managed by the Authority. Recreational and educational facilities which are consistent with environmental objectives will be provided for public enjoyment; and mountain bikers could apply to the Authority for permits if they wish to carry out mountain biking activity within the proposed Country Park.

6. The hearing of objection by the Country and Marine Parks Board (the Board) took place on 22 April 2008. Having considered the reason for the objection and the Authority's representation, the Board rejected the objection.

7. The draft map was approved by the Chief Executive in Council on 3 June 2008. The approved map is at **Annex B**.

B

## **THE ORDER**

8. Following the approval of the draft map by the Chief Executive in Council on 3 June 2008, the approved map was deposited in the Land Registry according to the procedural requirements laid down in the Ordinance. The Order designating the areas delineated and coloured pink on the approved map to be a country park was then signed by the Chief Executive. Upon the proposed commencement date of the Order on 7 November 2008, these areas will be controlled and managed in accordance with the Ordinance and the regulations made under that Ordinance.

## **LEGISLATIVE TIMETABLE**

9. The legislative timetable will be as follows -

Publication in the Gazette	4 July 2008
Tabling at the LegCo	9 July 2008
Commencement of the Order	7 November 2008

## **OTHER OPTIONS**

10. Designation of a country park would provide statutory protection to the area concerned and enable the Authority to conserve and manage it for conservation, education and recreation purposes. The Authority considers that there is no better alternative to achieve the aforementioned purposes.

## **IMPLICATIONS OF THE PROPOSAL**

11. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The Order will not affect the current binding effect of the Ordinance. As the proposed Country Park is mostly mountainous and mainly visited by people for recreational purposes, its designation does not have any significant economic

C implications. The proposal has financial, civil service, environmental and sustainability implications as set out at **Annex C**.

## **PUBLIC CONSULTATION**

12. The Board was consulted in November 2007 and supported the proposed designation. After publishing in the Gazette a notice inviting inspection by the public of the draft map of the proposed Country Park on 4 January 2008, the Islands District Council and the Legislative Council Panel on Environmental Affairs were consulted on 4 February and 28 April 2008 respectively. Both had no objection to the draft map of the proposed Country Park.

## **PUBLICITY**

13. A press release will be issued. A spokesman will be available to answer media and public enquiries. For any enquiries, please contact Mr. C H Leung, Senior Country Park Officer (Southeast) of Agriculture, Fisheries and Conservation Department at 2150 6840 or Miss Florence Chan, Senior Administrative Officer (Nature Conservation) of Environmental Protection Department at 2594 6229.

**Environmental Protection Department**  
**2 July 2008**

**COUNTRY PARKS (LANTAU NORTH (EXTENSION)  
COUNTRY PARK DESIGNATION) ORDER 2008**

(Made by the Chief Executive under section 14 of the Country Parks Ordinance (Cap. 208) after consultation with the Executive Council)

**1. Commencement**

This Order shall come into operation on 7 November 2008.

**2. Designation of Lantau North (Extension)  
Country Park**

Those areas delineated and coloured pink on Plan No. CP/LN(E)<sup>A</sup> approved on 3 June 2008 by the Chief Executive in Council and deposited in the Land Registry are designated as a country park to be known as the Lantau North (Extension) Country Park.

Chief Executive

2008

**Explanatory Note**

This Order designates as the Lantau North (Extension) Country Park certain areas to the north, north-east and east of the existing Lantau North Country Park. Those areas are to be controlled and managed in accordance with the Country Parks Ordinance (Cap. 208) and the regulations made under that Ordinance.

# **LANTAU NORTH (EXTENSION) COUNTRY PARK**

## **Explanatory Statement**

### **1. Authority**

This statement forms part of the draft map of the proposed Lantau North (Extension) Country Park, prepared by the Country and Marine Parks Authority (the Authority) under Section 8 of the Country Parks Ordinance (Chapter 208) (“the Ordinance”).

### **2. Location and Boundaries**

The proposed Lantau North (Extension) Country Park (the proposed Country Park) covers areas to the north, north-east and east of the existing Lantau North Country Park. It embraces most of the mountainous areas stretching from Tai Shan above the Penny’s Bay in the east, to Tai Ho, Tung Chung and Sham Wat in the west. It is bounded to the south by the Lantau North Country Park, and to the north by the North Lantau Highway, new town at Tung Chung and the existing villages. The area north of Silvermine Bay and south of the Discovery Bay golf course is also included in the proposed Country Park. It covers an area of about 2360 hectares.

### **3. Objectives**

3.1 The majority of the proposed Country Park is mountainous and upland valleys covered with natural woodland and unspoiled stream courses, which provide highly scenic backdrop to the urban development at Tung Chung. The upland areas also offer magnificent views of the airport to the north, rural and wilderness mountainous areas to the south. The well established areas of secondary woodlands, developed montane forests and fresh water habitats are of high conservation and landscape value. The overall objective of the Country Park is to conserve the natural environment, to protect the diversified habitats and to preserve the scenic landscape.

3.2 Apart from conservation, the area also offers opportunities for outdoor recreation and countryside education. At suitable locations, recreational and educational facilities will be provided. Footpaths will also be improved and upgraded to facilitate hiking and leisure walking activities. The remote mountainous areas of the proposed Country Park provide a good environment for various activities as well as for nature appreciation.

3.3 The management of the proposed Country Park will focus on the conservation of the scenic landscape with special attention to the protection of the woodland against hill fires. Extensive tree planting will be carried out at suitable locations. The area will be patrolled by park wardens. Litter collection and general landscape maintenance will also be carried out by the Authority.



#### **4. Revised Concept Plan for Lantau**

4.1 In 2004, the Lantau Development Task Force under the steer of the Financial Secretary formulated a “Concept Plan for Lantau” to provide an overall planning framework for a balanced and coordinated development of Lantau. To promote sustainable development of Lantau by balancing development and conservation needs, nature conservation is one of the important proposals in the Concept Plan. The proposed Country Park was included as a major conservation proposal.

4.2 Taking into account public comments and the latest findings/progress of studies/projects affecting Lantau, the Lantau Development Task Force released in May 2007 a “Revised Concept Plan for Lantau”. The proposed Country Park remains a major item in the comprehensive conservation strategy, as part of the Revised Concept Plan for Lantau.

#### **5. Access**

The proposed Country Park is accessible through the existing footpaths connecting to the Lantau North Country Park and adjacent villages. There are also footpaths connecting from Tung Chung Road, Sham Wat Road and Wong Lung Hang Road. The footpath network will be reviewed and improved, directional signs will be erected where appropriate.

#### **6. Zoning**

6.1 The proposed Country Park will be subdivided into zones appropriate to different uses, an arrangement which can be adjusted to accommodate future requirements.

- (a) Recreational Zone – This zone refers mainly to areas on the lower slopes around Tung Chung and Tai Ho. Recreational facilities such as campsites or picnic/barbecue sites, family walks etc. will be provided for large and small groups of visitors.
- (b) Wilderness Zone – This zone will provide scenic views of densely vegetated mountainous areas. Footpaths will be provided and maintained for hiking.
- (c) Conservation Zone – The areas identified for this zone are sites of special scientific importance. Access to these areas is, however, not encouraged.

6.2 A piece of land of about 12 hectares at Sze Pak Wan within the proposed Country Park has been identified for the construction of service reservoirs by the Water Supplies Department. Construction of the proposed service reservoirs will be allowed subject to the future need of the Lantau area and the fulfillment of environmental protection requirements. When making plan relating to the proposed

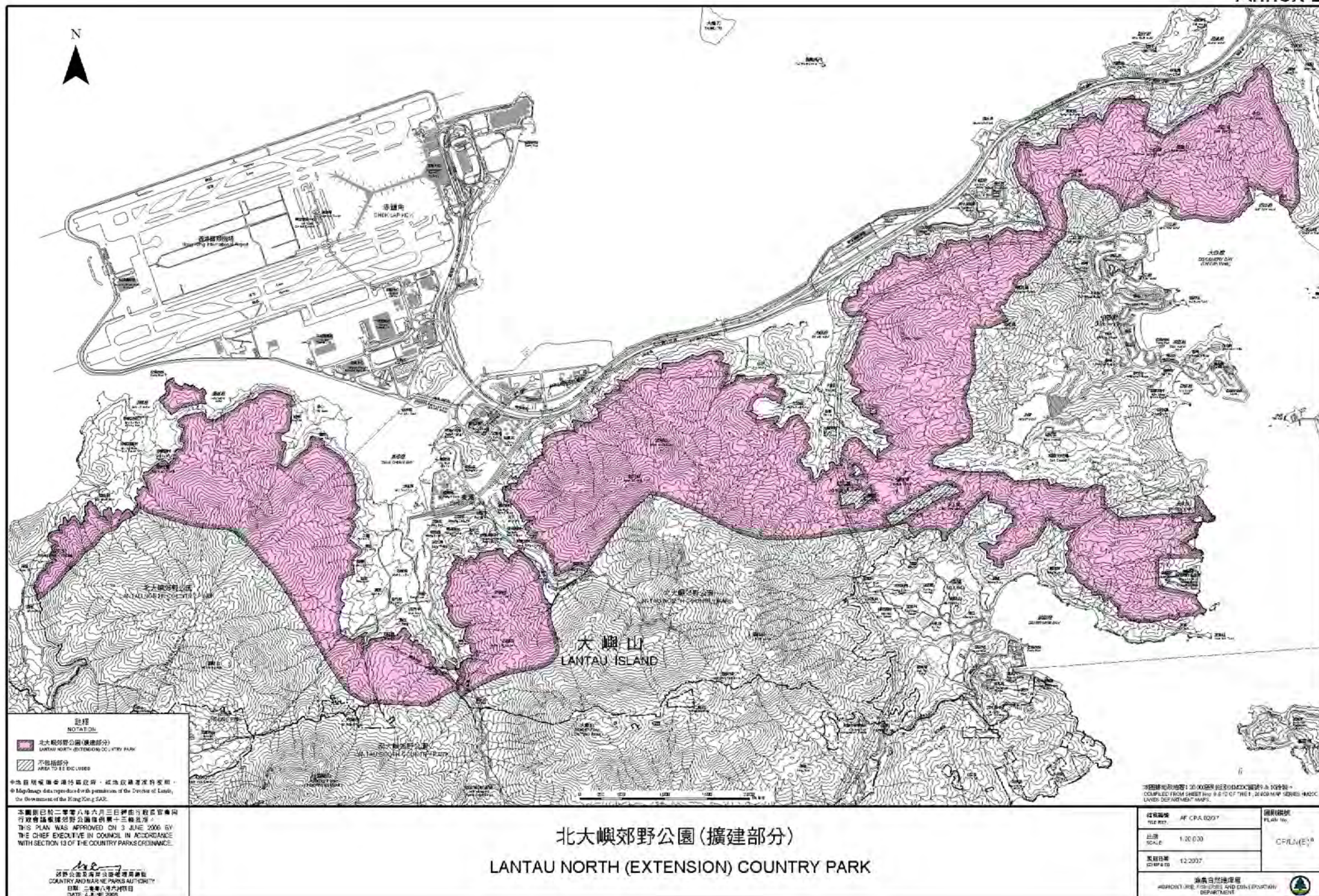
Country Park, the authority will take into account the possible use of the service reservoirs there.

## **7. Visitor Facilities**

Existing footpaths will be upgraded and recreational facilities such as picnic tables, benches, litter bins, shelters, information boards and view compasses will be provided at suitable locations. Way markers will be erected at entry points and other strategic locations. Educational facilities such as nature trails, warden posts will be provided where appropriate and guided walks and other nature education activities will be organized.

Country and Marine Parks Authority  
Agriculture, Fisheries and Conservation Department  
December 2007







## **FINANCIAL AND CIVIL SERVICE IMPLICATIONS**

The management and control of the proposed Country Park will be carried out by redeployment of resources and creation of six civil service posts in AFCD (1 Senior Field Assistant and 5 Field Assistants). These six posts have been approved for creation in the 2007 Resource Allocation Exercise.

2. AFCD estimates that the additional recurrent resources for the management and control of the proposed Country Park would be about \$5 million, including staff cost of \$2.3 million for 15 civil service posts. AFCD has agreed to meet the additional resources required by redeployment of internal resources.

## **ENVIRONMENTAL IMPLICATIONS**

3. Designation of the proposed Country Park will enable areas of high conservation value in North Lantau to be protected as a country park under the Ordinance. The Authority will manage the areas for nature conservation purpose and promote other compatible uses including countryside recreation, eco-tourism, outdoor education and scientific research.

## **SUSTAINABILITY IMPLICATIONS**

4. Designation of the proposed Country Park will help contribute to the conservation of biodiversity and terrestrial habitats. It will also help promote conservation education and enhance public awareness of the importance of nature conservation.

# **LEGISLATIVE COUNCIL BRIEF**

Public Health and Municipal Services Ordinance  
(Cap. 132)

## **PUBLIC HEALTH AND MUNICIPAL SERVICES (MARKETS) DECLARATION 2008**

## **PUBLIC HEALTH AND MUNICIPAL SERVICES (DESIGNATION OF PUBLIC MARKETS) ORDER 2008**

## **PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE (AMENDMENT OF TENTH SCHEDULE)(No.2) ORDER 2008**

### **INTRODUCTION**

A new public market will commence operation on 1 August 2008 at 15 Aldrich Bay Road, Hong Kong. This paper briefs Members on the three pieces of subsidiary legislation made by the Director of Food and Environmental Hygiene (DFEH) to designate the Aldrich Bay Market as a public market under the Public Health and Municipal Services Ordinance (Cap.132) (“the Ordinance”).

### **BACKGROUND**

2. For the proper regulation and control of markets, DFEH is empowered, under section 79(1) of the Ordinance, to declare a venue to be a market to which the Ordinance applies. DFEH may then, under section 79(3) of the Ordinance, designate such market as a public market so that by virtue of section 79A, the management and control of which will be vested in DFEH. DFEH is also empowered under section 79(5) of the Ordinance to amend, add to or delete from the Tenth Schedule of the Ordinance, which specifies designated public markets.

3. The new Aldrich Bay Market is located at 15 Aldrich Bay Road, Hong Kong and comprises 67 market stalls and four cooked food stalls. It is tentatively scheduled for commissioning on 1 August 2008, and the stalls will be let out by open auction.

4. To ensure proper management and control of the Aldrich Bay Market, it is necessary for DFEH to first declare it as a market to which the Ordinance applies, and then designate it as a public market and enlist it in the Tenth Schedule to the Ordinance.

## THE SUBSIDIARY LEGISLATION

5. DFEH has made the **Public Health and Municipal Services (Markets) Declaration 2008** at Annex A to declare the Aldrich Bay Market as a market to which the Ordinance applies. The Declaration will be gazetted on 27 June 2008.

6. After the publication of the Declaration, DFEH will proceed to designate the Aldrich Bay Market as a public market by making the following two Orders -

- (a) the **Public Health and Municipal Services (Designation of Public Markets) Order 2008** at Annex B to designate the Aldrich Bay Market as a public market; and
- (b) the **Public Health and Municipal Services Ordinance (Amendment of Tenth Schedule) (No.2) Order 2008** at Annex C to include the Aldrich Bay Market in the Schedule on public markets.

## LEGISLATIVE TIMETABLE

8. The legislative timetable is as follows –

	Publication in the Gazette	Tabling at the Legislative Council
Public Health and Municipal Services (Markets) Declaration 2008	27 June 2008	2 July 2008
Public Health and Municipal Services (Designation of Public Markets) Order 2008	4 July 2008	9 July 2008

	Publication in the Gazette	Tabling at the Legislative Council
Public Health and Municipal Services Ordinance (Amendment of Tenth Schedule) (No.2) Order 2008	4 July 2008	9 July 2008

## **IMPLICATIONS OF THE SUBSIDIARY LEGISLATION**

10. The three pieces of subsidiary legislation are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the current binding effect of the Ordinance and have no civil service, economic, productivity or environmental implications. The additional expenditure incurred in the management of the new market will be absorbed by the Food and Environmental Hygiene Department.

## **PUBLIC CONSULTATION**

11. The declaration and designation of Aldrich Bay Market as a public market will confer upon DFEH a statutory duty to manage and control the venue as a public market in accordance with the Ordinance. The market stalls therein will be leased out for operation. The Eastern District Council has been consulted on the project and is agreeable.

## **PUBLICITY**

12. As relevant stakeholders are well informed of the project, further publicity on the designation is considered unnecessary.

## **ENQUIRIES**

13. Enquiries on this brief can be addressed to Miss Ivy CHAN, Assistant Secretary for Food and Health (Food) (Tel No.: 2973 8255).

**Food and Health Bureau**  
**June 2008**



# PUBLIC HEALTH AND MUNICIPAL SERVICES (MARKETS) DECLARATION 2008

(Made by the Director of Food and Environmental Hygiene under  
section 79(1) of the Public Health and Municipal  
Services Ordinance (Cap. 132))

## 1. Market to which the Public Health and Municipal Services Ordinance applies

The Aldrich Bay Market at 15 Aldrich Bay Road, Hong Kong is declared to be a market to which the Public Health and Municipal Services Ordinance (Cap. 132) applies with effect from 1 August 2008.

## 2. Schedule amended

The Schedule to the Declaration of Markets Notice (Cap. 132 sub. leg. AN) is amended by adding –

“Aldrich Bay Market 愛秩序灣街市”。

Director of Food and Environmental Hygiene

2008

### Explanatory Note

This Declaration declares the Aldrich Bay Market at 15 Aldrich Bay Road, Hong Kong to be a market to which the Public Health and Municipal Services Ordinance (Cap. 132) applies.

**PUBLIC HEALTH AND MUNICIPAL SERVICES  
(DESIGNATION OF PUBLIC MARKETS)  
ORDER 2008**

(Made by the Director of Food and Environmental Hygiene under  
section 79(3) of the Public Health and Municipal  
Services Ordinance (Cap. 132))

**3. Commencement**

This Order shall come into operation on 1 August 2008.

**4. Designation of a public market**

The Aldrich Bay Market at 15 Aldrich Bay Road, Hong Kong, being a market to which the Public Health and Municipal Services Ordinance (Cap. 132) applies, is designated as a public market.

Director of Food and Environmental Hygiene

2008

**Explanatory Note**

This Order designates the Aldrich Bay Market at 15 Aldrich Bay Road, Hong Kong as a public market.

**PUBLIC HEALTH AND MUNICIPAL SERVICES  
ORDINANCE(AMENDMENT OF TENTH  
SCHEDULE) (No.2) ORDER 2008**

(Made by the Director of Food and Environmental Hygiene under  
section 79(5) of the Public Health and Municipal  
Services Ordinance (Cap. 132))

## 5. Commencement

This Order shall come into operation on 1 August 2008.

## 6. Public markets

The Tenth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132) is amended by adding –

“Aldrich Bay Market 愛秩序灣街市”。

Director of Food and Environmental Hygiene

2008

## Explanatory Note

Consequent upon the designation of the Aldrich Bay Market as a public market, this Order amends the Tenth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132) to reflect the designation.

## **LEGISLATIVE COUNCIL BRIEF**

Public Health and Municipal Services Ordinance  
(Cap. 132)

**MARKET (CESSATION OF APPLICATION OF THE PUBLIC HEALTH  
AND MUNICIPAL SERVICES ORDINANCE) DECLARATION 2008**

**PUBLIC HEALTH AND MUNICIPAL SERVICES (CESSATION OF  
DESIGNATION AS PUBLIC MARKET) ORDER 2008**

**PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE  
(AMENDMENT OF TENTH SCHEDULE) ORDER 2008**

**PUBLIC HEALTH AND MUNICIPAL SERVICES (MARKETS) (NO. 2)  
DECLARATION 2008**

**PUBLIC HEALTH AND MUNICIPAL SERVICES (DESIGNATION OF  
PUBLIC MARKET) (NO. 2) ORDER 2008**

**PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE  
(AMENDMENT OF TENTH SCHEDULE) (NO. 3) ORDER**

### **INTRODUCTION**

The existing Wan Chai Market at 264 Queens's Road East, Wan Chai ("the Old Wan Chai Market") will soon be replaced by the new Wan Chai Market at G/F, 258 Queen's Road East, Wan Chai ("the New Wan Chai Market"). This paper briefs Members on the six pieces of subsidiary legislation made by the Director of Food and Environmental Hygiene (DFEH) to cease the designation of the Old Wan Chai Market and to designate the New Wan Chai Market as a public market under the Public Health and Municipal Services Ordinance (Cap.132) ("the Ordinance").

## BACKGROUND

2. For the proper regulation and control of markets, DFEH is empowered, under section 79(1) of the Ordinance, to declare a venue to be a market to which the Ordinance applies. DFEH may then, under section 79(3) of the Ordinance, designate such market as a public market under section 79(3) so that by virtue of section 79A, the management and control of which will be vested in DFEH. DFEH is also empowered under section 79(5) of the Ordinance to amend, add to or delete from the Tenth Schedule of the Ordinance, which specifies the designated public markets.

3. The Old Wan Chai Market, which is currently a designated public market will be decommissioned just before 1 September 2008. Therefore, it is necessary for DFEH to declare its cessation as a market to which the Ordinance applies, cease to designate it as a public market; and amend the Tenth Schedule of the Ordinance accordingly with effect from 1 September 2008.

4. The New Wan Chai Market has been developed to replace the Old Wan Chai Market. The New Wan Chai Market will comprise three meat stalls, ten fish stalls and 37 wet goods stalls. It is scheduled for commissioning on 1 September 2008 and the stalls will be let out to Old Wan Chai Market tenants through restricted auction.

5. In order to ensure proper management and control of the New Wan Chai Market, it is necessary for DFEH to first declare it as a market to which the Ordinance applies; designate it as a public market; and enlist the New Wan Chai Market in the Tenth Schedule of the Ordinance.

## THE SUBSIDIARY LEGISLATION

6. For the decommissioning of the Old Wan Chai Market with effect from 1 September 2008, DFEH has made the following Declaration and Orders.

- (a) the **Market (Cessation of Application of the Public Health and Municipal Services Ordinance) Declaration 2008** at **Annex A** to declare the cessation of the Old Wan Chai Market as a market to which the Ordinance applies;
- (b) the **Public Health and Municipal Services (Cessation of Designation as Public Market) Order 2008** at **Annex B** to cease the designation of the Old Wan Chai Market as a public market; and
- (c) the **Public Health and Municipal Services Ordinance (Amendment of**

**Tenth Schedule) Order 2008** at **Annex C** to take out the Old Wan Chai Market from the Schedule on public markets.

7. For the commissioning of the New Wan Chai Market on 1 September 2008, DFEH has made the **Public Health and Municipal Services (Markets) (No. 2) Declaration 2008** at **Annex D** to declare the New Wan Chai Market as a market to which the Ordinance applies.

8. After the publication of the above Declaration, DFEH will proceed to designate the New Wan Chai Market as a public market by making the following two Orders -

- (a) the **Public Health and Municipal Services (Designation of Public Markets) (No. 2) Order 2008** at **Annex E** to designate the New Wan Chai Market as a public market; and
- (b) the **Public Health and Municipal Services Ordinance (Amendment of Tenth Schedule) (No. 3) Order 2008** at **Annex F** to include the New Wan Chai Market in the Schedule of public markets.

## **LEGISLATIVE TIMETABLE**

9. The legislative timetable is as follows –

	Publication in the Gazette	Tabling at the Legislative Council
Market (Cessation of Application of the Public Health and Municipal Services Ordinance) Declaration 2008	27 June 2008	2 July 2008
Public Health and Municipal Services (Cessation of Designation as Public Market) Order 2008	27 June 2008	2 July 2008
Public Health and Municipal Services Ordinance (Amendment of Tenth Schedule) Order 2008	27 June 2008	2 July 2008

	Publication in the Gazette	Tabling at the Legislative Council
Public Health and Municipal Services (Markets) (No. 2) Declaration 2008	27 June 2008	2 July 2008
Public Health and Municipal Services (Designation of Public Markets) (No. 2) Order 2008	4 July 2008	9 July 2008
Public Health and Municipal Services Ordinance (Amendment of Tenth Schedule) (No. 3) Order 2008	4 July 2008	9 July 2008

## **IMPLICATIONS OF THE SUBSIDIARY LEGISLATION**

10. The six pieces of subsidiary legislation are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the current binding effect of the Ordinance and have no civil service, economic, productivity or environmental implications. The additional expenditure incurred in the management of the New Wan Chai Market will be absorbed by the Food and Environmental Hygiene Department.

## **PUBLIC CONSULTATION**

11. The declaration and designation of the New Wan Chai Market as a public market will confer upon DFEH a statutory duty to manage and control the venue as a public market in accordance with the Ordinance. The market stalls therein will be leased out for operation. The Wan Chai District Council and the existing tenants of the Old Wan Chai Market have been consulted and are supportive.

## **PUBLICITY**

12. As the relevant stakeholders are well informed of the project, further publicity on the designation is considered not unnecessary.

## **ENQUIRIES**

13. Enquiries on this brief can be addressed to Miss Ivy CHAN, Assistant Secretary for Food and Health (Food) (Tel No.: 2973 8255)

**Food and Health Bureau**  
**June 2008**



**Annex A**

**MARKET (CESSATION OF APPLICATION OF THE  
PUBLIC HEALTH AND MUNICIPAL SERVICES  
ORDINANCE) DECLARATION 2008**

(Made by the Director of Food and Environmental Hygiene under section 79(1)  
of the Public Health and Municipal Services Ordinance (Cap. 132))

**1. Commencement**

This Declaration shall come into operation immediately before the commencement of 1 September 2008.

**2. Market to which the Public Health and  
Municipal Services Ordinance no longer  
applies**

It is declared that the Wan Chai Market at 264 Queen's Road East, Wan Chai, Hong Kong ceases to be a market to which the Public Health and Municipal Services Ordinance (Cap. 132) applies.

**3. Schedule amended**

The Schedule to the Declaration of Markets Notice (Cap. 132 sub. leg. AN) is amended by repealing –

“Wan Chai Market                      灣仔街市”.

Director of Food and Environmental Hygiene

2008

### **Explanatory Note**

This Declaration declares that the Wan Chai Market at 264 Queen's Road East, Wan Chai, Hong Kong ceases to be a market to which the Public Health and Municipal Services Ordinance (Cap. 132) applies.

**Annex B**

**PUBLIC HEALTH AND MUNICIPAL SERVICES  
(CESSATION OF DESIGNATION AS PUBLIC  
MARKET) ORDER 2008**

(Made by the Director of Food and Environmental Hygiene under section 79(3)  
of the Public Health and Municipal Services Ordinance (Cap. 132))

**1. Commencement**

This Order shall come into operation immediately before the commencement of 1 September 2008.

**2. Cessation of designation as a public market**

The Wan Chai Market at 264 Queen's Road East, Wan Chai, Hong Kong ceases to be designated as a public market.

Director of Food and Environmental Hygiene

2008

### **Explanatory Note**

This Order cancels the designation of the Wan Chai Market at 264 Queen's Road East, Wan Chai, Hong Kong as a public market.

**PUBLIC HEALTH AND MUNICIPAL SERVICES  
ORDINANCE (AMENDMENT OF TENTH  
SCHEDULE) ORDER 2008**

(Made by the Director of Food and Environmental Hygiene under section 79(5)  
of the Public Health and Municipal Services Ordinance (Cap. 132))

**1. Commencement**

This Order shall come into operation immediately before the  
commencement of 1 September 2008.

**2. Public markets**

The Tenth Schedule to the Public Health and Municipal Services  
Ordinance (Cap. 132) is amended by repealing –

“Wan Chai Market                      灣仔街市”.

Director of Food and Environmental Hygiene

2008

### **Explanatory Note**

Consequent upon the cancellation of the designation of the Wan Chai Market at 264 Queen's Road East, Wan Chai, Hong Kong as a public market, this Order amends the Tenth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132) to reflect the cancellation.

**Annex D**

**PUBLIC HEALTH AND MUNICIPAL SERVICES  
(MARKETS) (NO. 2) DECLARATION 2008**

(Made by the Director of Food and Environmental Hygiene under section 79(1)  
of the Public Health and Municipal Services Ordinance (Cap. 132))

**1. Market to which the Public Health and  
Municipal Services Ordinance applies**

The Wan Chai Market on the Ground Floor, 258 Queen's Road East, Wan Chai, Hong Kong is declared to be a market to which the Public Health and Municipal Services Ordinance (Cap. 132) applies with effect from 1 September 2008.

**2. Schedule amended**

The Schedule to the Declaration of Markets Notice (Cap. 132 sub. leg. AN) is amended by adding –

“Wan Chai Market                      灣仔街市”.

Director of Food and Environmental Hygiene

2008

### **Explanatory Note**

This Declaration declares the Wan Chai Market on the Ground Floor, 258 Queen's Road East, Wan Chai, Hong Kong to be a market to which the Public Health and Municipal Services Ordinance (Cap. 132) applies.



**PUBLIC HEALTH AND MUNICIPAL SERVICES  
(DESIGNATION OF PUBLIC MARKETS) (NO. 2)  
ORDER 2008**

(Made by the Director of Food and Environmental Hygiene under section 79(3)  
of the Public Health and Municipal Services Ordinance (Cap. 132))

**1. Commencement**

This Order shall come into operation on 1 September 2008.

**2. Designation of a public market**

The Wan Chai Market on the Ground Floor, 258 Queen's Road East, Wan Chai, Hong Kong, being a market to which the Public Health and Municipal Services Ordinance (Cap. 132) applies, is designated as a public market.

Director of Food and Environmental Hygiene

2008

### **Explanatory Note**

This Order designates the Wan Chai Market on the Ground Floor, 258 Queen's Road East, Wan Chai, Hong Kong as a public market.

**PUBLIC HEALTH AND MUNICIPAL SERVICES  
ORDINANCE (AMENDMENT OF TENTH  
SCHEDULE) (NO. 3) ORDER 2008**

(Made by the Director of Food and Environmental Hygiene under section 79(5)  
of the Public Health and Municipal Services Ordinance (Cap. 132))

**1. Commencement**

This Order shall come into operation on 1 September 2008.

**2. Public markets**

The Tenth Schedule to the Public Health and Municipal Services  
Ordinance (Cap. 132) is amended by adding –

“Wan Chai Market                      灣仔街市”.

Director of Food and Environmental Hygiene

2008

### **Explanatory Note**

Consequent upon the designation of the Wan Chai Market on the Ground Floor, 258 Queen's Road East, Wan Chai, Hong Kong as a public market, this Order amends the Tenth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132) to reflect the designation.

# **立法會**

## ***Legislative Council***

### **Legal Service Division Report on Subsidiary Legislation Gazetted on 11 July 2008**

**Date of tabling in LegCo** : 16 July 2008

**Amendment to be made by** : 15 October 2008 (or 5 November 2008  
if extended by resolution)

#### **PART I ANTIQUITIES AND MONUMENTS**

##### **Antiquities and Monuments Ordinance (Cap. 53)**

##### **Antiquities and Monuments (Withdrawal of Declaration of Proposed Monument) (No. 45 Stubbs Road) Notice (L.N. 200)**

##### **Antiquities and Monuments (Declaration of Historical Buildings) (No. 2) Notice 2008 (L.N. 201)**

L.N. 200 is made by the Secretary for Development (the Authority) under sections 2A and 2B of the Antiquities and Monuments Ordinance (Cap. 53) (the Ordinance).

2. The object of L.N. 200 is to withdraw the declaration made by virtue of the Antiquities and Monuments (Declaration of Proposed Monument) (No. 45 Stubbs Road) Notice (L.N. 175 of 2007) (the Declaration). The Declaration declared the buildings and the adjoining land situated within Inland Lot No.7327, No. 45 Stubbs Road, Hong Kong together with all structures erected on such lot (commonly known as “King Yin Lei”) to be a proposed monument on 15 September 2007 for the purposes of the Ordinance. The Declaration expires after 14 September 2008.

3. L.N. 201 is made by the Authority under section 3(1) of the Ordinance after consultation with the Antiquities Advisory Board and with the approval of the Chief Executive to declare the same buildings and adjoining land together with all structures erected on the same lot to be historical buildings (the Buildings) for the purposes of the Ordinance. The effect of L.N. 201 is that no person shall excavate in, demolish or interfere with the Buildings except in accordance with a permit granted by the Authority.

4. L.N. 201 is made before the Declaration expires after 14 September 2008 so as to avoid any gap during which there will be no statutory protection for the Buildings. Members may refer to the LegCo Brief (File Ref: DEVB/CS/CR 4/1/56) issued by the Development Bureau in July 2008 for background information.

5. At its meeting held on 22 February 2008, the Subcommittee on Heritage Conservation formed under the Panel on Home Affairs (the Subcommittee) received a briefing from the Secretary for Development (SDEV) on the declaration of the Buildings as a proposed monument and the proposed preservation option. SDEV informed the Subcommittee of her intention to declare, in her capacity as the Antiquities Authority, the Building as a monument under section 3(1) of the Ordinance.

6. Members of the Subcommittee in general supported the proposed preservation option which necessitated non-in-situ land exchange and welcomed the policy of provision of economic incentives to encourage private owners to preserve historic buildings. They also supported the Administration's plan to put the Buildings to adaptive re-use and turn it into an attraction for local residents as well as tourists.

7. Members may wish to refer to the minutes of the Subcommittee meeting held on 22 February 2008 (LC Paper No. CB(2)2073/07-08) for details of the discussion.

## **PART II COMMENCEMENT NOTICES**

### **Prevention and Control of Disease Ordinance (14 of 2008)**

#### **Prevention and Control of Disease Ordinance (Commencement) Notice (L.N. 202)**

#### **Prevention and Control of Disease Regulation (L.N. 159 of 2008)**

#### **Prevention and Control of Disease Regulation (Commencement) Notice (L.N. 203)**

8. By L.N. 202 made under section 1(2) of the Prevention and Control of Disease Ordinance (14 of 2008) (the Ordinance), the Secretary for Food and Health has appointed 14 July 2008 as the day on which the Ordinance shall come into operation.

9. The object of the Ordinance is to replace the Quarantine and Prevention of Disease Ordinance (Cap. 141) to bring the legislative basis for measures to control and prevent disease up-to-date and in line with the requirements of the International Health Regulations (2005) promulgated by the World Health Organization.

10. By L.N. 203 made under section 1 of the Prevention and Control of Disease Regulation (L.N. 159 of 2008) (the Regulation), the Secretary for Food and

Health has appointed 14 July 2008 as the day on which the Regulation shall come into operation, the same day on which the Ordinance shall come into operation.

11. The object of the Regulation is to consolidate and bring up-to-date measures to prevent the spread of infectious diseases into Hong Kong and to prevent and control their spread in or transmission from Hong Kong. The Regulation also gives effect to the International Health Regulation (2005) promulgated by the World Health Organization. Members may wish to refer to the Legal Service Division Report on the Regulation dated 11 June 2008 (LC Paper No. LS93/07-08) for further information. No Subcommittee was formed on the Regulation.

12. Before the passage of Prevention and Control of Disease Bill (the Bill) at the Council meeting of 28 May 2008, the Bill had been scrutinized by a Bills Committee. The Bills Committee also scrutinized the draft provisions of the Regulation provided by the Administration. Members may wish to refer to the report of the Bills Committee to the Council (LC Paper No. CB(2)2015/07-08) for further information.

13. The Bills Committee on the Bill supported the early implementation of the Ordinance and the Regulation.

### ***Concluding observation***

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

Prepared by

LO Wing-yee, Winnie  
Assistant Legal Adviser  
Legislative Council Secretariat  
16 July 2008

## **LEGISLATIVE COUNCIL BRIEF**

### **Declaration of King Yin Lei at 45 Stubbs Road, Hong Kong as a Monument**

#### **INTRODUCTION**

The Secretary for Development, in her capacity as the Authority (“Authority”) under the Antiquities and Monuments Ordinance (“Ordinance”) (Cap. 53), has –

- (a) after consultation with the Antiquities Advisory Board (AAB) and with the approval of the Chief Executive (CE), decided to declare the buildings and the adjoining land situated within the Inland Lot No. 7327, No. 45 Stubbs Road, Hong Kong together with all structures erected on such lot (the “Building”) (commonly known as “King Yin Lei”) to be a monument under the Ordinance; and
- (b) decided to withdraw the declaration of the Building as a proposed monument under the Ordinance.

The above declaration and withdrawal of declaration will be made by notice in the Gazette on 11 July 2008.

#### **JUSTIFICATION**

##### **Proposed monument declaration**

2. Built in around 1937 with gross floor area of about 1,641 square metres, the Building is a private residence with strong association with two famous families. It was built in fine “Chinese Renaissance” style combining the Chinese and Western architectural influences in a sophisticated manner, demonstrating the superb building technology and craftsmanship in Hong Kong’s early colonial period and reflecting the rising status and growing wealth of the Chinese community before World War II (please see photos at Annex A and information about historic background of King Yin Lei at Annex B). The Building was sold to its current owner (Ice Wisdom Limited) in August 2007, and works to remove the roof tiles, stone features and window frames were noticed on site in early September 2007.



3. To save the Building from further damage, the Secretary for Development, in her capacity as the Authority under section 2A of the Ordinance, took urgent action to declare the Building as a proposed monument on 15 September 2007 after consultation with the AAB. The declaration gives the Building statutory protection and allows a period of up to 12 months for the Authority to consider in a comprehensive manner whether the Building should be declared as a monument. It also provides an opportunity for the Government to discuss with the owner feasible options for preservation of the Building. Unless it is withdrawn earlier, the proposed monument declaration will expire after 14 September 2008. Under the Ordinance, proposed monument declaration within private land cannot be extended.

4. Subsequent to the proposed monument declaration, the Antiquities and Monuments Office (AMO) of the Leisure and Cultural Services Department engaged an expert recommended by the State Administration of Cultural Heritage, Professor Tang Guohua of the School of Architecture and Urban Planning of Guangzhou University to conduct a study on the restoration works of the Building. Professor Tang confirmed the heritage value of the Building, and considered that the original appearance of the Building could be restored up to 80% while its heritage value could be basically maintained.

5. Meanwhile, the AMO carried out on-site inspections to the Building for further assessment. Based on the information obtained from those inspections and Professor Tang's conclusions, AMO considered that the heritage value of the Building had reached the threshold that justified its declaration as a monument under the Ordinance. Based on AMO's professional advice, the Authority intended to declare the Building as a monument under section 3(1) of the Ordinance. The AAB was consulted on the intended declaration at its meeting on 25 January 2008 and Members unanimously supported the proposal.

6. On 29 April 2008, the Authority served a notice under section 4 of the Ordinance to inform the owner about the intended monument declaration, and the owner may object by petition to the CE within a month. Upon the expiry of the one-month period, the owner has not made any objection by petition. Accordingly, in accordance with the Ordinance, the Authority has obtained the approval of the CE for the declaration of the Building as a monument by notice in the Gazette. To avoid any gap during which there is no statutory protection for the Building, the monument declaration will have to be made before the proposed monument declaration expires after 14 September 2008. With the declaration of the Building as a monument, the declaration of the Building as a proposed monument made on 15 September 2007 can be withdrawn.

## **Proposed preservation option**

7. The declaration of the Building as a monument is based on the high heritage value of the Building. As the Building is in private ownership, we have, as provided for under the new heritage conservation policy announced by CE in his 2007-08 Policy Address, explored with the owner possible economic incentives aiming at preserving the Building. In implementing this policy, we aim to strike a proper balance between preservation of historic buildings and respect for private property rights.

8. After several rounds of discussion with the owner's representatives, Government has reached an understanding with the owner on a preservation option. Under the proposed arrangement, the owner will surrender the whole lot of the Building to Government for preservation, while Government in exchange will grant an adjacent site of man-made slope of the same size as the existing lot to the owner for new residential development. In addition, the owner has agreed to carry out and fund the restoration works of the Building to the satisfaction of AMO. We consulted the Sub-committee on Heritage Conservation of the Panel on Home Affairs of the Legislative Council at its meeting on 22 February 2008, and Members generally supported the proposed preservation option (please refer to the paper to the Sub-committee LC Paper No. CB(2)1105/07-08(01)). The proposed preservation option is currently undergoing the relevant statutory process under the Town Planning Ordinance (Cap. 131). After that, we will seek approval of the CE in Council for the proposed non-in-situ land exchange.

9. After King Yin Lei has been surrendered to Government, we plan to put it to adaptive re-use and revitalise it into an attraction for local residents as well as tourists. There is wide public interest to have access into the Building to enjoy its architecture and to learn about its history. We plan to consult the public and devise suitable proposals for its revitalisation.

## **PUBLICITY**

10. A press release was issued on 25 January 2008 on the consultation with the AAB and the intention of the Authority to declare the Building as a monument. We will continue to adopt the approach of keeping the public informed at every stage of the process to preserve the Building. A Legal Notice will be published in Gazette on 11 July 2008 to give effect to the monument declaration and the consequential withdrawal of the proposed monument declaration. A press release will be issued, and a spokesperson will be available to answer media and public enquiries.

## **ENQUIRIES**

11. For any enquiries on this brief, please contact Mr. Jack Chan, Commissioner for Heritage of the Development Bureau, at 2848 2104.

**Development Bureau**  
**July 2008**

Photos of King Yin Lei



## Information about Historic Background of King Yin Lei

King Yin Lei (the Building) has strong association with two famous families. It was built in 1937 by Mrs Shum Li Po-lun (岑李寶麟), the granddaughter of Mr Li Sing (李陞), the daughter of Mr Li Po-chun (李寶椿) and the wife of Mr Shum Yat-chor (岑日初), all were notable merchants and philanthropists in Hong Kong. The Building was sold in 1978 to the Yow family – Mr. Yow Qhei-man (邱子文) and his son Mr. Yow Mok-shing (邱木城), who gave the name “King Yin Lei” to the Building which meant “house of virtuous views”.

2. The Building is important in signifying the historical development of Hong Kong. As one of the luxurious historic houses located along the hillside of Hong Kong Island, the Building reflects the rising status and growing wealth of the Chinese community in Hong Kong. It also represents an earlier phase of Hong Kong history when the upper-class residential area took shape in the Mid-Levels.

3. The Building was built in the “Chinese Renaissance” style that was very popular between the 1920’s to 1930’s in Hong Kong. It is a fine and unique example of the style that generally features a Western floor plan with lavish Chinese decorations and architectural elements. The Building is an outstanding and unique example of such a style as it combines the Chinese and Western architectural influences in a very sophisticated manner. There are not too many buildings in Hong Kong characterising the Chinese Renaissance style.

4. The façade of the Building has been a popular spot for taking photographs by visitors. The social value of the Building also lies in the role it played in the film heritage and entertainment industry of Hong Kong. The mansion has been featured in films of international renown such as “*Soldier of Fortune*” (江湖客) (1955), “*Love is a Many-Splendoured Thing*” (生死戀) (1955) and a locally produced television series “*Delightful Dream of the Capital*” (京華春夢) (1980). These examples reflect the high scenic character of the site.

**Legal Service Division Report on  
Subsidiary Legislation gazetted between 25 July and 3 October 2008  
(to be tabled on 8 October 2008)**

<b><u>L.N. No</u></b>	<b><u>Item</u></b>
* 207	Western Harbour Crossing Ordinance (Replacement of Schedule 1) Notice 2008
208	Employees Retraining Ordinance (Amendment of Schedule 3) Notice 2008
209	Import and Export (General) Regulations (Amendment of Seventh Schedule) Notice 2008
* 210	Volunteer and Naval Volunteer Pensions Ordinance (Amendment of Schedules) Order 2008
211	Admission and Registration (Amendment) (No. 2) Rules 2002 (Commencement) Notice
212	Legal Practitioners (Risk Management Education) Rules (Appointment of Commencement Date) Notice 2008
213	Fugitive Offenders (Transnational Organized Crime) Order (Commencement) Notice
214	Mutual Legal Assistance in Criminal Matters (Transnational Organized Crime) Order (Commencement) Notice
215	Harmful Substances in Food (Amendment) Regulation 2008
216	Child Abduction and Custody (Parties to Convention) (Amendment) (No. 2) Order 2008
217	Building (Planning) (Amendment) Regulation 2008 (Commencement) Notice
218	Broadcasting (Licence Fees) (Amendment) Regulation 2008
219	Road Traffic (Public Service Vehicles) (Amendment) Regulation 2008

<b><u>L.N. No</u></b>	<b><u>Item</u></b>
220	Tate's Cairn Tunnel Ordinance (Replacement of Schedule) Notice 2008
221	Mandatory Provident Fund Schemes (Amendment) (No. 2) Ordinance 2008 (Commencement) Notice
222	Race Discrimination Ordinance (Commencement) Notice 2008

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\* not required to be tabled and not subject to amendment

**立法會**  
***Legislative Council***

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 25 July 2008**

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

**Western Harbour Crossing Ordinance (Cap. 436)  
Western Harbour Crossing Ordinance (Replacement of Schedule 1) Notice  
2008 (L.N. 207)**

By this Notice made by the Commissioner for Transport under section 52(1) of the Western Harbour Crossing Ordinance (Cap. 436) (the Ordinance), the existing Schedule 1 to the Ordinance is repealed and substituted by a new Schedule 1 showing the new statutory tolls for Western Harbour Crossing (WHC). The Notice came into operation on 31 July 2008.

2. The Ordinance provides for a specified toll adjustment mechanism. Under section 45 of the Ordinance, the Western Harbour Tunnel Company Limited (the Company) or the franchisee may effect toll increase on six specified dates as stated in Schedule 4. However, under section 46(1), whenever the Company or the franchisee's net revenue in any year (not being a year ending immediately before the specified dates) is less than the minimum estimated net revenue for that year as specified in Schedule 5 to the Ordinance, the Company or 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 Company or the franchisee has given effect to all the anticipated toll increases and the net revenue of the Company or the franchisee in respect of any year before the expiry of the franchise period is less than the minimum estimated net revenue for that year, the Company or the franchisee may apply to the Secretary to give effect to an additional toll increase. 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.

3. 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 Company or the franchisee shall



not give effect to more than one increase in the tolls in one year. The last statutory toll increase came into effect on 31 July 2007 (L.N. 166 of 2007).

4. 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.

5. According to the Administration, the franchisee has exercised its right to statutory toll increase on the basis of its 2004-2005 Net Revenue Statement. It has decided to effect the new toll levels for WHC on 31 July 2008. However, existing concessionary tolls (at January 2008 level) will continue to be offered to all categories of vehicles. Hence the actual toll levels will remain unchanged and users of WHC will not be affected by the increase. Members may wish to refer to an information note on WHC tolls issued by the Transport and Housing Bureau dated July 2008 in the website of the Bureau (<http://www.thb.gov.hk/eng/whatsnew/transport/2008/200807302.pdf>) for background and further information. A copy of the note is attached for Members' easy reference. A comparison table of the existing tolls and the new tolls is provided in Annex B to the information note.

#### *Concluding Observation*

6. No difficulties relating to the legal and drafting aspects of the legal notice reported above have been identified.

#### Encl

Prepared by

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Legislative Council Secretariat  
1 August 2008

## **Information Note**

### **Western Harbour Crossing Tolls**

#### **Introduction**

The new statutory toll levels of the Western Harbour Crossing (WHC) that will take effect from 31 July 2008 but WHC will continue to offer the existing concessionary tolls to all categories of vehicles. Hence, the actual toll levels will remain unchanged and users will not be affected by the exercise.

#### **Background**

2. The Western Harbour Crossing Ordinance (Cap. 436) (the Ordinance) provides for a specified toll adjustment mechanism in respect of WHC. Under the Ordinance, the franchisee may effect anticipated toll increases on six specified dates (1 January 2001, 1 January 2005, 1 January 2009, 1 January 2013, 1 January 2017 and 1 January 2021). However, if the franchisee's actual net revenue in any year falls short of the minimum estimated net revenue for that year specified in Schedule 5 to the Ordinance, the franchisee may advance an anticipated toll increase or create an additional toll increase if all the anticipated toll increases have been effected. The maximum levels of increase in respect of different categories of vehicles are specified in Schedule 2 to the Ordinance.

3. Since the operation of WHC in 1997, the franchisee's net revenue has consistently fallen short of the specified levels. The last toll increase of WHC was made on the basis of its 2003/04 Net Revenue Statement (NRS) and took effect on 31 July 2007. However, the franchisee offered greater concessions for all vehicles from the same date so that the then actual toll levels were maintained. The franchisee subsequently reduced the toll concessions thereby increasing actual toll levels on 6 January 2008. A summary of the historical changes in WHC's toll levels is at **Annex A**.

4. The franchisee of WHC submitted its 2004/05 NRS in August 2005. As required under the specified toll adjustment mechanism, we carefully examined the NRS of WHC and noted that the franchisee's net revenue of \$492 million was lower than the minimum net revenue of \$1,190 million for that year specified in Schedule 5 to the Ordinance and is therefore entitled to an additional toll increase. We have however urged the franchisee

to have due regard to wider public interest in devising its tolling strategy, and the franchisee has withheld effecting the statutory toll increase.

### **Present Position**

5. The franchisee recently notified the Administration of its decision to exercise its right to a statutory toll increase on the basis of its 2004/05 NRS and to effect the new toll levels (at **Annex B**) on 31 July 2008. The requirements under the Ordinance for effecting the statutory toll increase have been complied with. At the same time, the franchisee will offer greater concessions to all types of vehicles so that the current toll levels (at January 2008 level) would be maintained and users will not be affected.

Transport and Housing Bureau  
July 2008

**Historical Toll Levels of WHC (page 1 of 2)**

	<b>30 April 1997</b>		<b>3 December 2000</b>		<b>31 July 2002</b>		<b>16 February 2003</b>		<b>24 February 2004</b>	
	Statutory	Conces- sionary	Statutory	Conces- sionary	Statutory	Conces- sionary	Statutory	Conces- sionary	Statutory	Conces- sionary
<b>Motorcycles</b>	\$15	\$15	\$20	\$20	\$25	\$20	\$25	\$20	\$30	\$20
<b>Private cars</b>	\$30	\$30	\$40	\$35	\$50	\$35	\$50	\$37	\$60	\$37
<b>Taxis</b>	\$30	\$30	\$40	\$35	\$50	\$35	\$50	\$35	\$60	\$35
<b>Light buses</b>	\$40	\$40	\$50	\$45	\$60	\$45	\$60	\$47	\$70	\$47
<b>Light goods vehicles</b>	\$45	\$45	\$60	\$50	\$75	\$50	\$75	\$50	\$90	\$50
<b>Medium goods vehicles</b>	\$65	\$65	\$85	\$70	\$105	\$70	\$105	\$70	\$125	\$70
<b>Heavy goods vehicles</b>	\$95	\$95	\$125	\$100	\$155	\$100	\$155	\$100	\$185	\$100
<b>Single-decked buses</b>	\$40	\$40	\$50	\$50	\$60	\$50	\$60	\$60	\$70	\$60
<b>Double-decked buses</b>	\$55	\$55	\$70	\$70	\$85	\$70	\$85	\$85	\$100	\$85
<b>Additional axle</b>	\$30	\$30	\$40	\$30	\$50	\$30	\$50	\$30	\$60	\$30

### Historical Toll Levels of WHC (page 2 of 2)

	<b>4 July 2004</b>		<b>31 July 2005</b>		<b>31 July 2006</b>		<b>31 July 2007</b>		<b>6 January 2008</b>	
	Statutory	Conces- sionary	Statutory	Conces- sionary	Statutory	Conces- sionary	Statutory	Conces- sionary	Statutory	Conces- sionary
<b>Motorcycles</b>	\$30	\$22	\$35	\$22	\$40	\$22	\$45	\$22	\$45	\$22
<b>Private cars</b>	\$60	\$40	\$70	\$40	\$80	\$40	\$90	\$40	\$90	\$45
<b>Taxis</b>	\$60	\$35	\$70	\$35	\$80	\$35	\$90	\$35	\$90	\$40
<b>Light buses</b>	\$70	\$50	\$80	\$50	\$90	\$50	\$100	\$50	\$100	\$55
<b>Light goods vehicles</b>	\$90	\$55	\$105	\$55	\$120	\$55	\$135	\$55	\$135	\$55
<b>Medium goods vehicles</b>	\$125	\$80	\$145	\$80	\$165	\$80	\$185	\$80	\$185	\$80
<b>Heavy goods vehicles</b>	\$185	\$110	\$215	\$110	\$245	\$110	\$275	\$110	\$275	\$110
<b>Single-decked buses</b>	\$70	\$70	\$80	\$70	\$90	\$70	\$100	\$70	\$100	\$80
<b>Double-decked buses</b>	\$100	\$100	\$115	\$100	\$130	\$100	\$145	\$100	\$145	\$115
<b>Additional axle</b>	\$60	\$30	\$70	\$30	\$80	\$30	\$90	\$30	\$90	\$30

**Annex B****Existing and New Tolls of WHC**

	<b>Existing Tolls</b>		<b>New Tolls</b>		<b>Actual Increase</b>
	Statutory	Concessionary	Statutory	Concessionary	
<b>Motorcycles</b>	\$45	\$22	\$50	\$22	\$0
<b>Private cars</b>	\$90	\$45	\$100	\$45	\$0
<b>Taxis</b>	\$90	\$40	\$100	\$40	\$0
<b>Light buses</b>	\$100	\$55	\$110	\$55	\$0
<b>Light goods vehicles</b>	\$135	\$55	\$150	\$55	\$0
<b>Medium goods vehicles</b>	\$185	\$80	\$205	\$80	\$0
<b>Heavy goods vehicles</b>	\$275	\$110	\$305	\$110	\$0
<b>Single-decked buses</b>	\$100	\$80	\$110	\$80	\$0
<b>Double-decked buses</b>	\$145	\$115	\$160	\$115	\$0
<b>Additional axle</b>	\$90	\$30	\$100	\$30	\$0

**立法會**  
***Legislative Council***

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 1 August 2008**

**Date of tabling in LegCo** : 8 October 2008

**Amendment to be made by** : 5 November 2008 (or 26 November 2008 if  
extended by resolution)

**Employees Retraining Ordinance (Cap. 423)**

**Employees Retraining Ordinance (Amendment of Schedule 3) Notice 2008  
(L.N.208)**

The Amendment Notice is made by the Chief Executive in Council under section 31(1) of the Employees Retraining Ordinance (Cap. 423). It suspends the obligation to pay the Employees Retraining Levy (\$400 per month for each employee) of employers of foreign domestic helpers and all other employers of labour imported under an approved labour importation scheme for a period of two years from 1 August 2008 to 31 July 2010.

2. No LegCo Brief has been issued at the date of this report. There is no information as to whether there is any consultation on the suspension of the Levy for all approved labour importation schemes.

3. No difficulties in the legal and drafting aspects have been identified.

LEE Ka-yun, Kelvin  
Assistant Legal Adviser  
Legislative Council Secretariat  
13 August 2008

## **LEGISLATIVE COUNCIL BRIEF**

### **Employees Retraining Ordinance (Cap. 423)**

#### **EMPLOYEES RETRAINING ORDINANCE (AMENDMENT OF SCHEDULE 3) NOTICE 2008**

### **INTRODUCTION**

At the meeting of the Executive Council on 30 July 2008, the Council ADVISED and the Chief Executive ORDERED that the Employees Retraining Ordinance (Amendment of Schedule 3) Notice 2008, at **Annex A**, should be made under section 31(1) of the Employees Retraining Ordinance (ERO) (Cap. 423) to suspend, for a period of two years with effect from 1 August 2008, the obligation on employers of all imported labour, including foreign domestic helpers (FDHs), to pay the Employees Retraining Levy (levy).

### **JUSTIFICATIONS**

#### **Providing Relief to the Middle Class**

2. To help mitigate the impact of rising inflation, the Chief Executive announced on 16 July 2008 an \$11 billion relief package comprising ten initiatives. A key initiative in the package that targets the middle class is the suspension of the levy payable by employers of FDHs. To help alleviate as soon as possible the financial burden on the employers of all imported labour, including FDHs, who are mostly from the middle class, we have, with effect from 1 August 2008, suspended the collection of the levy for a period of two years. In practice, the levy suspension is applicable to all employment contracts for which visas for the imported labour/FDH concerned are issued by the Director of Immigration between 1 August 2008 and 31 July 2010.

3. As at 31 July 2008, there were about 252 200 FDHs and 1 330



other imported labour such as care workers and farm workers working in Hong Kong under the Supplementary Labour Scheme. Their employers will benefit from the levy suspension when they renew the contracts of the imported labour/FDHs at any time during the two-year suspension period. All new employment contracts with visas granted during the period will also be eligible for the levy suspension.

4. For the relevant employers of FDHs, the proposed suspension generally represents a saving of \$400 per month, or a total saving of \$9,600 for a 24-month standard contract, for each FDH. The suspension, introduced quickly, represents a positive response from the Administration to calls from various political parties and certain groups in the community, including employers of FDHs, for an adjustment to the levy as a relief measure to alleviate the inflationary pressure on the middle class.

### **Financial condition of the Employees Retraining Fund**

5. As at 5 July 2008, the levy collected from employers of FDHs, which goes to the Employees Retraining Fund (ERF), and the interest earned have accumulated to over \$4.7 billion. The Chief Executive-in-Council decided at its meeting on 23 October 2007 to relax the eligibility criteria of the Employees Retraining Scheme (ERS) to cover young people aged 15 to 29 and those with education up to the sub-degree level and the Employees Retraining Board (ERB) has since started to draw down the levy to support its operation and services. The Government has ceased its recurrent subvention to the ERB in 2008-09.

6. Following the relaxation of the eligibility criteria of the ERS in December 2007 and the recent completion of its strategic review, the ERB expects to take on a new strategic role and responsibilities and offer more comprehensive and diversified training and retraining services for upgrading the quality of the local workforce. The annual expenditure of the ERB is estimated to increase significantly from about \$400 million in the past to about \$900 million in 2008-09. The expenditure figure is expected to increase further when the recommendations of the strategic review are fully implemented beyond 2008-09. The ERB has planned to rely on the levy collected (estimated to be about \$1.1 billion per year before the suspension) together with the investment return of the ERF to generate sufficient funding for meeting the recurrent expenses of the ERB

and provision of the expanded training services.

7. In view of the healthy financial condition of the ERF, the temporary suspension for two years of the levy should not have any material impact on the operation of the ERB in 2008-09. The expansion of services in 2009-10 and beyond will be subject to the availability of the levy income after the two-year suspension period. As the fund that can be set aside for investment will become much less, the ERB has to review its investment strategy and a much lower return on investment is expected.

8. Notwithstanding this temporary levy suspension, the Government's overall policy that the operating expenses of the ERB should be primarily met by the levy income and that employers of low-skilled imported labour should contribute towards the training and retraining of the local workforce remains unchanged. It is important to note that the role of the ERB is of paramount importance to Hong Kong. Apart from increasing the provision of training places, the ERB also plans to enrich the training content, enhance the quality assurance of its courses and develop new training programmes that are more diversified and geared towards market needs. Trainees will be able to obtain recognised qualifications for employment and progression. In the long run, levy collection is essential in ensuring steady and sufficient financial resources for the ERB to enhance the employability of the local workforce so as to maintain Hong Kong's economic competitiveness.

### **Implementation timetable**

9. The Amendment Notice is subsidiary legislation. It will be tabled at the Legislative Council (LegCo) for negative vetting upon the commencement of the new LegCo term in October 2008. On the effective date of the Amendment Notice, bearing in mind the need to implement the levy suspension as soon as practicable to help alleviate the inflationary pressure on the middle class, we have brought the Amendment Notice into effect upon gazettal on 1 August 2008.

### **Implementation arrangements**

10. Under the ERO, the legal obligation for employers of

imported labour/FDH to pay the levy arises when the visa for imported labour/FDH is granted by the Immigration Department. While, as a facilitating measure, we allow employers of FDHs the option of paying the levy in one go or through four instalments, the availability of the alternate levy payment method by instalments does not in any way alter the legal position that the liability for levy payment under the ERO is incurred upon the granting of a visa. Accordingly, employers of pre-existing contracts (i.e. contracts with visa granted before 1 August 2008) are required to continue to pay their levy as provided under the ERO in respect of the pre-existing contracts. That said, they would be able to enjoy levy suspension for the new contract period when visas for the renewal of the contracts of their serving FDHs or the hiring of a new FDH at any point in time during the two-year levy suspension period are granted.

11. On the part of FDHs, we note the FDH community's concerns about their position in the event that their contracts are terminated prematurely before having run their full two-year course. To protect the interests of FDHs and minimise the possible impact of premature termination of contracts on them, the Director of Immigration (Director) would, as a special arrangement, exercise discretion during the suspension period and allow the advanced renewal of FDHs' contracts with the same employers without requiring the FDHs to leave Hong Kong after the existing contracts have been terminated. In accordance with the established guidelines of the Immigration Department, if an employer has prematurely terminated his/her FDH, he/she is required to pay the instalment(s) covering the period of employment only. Employers would be reminded that the Director reserves the right to refuse visas for cases involving blatant manipulation.

12. Employers who wish to apply for advanced contract renewal with the same FDHs are required to sign an undertaking to confirm the termination of the existing contract and the effective date of the termination, and to commit on the continuity of employment relationship under the new and old contracts. This is to ensure that the length of service of the FDHs will not be affected or curtailed in reckoning their entitlements under the Employment Ordinance (Cap. 57) (e.g. annual leave, long service payment, etc.) and employment contract. The FDHs are also required to sign the undertaking to indicate their acceptance of the arrangement.

13. Also, employers of FDHs who opt for the advanced contract renewal arrangement would have to honour certain contractual obligations under the pre-existing and the new contracts, and bear the cost as in normal premature termination cases<sup>1</sup>. Such contractual obligations have been in place for years for good policy considerations. They include –

- (a) providing, irrespective of whether the contract has been prematurely terminated or completed in full, free return passage to the FDH's place of origin; and free passage from the FDH's place of origin to Hong Kong, according to clause 7(a) of the standard employment contract for FDHs<sup>2</sup>;
- (b) paying the FDH, for the new contract period, the prevailing minimum allowable wage level, which was increased from \$3,480 to \$3,580 since 10 July 2008; and
- (c) shouldering fees for notarisation of the new employment contract by the relevant consulates in Hong Kong and for application for employment visa with the Immigration Department.

14. Since the implementation of the levy suspension from 1 August 2008, the Immigration Department has re-deployed additional resources and, where necessary, extended their operating hours in order to cope with the surge in applications for the grant of visa. Looking further ahead, to ensure that applications received could be properly processed for the grant of visa before the end date of the suspension (i.e. 31 July 2010), the Immigration Department would need to set a cut-off date for employers to submit visa applications for advanced renewal of contracts and new contracts, where part of the contract period falls after 31 July 2010. The Immigration Department would work out the exact cut-off date, in the light

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<sup>1</sup> In normal premature termination cases, the FDH employer is required to pay termination payments to the FDH such as pro-rata annual leave pay, long service payment (where appropriate) in addition to the obligations at paragraph 13.

<sup>2</sup> Clause 7(a) of the standard employment contract stipulates that, "[t]he Employer shall provide the Helper with free passage from his/her place of origin to Hong Kong and on termination or expiry of this contract, free return passage to his/her place of origin."

of operational experience, and announce the application deadline and other detailed arrangements. Employers would also be reminded that visa applications received by the Immigration Department after the application deadline will not be approved in time for them to enjoy the levy suspension.

## **THE AMENDMENT NOTICE**

15. The Amendment Notice at **Annex A** seeks to reduce the sum specified in Schedule 3 to the ERO for calculation of the levy to \$0 with effect from 1 August 2008, and to provide for the reinstatement of the sum to \$400 with effect from 1 August 2010.

## **LEGISLATIVE TIMETABLE**

16. The legislative timetable is as follows –

Publication in Gazette	1 August 2008
Tabling at the Legislative Council for negative vetting	8 October 2008

## **IMPLICATIONS OF THE PROPOSAL**

17. The proposal has financial, civil service and economic implications as set out at **Annex B**.

18. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no environmental, productivity or sustainability implications. The amendment will not affect the current binding effect of the ERO.

## **PUBLIC CONSULTATION**

19. The proposal has been formulated having regard to the views and suggestions made by various sectors of the community, including LegCo, employers' groups, think tanks, etc. on the need to help alleviate the inflationary pressure on the middle class through an adjustment to the

levy.

## **PUBLICITY**

20. A media session was held and a press release was issued on 30 July 2008 after the Executive Council meeting. Information on the suspension decision and related arrangements has been uploaded onto the internet for public information. Both the Immigration Department and Labour Department have set up hotlines for answering public enquiries.

## **BACKGROUND**

21. The ERB is an independent statutory body established in 1992 under the ERO. Its main function is to provide training and retraining services to eligible local workers to assist them in acquiring new or enhanced skills so that they can adjust to changes in the economic environment. Following the relaxation of the eligibility criteria of the ERS with effect from December 2007, the service targets of the ERB now cover all eligible persons aged 15 or above with education level at sub-degree level or below.

22. It is the Government's established policy that employers hiring low-skilled imported labour should contribute towards the training and retraining of the local workforce. In line with this policy, all employers of imported labour under labour importation schemes designated under the ERO (the schemes) have since the commencement of the Ordinance in 1992 been required to pay the levy, which is specified at \$400 per month in Schedule 3 of the ERO. The levy goes to the ERF, which is administered by the ERB, for providing training and retraining to local workers.

23. In February 2003, the Chief Executive-in-Council approved the recommendation of the report of the Task Force on Population Policy that, same as employers of imported labour under the schemes, employers of FDHs should also be required to pay a monthly levy of \$400 with effect from 1 October of that year. Employers of FDHs may choose to pay the levy in a lump sum for the standard contract period of 24 months or by four equal instalments whereas employers of imported labour are required

to make lump sum payment.

## **ENQUIRY**

24. Any enquiries on this brief should be addressed to Ms Karyn Chan, Principal Assistant Secretary for Labour and Welfare (Manpower) at 2810 3290.

**Labour and Welfare Bureau**  
**30 September 2008**

**EMPLOYEES RETRAINING ORDINANCE  
(AMENDMENT OF SCHEDULE 3) NOTICE 2008**

(Made by the Chief Executive in Council under section 31(1) of  
the Employees Retraining Ordinance (Cap. 423))

**1. Commencement**

- (1) Section 2(1) shall come into operation on 1 August 2008.
- (2) Section 2(2) shall come into operation on 1 August 2010.

**2. Amount of levy specified for the purposes  
of section 14(2)**

(1) Schedule 3 to the Employees Retraining Ordinance (Cap. 423)  
is amended by repealing “\$400” and substituting “\$0”.

(2) Schedule 3 is amended by repealing “\$0” and substituting  
“\$400”.

Clerk to the Executive Council

COUNCIL CHAMBER

2008



### **Explanatory Note**

The object of this Notice is to reduce the sum specified for calculation of the levy imposed by the Employees Retraining Ordinance (Cap. 423) to \$0 from 1 August 2008 and to restore it to \$400 from 1 August 2010.

## **Implications of the Proposal**

### **Financial Implications**

From 2008-09 onwards, the Government has ceased its recurrent subvention to the Employees Retraining Board (ERB) which would henceforth meet its operating expenses from the levy. The annual expenditure of the ERB is estimated to be about \$900 million in 2008-09 and is expected to further increase when the recommendations of the strategic review are fully implemented beyond 2008-09. As at 5 July 2008, the levy collected from employers of foreign domestic helpers (FDHs) and the interest earned have accumulated to over \$4.7 billion in the Employees Retraining Fund (ERF). Before the suspension, the levy income exceeded \$1.1 billion per year. It is estimated that a two-year suspension of levy collection would result in a total loss of levy income of over \$2.2 billion. However, if some employers manage to enjoy a waiver of more than 24 months, the overall financial implications may well exceed \$2.2 billion. That said, since the levy would be reinstated upon expiry of the suspension period, the overall financial condition of the ERF and long-term financial position of the ERB would not be unduly affected. The ERB should be able to rely on the annual levy income and investment return of the ERF to support its operation and services in the long run.

### **Civil Service Implications**

2. With the suspension in place, the processing time for visa applications may be slightly shortened. The workload in collecting outstanding levy instalment(s) of pre-existing contracts would gradually decrease because some employers might pursue advanced renewal of contracts. The suspension of levy collection should therefore result in some temporary staff savings for the Immigration Department. On the other hand, during the suspension period, there would be a considerable number of applications for advanced renewal of contracts and a substantial increase in levy-related enquiries, both concerning the new measures and arrangements for outstanding instalment(s) of pre-existing contracts. The levy suspension may also increase the incentive of prospective employers to employ FDHs, thereby boosting the upward trend of related applications. Having regard to the above considerations, the Civil Service Bureau and the Financial Services and the Treasury Bureau will work out with the Immigration Department the manpower implications involved and make the necessary adjustment.

### **Economic Implications**

3. The proposal will help relieve the financial burden faced by the employers of imported labour, including in particular middle class households hiring FDHs, amid the rising inflation. It will also restrain consumer price inflation by lowering the cost of purchased housework services, although such impact is likely to be insignificant.

**立法會**  
***Legislative Council***

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 8 August 2008**

**Date of tabling in LegCo** : 8 October 2008

**Amendment to be made by** : 5 November 2008 (or 26 November 2008 if extended by resolution)

**Import and Export Ordinance (Cap. 60)  
Import and Export (General) Regulations (Amendment of Seventh Schedule)  
Notice 2008 (L.N. 209)**

This Notice removes Venezuela from the list of specified countries or places in the Seventh Schedule to the Import and Export (General) Regulations (Cap. 60 sub. leg. A) ("the Regulations"). Part VI of and the Seventh Schedule to the Regulations together implement in Hong Kong an international certification scheme for rough diamonds known as the Kimberley Process Certification Scheme. The amendment made by this Notice reflects the fact that trade in rough diamonds with Venezuela may no longer be carried on under the Kimberley Process Certification Scheme.

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

Prepared by  
TSO Chi-yuen, Timothy  
Assistant Legal Adviser  
Legislative Council Secretariat  
11 August 2008

# 立法會

## *Legislative Council*

### **Legal Service Division Report on Subsidiary Legislation Gazetted on 15 August 2008**

#### **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 2008 (L.N. 210)**

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 2008 (L.N. 160 of 2008) (the Pensions Increase Declaration Notice) gazetted on 6 June 2008 made under the Pensions (Increase) Ordinance, an increase of 2.5% is declared in respect of a basic pension with effect from 1 April 2008 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 2008 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 2007 (L.N. 172 of 2007).

4. This Order is deemed to have come into operation on 1 April 2008.

5. No difficulties in relation to the legal and drafting aspects of the Order have been identified.

Prepared by

FUNG Sau-kuen, Connie  
Assistant Legal Adviser  
Legislative Council Secretariat  
18 August 2008

**立法會**  
***Legislative Council***

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 5 September 2008**

**Date of tabling in LegCo** : 8 October 2008

**Amendment to be made by** : 5 November 2008 (or 26 November 2008 if extended by resolution)

**Admission and Registration (Amendment) (No. 2) Rules 2002 (L.N. 247 of 2002)**

**Admission and Registration (Amendment) (No. 2) Rules 2002 (Commencement) Notice (L.N. 211)**

By this Notice, 1 November 2008 is appointed as the day on which section 2(a)(ii) and (b) of the Admission and Registration (Amendment) (No. 2) Rules 2002 (L.N. 247 of 2002, as amended by L.N. 237 of 2003) (the amendment Rules) shall come into operation.

2. Section 1 of the amendment Rules provides that the amendment Rules shall 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.

3. Section 2(a)(ii) of the amendment Rules amends Form 2 in the Schedule to the Admission and Registration Rules (Cap. 159 sub. leg. B) to reflect the requirement that a trainee solicitor shall have attended the risk management education (RME courses) courses required under the Legal Practitioners (Risk Management Education) Rules (Cap. 159 sub. leg. Z) (RME Rules).

4. Section 2(b) of the amendment Rules also amends Form 4 in the Schedule to the Admission and Registration Rules to reflect the requirement that a trainee solicitor shall have attend the RME courses required during his employment as a trainee solicitor.

**Legal Practitioners Ordinance (Cap. 159)**  
**Legal Practitioners (Risk Management Education) Rules (Appointment of**  
**Commencement Date) Notice 2008 (L.N. 212)**

5. By this Notice, the Council of The Law Society of Hong Kong appoints 1 November 2008 as the day on which the RME Rules shall take effect in relation to a trainee solicitor whose first trainee solicitor contract commences on or after 1 November 2008.

6. Under section 12(2) of the RME Rules, the RME Rules in relation to any trainee solicitor 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. The drafting of the above two items of subsidiary legislation does not present any difficulty.

Prepared by

Kitty CHENG  
Assistant Legal Adviser  
Legislative Council Secretariat  
12 September 2008



# 立法會

## *Legislative Council*

### **Legal Service Division Report on Subsidiary Legislation Gazetted on 19 September 2008**

**Date of tabling in LegCo** : 8 October 2008

**Amendment to be made by** : 5 November 2008 (or 26 November 2008 if extended by resolution)

**Fugitive Offenders (Transnational Organized Crime) Order (L.N. 78 of 2008)**

**Fugitive Offenders (Transnational Organized Crime) Order (Commencement) Notice (L.N. 213)**

**Mutual Legal Assistance in Criminal Matters (Transnational Organized Crime) Order (L.N. 187 of 2008)**

**Mutual Legal Assistance in Criminal Matters (Transnational Organized Crime) Order (Commencement) Notice (L.N. 214)**

By the two Notices, L.N. 213 and L.N. 214, the Secretary for Security has appointed 28 November 2008 as the date on which the Fugitive Offenders (Transnational Organized Crime) Order (L.N. 78 of 2008) and the Mutual Legal Assistance in Criminal Matters (Transnational Organized Crime) Order (L.N. 187 of 2008) (the two Orders) respectively are to come into operation.

2. The two Orders implement in Hong Kong the United Nations Convention Against Transnational Organized Crime. The Convention seeks to strengthen the power of governments in combating serious crimes by providing a basis for common actions against organized crimes, money laundering, corruption and obstruction of justice. The two Orders were scrutinized by a subcommittee during the 2007-2008 session of the Council. Members may wish to refer to the report of the subcommittee (LC Paper No.

CB(2)2143/07-08) for further information.

3. Neither the public nor any LegCo Panel has been consulted on the two Notices. No difficulties in relation to the legal and drafting aspects of the two Notices have been identified.

Prepared by

KAU Kin-wah  
Assistant Legal Adviser  
Legislative Council Secretariat  
22 September 2008

LS/S/45/07-08

**立法會**  
***Legislative Council***

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 23 September 2008**

**Date of tabling in LegCo** : 8 October 2008

**Amendment to be made by** : 5 November 2008 (or 26 November 2008 if extended by resolution)

**Public Health and Municipal Services Ordinance (Cap. 132)  
Harmful Substances in Food (Amendment) Regulation 2008 (L.N.215)**

The Amendment Regulation is made by the Director of Food and Environmental Hygiene (the Director) under section 55(1) of the Public Health and Municipal Services Ordinance (Cap. 132) (the Principal Ordinance) to amend the First Schedule to the Harmful Substances in Food Regulations (Cap. 132 sub. leg. AF) (the Principal Regulations).

2. Under section 55(1) of the Principal Ordinance, the Director may, so far as it appears to him to be necessary or expedient in the interests of the public health, or otherwise for the protection of the public, make regulations for requiring, prohibiting or regulating the addition of any specified substance to food intended for sale for human consumption.

3. The First Schedule to the Principal Regulations is a list of substances the maximum concentration of which in specified foods is prescribed. The Amendment Regulation adds melamine as item 26B to the list of substances in the First Schedule. The maximum concentration prescribed is 1 milligram per kilogram of –

- (a) milk;
- (b) any food intended to be consumed principally by persons of an age group into which children under the age of 36 months fall; or
- (c) any food intended to be consumed principally by pregnant or lactating women,

and 2.5 milligrams per kilogram of any other food.

4. The effect of the Amendment Regulation is that any person who imports, consigns, delivers, manufactures or sells, for human consumption, any specified food containing melamine of a concentration greater than that prescribed commits an offence and is punishable by a fine at level 5 (i.e. \$50,000) and imprisonment for 6 months.

5. No LegCo Brief has been issued at the date of this report. However, the Administration briefed Members and Members-elect at an informal meeting held on 19 September 2008 regarding the recent incident of melamine being detected in milk powder and milk products as well as the follow-up measures taken/to be taken by the Administration to tackle the problem, including the gazettal of a regulation to prohibit inappropriate level of melamine in food prior to the commencement of the next legislative term.

6. The Amendment Regulation came into effect on 23 September 2008.

7. No difficulties in the legal and drafting aspects have been identified.

LEE Ka-yun, Kelvin  
Assistant Legal Adviser  
Legislative Council Secretariat  
24 September 2008

## **LEGISLATIVE COUNCIL BRIEF**

### **Public Health and Municipal Services Ordinance (Cap. 132)**

#### **HARMFUL SUBSTANCES IN FOOD (AMENDMENT) REGULATION 2008**

#### **INTRODUCTION**

1. On 22 September 2008, the Director of Food and Environmental Hygiene, in exercise of the power under section 55(1) of the Public Health and Municipal Services Ordinance (Cap. 132), made the Harmful Substances in Food (Amendment) Regulation 2008 (“the Amendment Regulation”) at Annex.

#### **BACKGROUND AND JUSTIFICATIONS**

2. The Harmful Substances in Food Regulations (Cap 132AF) govern, among other things, the presence of harmful substances in food imported to and sold in Hong Kong.

3. The First Schedule to Cap 132AF stipulates the maximum amount of harmful substances allowed in food. Any person who imports, consigns, delivers, manufactures or sells for human consumption any food containing substances in greater concentration than that stipulated in the First Schedule to Cap 132AF commits an offence. The Director of Food and Environmental Hygiene is the designated authority under section 55(1) of Cap 132 to make and amend Cap 132AF.

#### Incident of detecting melamine in dairy products

4. Earlier in September 2008, melamine was found in the infant formula produced by the Mainland’s Sanlu brand and there were infants in the Mainland who suffered from kidney stones and kidney failure after consuming Sanlu infant formula. On 16 September 2008, the Mainland

authorities further announced that melamine was detected in the milk powder products of 22 corporations.

5. Melamine is an industrial chemical used for the production of melamine resins, which are used in laminates, glues, adhesives, molding compounds, coatings, paper, textiles, flame retardants or superplasticizer for concrete. Melamine should not be used in food products. It is understood that melamine was added to milk to raise the level of nitrogen present in the product for testing (the level of nitrogen present is higher in protein-rich food product). While melamine has low oral acute toxicity, excessive exposure to melamine has been found to cause bladder stones, crystals in urine and proliferation of epithelial cells of urinary bladder in experimental animals.

6. The Administration has taken a series of measures to effectively tackle the issue. These include conducting tests on dairy products in the market, making announcement on the test results and the latest developments to the public on a daily basis, and maintaining close liaison with the trade, overseas and the Mainland authorities. To tackle the possible medium and long term implications caused by the incident, the Administration has set up an Expert Group to analyze and evaluate various aspects such as health services, treatment and food safety in detail, with a view to formulate corresponding effective measures.

7. The Centre for Food Safety (CFS) is continuously taking samples in the market, and has expanded the scope of the surveillance and testing in a systematic manner. These include the progressive taking of samples to test milk powder, raw/fresh milk, dairy products (e.g. ice-cream, yoghurt) and products with milk powder as ingredient (e.g. cakes, chocolates). While the Mainland products are the main focus of our surveillance strategy, we have also expanded the scope of surveillance to local dairy products, and milk powder for pregnant women and infant formula of different origin.

8. The incident has aroused immense public concern over the safety of milk powder and milk products. Before the introduction of the Amendment Regulation, our legislation governing harmful substances in food, namely Cap 132AF, did not explicitly prohibit the presence of

melamine in food imported, consigned, delivered, manufactured or sold in Hong Kong. Neither did it specify the maximum concentration of melamine allowable in food.

#### Amendment of Cap 132AF

9. To ensure food safety and protect public health, the Administration has immediately made an Amendment Regulation to amend Cap 132AF to prohibit inappropriate level of melamine in food.

#### Standard for melamine

10. In setting the standard for melamine under Cap 132AF, we have researched into the international practices and standards and taken into consideration the followings –

- (a) melamine is not a food additive and the addition of melamine into food is not approved by the Food and Agriculture Organisation (FAO)/World Health Organisation (WHO) Codex Alimentarius or by any national authorities;
- (b) traces of melamine may be present in food due to migration of melamine from utensils/ packaging made of melamine-formaldehyde resin;
- (c) melamine can also be an environmental contaminant and small amount may be present as an environmental metabolite of pesticide;
- (d) a Tolerable Daily Intake of 0.63 mg/kg body weight/day for melamine is established by the US Food and Drug Administration; and
- (e) a half-reduced Tolerable Daily Intake of 0.32 mg/kg body weight/day for melamine should be applied to infants and young children of 36 months old or below, as they are more vulnerable to kidney stone formation.

11. Having taken into account all the above factors, we have set the maximum concentration of melamine under Cap 132AF as follows –

Milk	1 milligram per
Food intended to be consumed	kilogram of the
principally by persons of an age	food

group into which children under the age of 36 months fall	
Food intended to be consumed principally by pregnant or lactating women	
Any other food	2.5 milligrams per kilogram of the food

Contravention of the above requirement is subject to a maximum fine of \$50,000 and imprisonment of six months.

12. As at 3 October 2008, the CFS has tested a total of 1371 samples of milk powder and dairy products of which 25 did not meet the legal requirement on melamine set under Cap 132AF, and the detected levels range from 1.4 ppm to 68 ppm. All products concerned have been withdrawn from the market by the importers concerned. The CFS will continue to announce the results of the test on a daily basis so as to keep the public closely informed. All testing results were uploaded to CFS' website for reference by members of the public.

13. Furthermore, as there were concerns from the public on the consumption of milk imported from the Mainland, we have started to conduct test on all consignments of raw milk, pasteurised milk and UHT milk imported from the Mainland to ensure that they meet the legal requirement on melamine in food.

## **THE AMENDMENT REGULATION**

14. The Amendment Regulation has come into operation on the date of gazettal, i.e. 23 September 2008.

## **LEGISLATIVE TIMETABLE**

15. The legislative timetable is as follows –



## **IMPLICATIONS OF THE PROPOSAL**

16. The Amendment Regulation is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the binding effect of the principal Ordinance. It has no financial, civil service, economic, productivity and environmental implications.

17. In line with the sustainability principle of pursuing policies which promote and protect the physical health and safety of the people of Hong Kong, the Amendment Regulation would enhance food safety and help boost public confidence in our food safety regime.

## **PUBLIC CONSULTATION**

18. We briefed the Members and Members-designate of the Legislative Council on 19 September 2008 on the latest development of the melamine incident and our plan to introduce legislation to prohibit food with inappropriate level of melamine. We announced the Amendment Regulation on 22 September 2008 and briefed the Expert Committee on Food Safety and the food trade on the same day.

## **PUBLICITY**

19. A press conference was held on 22 September 2008 to announce the new requirement. A press release was issued on the same day.

## **ENQUIRIES**

20. Any enquiry on this brief can be addressed to Mr James Chan, Assistant Secretary for Food and Health Bureau (Tel: 2973-8241).

**Food and Health Bureau**  
**September 2008**

**L.N. 215 of 2008****HARMFUL SUBSTANCES IN FOOD (AMENDMENT)  
REGULATION 2008**

(Made by the Director of Food and Environmental Hygiene  
under section 55(1) of the Public Health and  
Municipal Services Ordinance (Cap. 132))

**1. Maximum concentration of certain substances  
present in specified foods**

The First Schedule to the Harmful Substances in Food Regulations  
(Cap. 132 sub. leg. AF) is amended by adding—

“26B. Melamine	Milk	1 milligram per kilogram of the food.
	Any food intended to be consumed principally by persons of an age group into which children under the age of 36 months fall	1 milligram per kilogram of the food.
	Any food intended to be consumed principally by pregnant or lactating women	1 milligram per kilogram of the food.

Any other food	2.5 milligrams per kilogram of the food.”.
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CHEUK Wing-hing  
Director of Food and  
Environmental Hygiene

22 September 2008

### **Explanatory Note**

This Regulation amends the First Schedule to the Harmful Substances in Food Regulations (Cap. 132 sub. leg. AF). After the amendment, any person who imports, consigns, delivers, manufactures or sells any food containing melamine of a concentration greater than that specified in the Schedule commits an offence.

# **立法會**

## ***Legislative Council***

### **Legal Service Division Report on Subsidiary Legislation Gazetted on 26 September 2008**

**Date of tabling in LegCo** : 8 October 2008

**Amendment to be made by** : 5 November 2008 (or 26 November 2008 if extended by resolution)

#### **Child Abduction and Custody Ordinance (Cap. 512)**

#### **Child Abduction and Custody (Parties to Convention) (Amendment) (No. 2) Order 2008 (L.N. 216 of 2008)**

The Amendment Order is made by the Chief Executive under section 4 of the Child Abduction and Custody Ordinance (Cap. 512) after consultation with the Executive Council to update the Child Abduction and Custody (Parties to Convention) Order (Cap. 512 sub. leg. A) (the Order) by adding the Republic of Costa Rica to the list of Contracting States to the Convention on the Civil Aspects of International Child Abduction (the Convention) so that the Convention will apply between Hong Kong Special Administrative Region (HKSAR) and the Republic of Costa Rica.

2. The Convention, which was signed at the Hague in 1980 and is now in force in 81 States, provides a mechanism for the return of children wrongfully removed from their place of habitual residence to another Contracting State in violation of custodial rights. The Convention does not apply to the Mainland, but an agreement was reached at the Sino-British Joint Liaison Group in September 1996 on the continued application of the Convention to HKSAR after 30 June 1997 and that the declaration of acceptance of new accessions would be made by the Central People's Government (CPG) on behalf of HKSAR.

3. The Republic of Costa Rica acceded to the Convention in 1999. Since the Republic of Costa Rica met the Administration's criteria for inclusion in the Order, with the consent of the CPG, the Administration considered it necessary to add the Republic of Costa Rica to the Order.

4. According to Article 38 of the Convention, the Convention will enter into force between an acceding State and a Contracting State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance. The CPG had deposited with the depository of the Convention (the Government of the Netherlands) its declaration of acceptance on behalf of the HKSAR of the accession of the Republic of Costa Rica on 16 June 2008. Therefore, the Convention has entered into force between HKSAR and the Republic of Costa Rica on 1 September 2008; and accordingly, the Amendment Order has specified 1 September 2008 as the date on which the Convention came into force as between HKSAR and the Republic of Costa Rica.

5. The Panel on Welfare Services has not been consulted on the Amendment Order. Members may refer to the LegCo Brief issued by the Labour and Welfare Bureau on 24 September 2008 (File Ref: LWR CR 1/3281/86(08)) for further information.

**Building (Planning) (Amendment) Regulation 2008**

**Building (Planning) (Amendment) Regulation 2008 (Commencement) Notice 2008 (L.N. 217)**

6. By this notice, the Secretary for Development has appointed 1 December 2008 as the day on which the Building (Planning) (Amendment) Regulation 2008 (L.N.124 of 2008) (the Amendment Regulation) will come into operation under section 1 of the Amendment Regulation.

7. The purpose of the Amendment Regulation is to enhance the design requirements governing the provision of facilities for access to and the use of buildings and their facilities by persons with a disability (PWDs). The Amendment Regulation amends the Principal Regulations to -

- (a) reflect the revised new requirements as set out in the Design Manual – Barrier Free Access 2008 issued by the Building Authority; and
- (b) provide for certain technical amendments.

8. The Amendment Regulation was scrutinized by a subcommittee of the House Committee in June 2008. In the subcommittee's meetings, members and some deputations expressed concerns on the following matters relating to the introduction of the Amendment Regulation -

- (a) the application of the Amendment Regulation to buildings where only limited facilities can be provided for PWDs due to physical constraints;
- (b) the requirement for the provision of ramps in food premises with changes in level may cause hardship to the food business industry; and
- (c) the extent of application of the Amendment Regulation to the Government and public buildings.

9. Concerning the drafting aspects of the Amendment Regulation, after considering the views made by the members of the Subcommittee, the Administration has proposed to make certain technical amendments to the section 5, in the new Third Schedule of the Amendment Regulation for the purposes of improving readability of and making correction to clerical mistakes in that section. A resolution in respect of the relevant amendments as proposed by the Administration was made and passed by the Legislative Council on 12 July 2008. Members may refer to L.N. 205 of 2008 in L.S. No.2 to Gazette no. 29/2008 for the details of above amendments.

10. Despite the concerns mentioned in paragraph 8 above the Subcommittee generally supported the Amendment Regulation (together with the abovementioned

amendments). Furthermore, the Subcommittee considered that the Amendment Regulation should come into force as early as possible, while they agreed that it would be for the Members of the Fourth Legislative Council (LegCo) to decide whether a subcommittee should be formed to study this Commencement Notice after it is tabled in LegCo. Members may refer to the Report of the Subcommittee on Building (Planning) (Amendment) Regulation 2008 LC Paper No. CB(2)2403/07-08 for further information.

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

Prepared by  
YICK Wing-kin  
Assistant Legal Adviser  
Legislative Council Secretariat  
3 October 2008

LS/S/47/07-08

## **LEGISLATIVE COUNCIL BRIEF**

### **Child Abduction and Custody Ordinance (Chapter 512)**

#### **CHILD ABDUCTION AND CUSTODY (PARTIES TO CONVENTION) (AMENDMENT) (No.2) ORDER 2008**

#### **INTRODUCTION**

At the meeting of the Executive Council on 23 September 2008, the Council ADVISED and the Chief Executive ORDERED that the Child Abduction and Custody (Parties to Convention) (Amendment) (No.2) Order 2008 (the Amendment Order) at Annex should be made under section 4 of the Child Abduction and Custody Ordinance (Chapter 512)(the Ordinance) to add the Republic of Costa Rica (Costa Rica) as a Contracting State to the Convention on the Civil Aspects of International Child Abduction (the Convention) so that the Convention would apply between the Hong Kong Special Administrative Region (HKSAR) and Costa Rica. The Amendment Order is to update the Child Abduction and Custody (Parties to Convention) Order (the Order) in order to implement the Convention between HKSAR and Costa Rica, whose accession to the Convention has recently been accepted by the Central People's Government (CPG).

## **JUSTIFICATIONS**

2. Section 4 of the Ordinance provides that the Chief Executive shall make and publish in the Gazette an order specifying, among other things, certain States as the Contracting States to the Convention. The list is updated from time to time by amendment orders.

3. Costa Rica acceded to the Convention in 1999. Since Costa Rica met our criteria for inclusion in the Order, with the consent of the CPG, the Administration considered it necessary to add Costa Rica to the Order.

## **EFFECTIVE DATE**

4. According to Article 38 of the Convention, the Convention will enter into force between an acceding State and a Contracting State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

5. The CPG had deposited with the depository of the Convention (the Government of the Netherlands) its acceptance on behalf of the HKSAR of the accession of Costa Rica on 16 June 2008. Based on the certificate from the CPG, the Convention has entered into force between HKSAR and Costa Rica on 1 September 2008. Accordingly, the Amendment Order has specified 1 September 2008 as the date on which the Convention came into force as between HKSAR and Costa Rica. The effective date is before the expiry of the standard negative vetting period of 28 days (or 28 plus 21 days of extended negative vetting period). This is to ensure our full compliance with the requirements in accordance with Article 38 of the Convention.



## **LEGISLATIVE TIMETABLE**

6. The legislative timetable will be —

Publication in the Gazette

26 September 2008

Tabling at the Legislative Council

8 October 2008

## **IMPLICATIONS OF THE PROPOSAL**

7. The Amendment Order is in conformity with the Basic Law, including the provisions concerning human rights. It has no environmental or sustainability implications.

8. The Amendment Order is also consistent with Article 11 of the United Nations Convention on the Rights of the Child which provides that State Parties shall take measures to combat the illicit transfer and non-return of children abroad and, to this end, shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

9. There may be some additional workload for the Department of Justice, Judiciary, Legal Aid Department, Social Welfare Department, Immigration Department and the Police. However, the number of cases is likely to be very few and the additional workload can be absorbed within existing resources.

10. The legislative amendments, which aim at updating the list of Contracting States to the Convention, would provide a broader and more up-to-date framework in combating international child abduction. There should be no economic implication.

11. The Amendment Order will not affect the current binding effect of

the Ordinance.

## **PUBLIC CONSULTATION**

12. Since this is a routine updating exercise, public consultation on the Amendment Order is considered not necessary.

## **PUBLICITY**

13. A press release will be issued on 24 September 2008. A spokesman from the Labour and Welfare Bureau will be available to answer media enquiries.

## **BACKGROUND**

14. The Convention, which was signed at the Hague in 1980 and is now in force in 81 States, provides an effective mechanism for the swift return of children wrongfully removed from their place of habitual residence to another Contracting State in violation of custodial rights.

15. An agreement was reached at the Sino-British Joint Liaison Group in September 1996 on the extension of the Convention to Hong Kong by the United Kingdom and its continued application to the HKSAR after 30 June 1997. The Convention does not apply to the Mainland, but the declaration of acceptance of new accessions is made by the CPG on behalf of the HKSAR.

16. Any state may accede to the Convention in accordance with Article 38. Article 38 also provides that the accession will have effect only as regards the relations between the acceding state and such Contracting States as will have declared their acceptance of the accession.

## **ENQUIRIES**

17. For further enquiries, please contact Miss SHEA Wing-man, Assistant Secretary for Labour and Welfare (Welfare) 1A, at 2973 8126.

**Labour and Welfare Bureau**

**24 September 2008**

**CHILD ABDUCTION AND CUSTODY (PARTIES TO  
CONVENTION) (AMENDMENT) (NO. 2) ORDER  
2008**

(Made by the Chief Executive under section 4 of the Child Abduction and  
Custody Ordinance (Cap. 512) after consultation with the Executive  
Council)

**1. Schedule amended**

The Schedule to the Child Abduction and Custody (Parties to Convention)  
Order (Cap. 512 sub. leg. A) is amended by adding –

“Republic of Costa Rica 1 September 2008”

after –

“Republic of Colombia 1 September 1997”.

Chief Executive

2008

**Explanatory Note**

This Order amends the Child Abduction and Custody (Parties to Convention) Order (Cap. 512 sub. leg. A) to add the Republic of Costa Rica as a Contracting State to the Convention on the Civil Aspects of International Child Abduction so that the Convention will apply between Hong Kong and the Republic of Costa Rica.

# 立法會 *Legislative Council*

## Legal Service Division Report on Subsidiary Legislation Gazetted on 3 October 2008

**Date of tabling in LegCo** : 8 October 2008

**Amendment to be made by** : 5 November 2008 (or 26 November 2008 if extended by resolution)

### **PART I FEE REVISION**

#### **Broadcasting Ordinance (Cap. 562)**

#### **Broadcasting (Licence Fees) (Amendment) Regulation 2008 (L.N. 218)**

This Regulation is made by the Chief Executive in Council under section 42(1)(f) of the Broadcasting Ordinance (Cap. 562). It amends the annual licence fees payable under the Broadcasting (Licence Fees) Regulation (Cap. 562 sub. leg. A) (B(LF)R) for domestic free television programme service licences and type A other licensable television programme service licences. This Regulation also repeals provisions in B(LF)R relating to deemed domestic free television programme service licences and deemed domestic pay television programme service licences as those licences no longer exist.

#### Domestic free television programme service licences

2. The current licence fees of domestic free television programme service licensees, i.e. Asia Television Limited (ATV) and Television Broadcasts Limited (TVB), are based on a formula comprising a fixed component (i.e. a fixed fee which reflects the cost incurred by the Television and Entertainment Licensing Authority in administering the provisions of the licence) and a variable component (i.e. a variable fee which is calculated based on the costs incurred in handling complaints and thus on the number of television programme service channels provided).

3. According to the Administration, ATV and TVB officially launched digital terrestrial broadcasting (DTT) on 31 December 2007. Based on the current charging mechanism as described in paragraph 2 above, the variable fees payable by the two licensees on programme channel basis will substantively increase in a DTT environment. However, the DTT platform is capable of providing multiple programme channels and is expected to lead in practice to audience fragmentation rather than a significant increase in viewership for the domestic free television

services and thus the total number of complaints is not expected to increase proportionately. There will be a significant departure from the full-cost recovery principle if the current formula is used to calculate the licence fee under the DTT environment.

4. Furthermore, under the DTT environment, licensees can introduce seasonal or event-based programme channels on an ad hoc basis at certain times, e.g. during the Olympics, and make use of the available frequency to provide enhanced services by reducing the number of programme channels at other times. Without a new fee structure, such ad hoc programme channels would not be counted towards the variable fee if the broadcast ceases before the due date for payment, whilst some programme channels with limited hours of television programmes in a day would be unfairly charged as if they were full-fledged programme channels.

5. The Administration, therefore, proposes to replace the current formula for charging a variable fee on a per programme channel basis by one which is based on the yearly total number of hours of television programme time provided by a licensee. As it is anticipated that the primary source of complaints and the complaints handling work involved will still primarily be in respect of the four simulcast programme channels (Jade and Pearl of TVB and Home and World of ATV) at the initial stage of DTT implementation, a higher rate for the variable fee be applied to the first 17,000 hours of programme time provided by each licensee (which will cover the hours of television programme time on the four simulcast programme channels in a year) and that a lower rate be applied for the hours of television programme time on the remaining channels.

6. Under this Regulation, each licensee shall be charged a fixed fee of \$4,701,400 and a variable fee at \$13,200 per 100 hours of television programme time for the first 17,000 hours and \$1,630 per every 100 hours of television programme time after those 17,000 hours of programme time, payable in advance for the licensing year based on the total number of hours of television programme time provided in the preceding licensing year. Following the end of a licensing year, the licensees are required to provide audited number of hours of television programme time for confirmation and fee adjustment, if any. As compared with the licence fees for the 2007-08 licensing year, the licence fee payable by the two licensees for 2008-09 will slightly increase by 3% to 7%, subject to the actual hours of television programme time. According to the Administration, such revised fee proposal would adhere to the full-cost recovery principle in the DTT environment.

7. The Administration has consulted the two domestic free television programme service licensees and they have no objection to the new licence fee structure and the fee level payable by them.

8. According to the LegCo Brief, the annual licence comes into force on 1 December of the year for both licensees. Under section 3 of Schedule 1 to this Regulation and the provisions of the existing licences, the two licensees are required

to pay the annual licence fee by 15 December each year.

Type A other licensable television programme service licence

9. The existing annual licence fee for “Type A other licensable television programme service licence” (Type A licence) comprises a fixed fee of \$171,200 and a variable fee of \$4 per subscriber. This type of licence aims at internal television services within private residential premises or housing estates.

10. The Administration received an enquiry from potential service providers who claim that the fee level for Type A licence inhibits their operation, particularly as compared with that for the “Type B other licensable television programme service licence”, which is for television services for hotels, at \$16,800 plus \$5,400 per hotel. The licence fee for Type A licence is thus considered as a possible hurdle for developing internal television services in residential premises or housing estates. Although no Type A licence has been granted so far, the Administration considered it appropriate to revise the licence fee, which is in line with the policy objective to encourage investment and more television programme choice if more operators are interested in such niche television markets.

11. Under this Regulation, the fee for Type A licence is revised downward to \$73,500, representing a 57% deduction. The variable fee at \$4 per subscriber remains the same. According to the Administration, such fee revision was made on the basis of a costing exercise carried out by the Administration by reference to the “Type B non-domestic television programme service”.

12. According to the Administration, the above two fee revisions, if implemented, will lead to an increase in Government revenue of about \$500,000 per annum. As stated in paragraph 8 of and Annex B to the LegCo Brief, the licence fees for domestic free television programme service licences are estimated to be \$7,640,000 for ATV and \$7,370,000 for TVB in the 2008-09 licensing year. As compared with the licence fees for the 2007-08 licensing year at \$7,152,100 each, the increase in revenue is estimated to be about \$710,000. For Type A Licence, the revenue implication is derived by multiplying the revised amount (\$73,500) with the projected caseload at two (although none have been issued so far), totaling \$147,000. Since the fixed fee for each Type A Licence is proposed to be decreased from \$171,200 to \$73,500, the decrease in revenue is estimated to be about \$195,400 in total. The Information Technology and Broadcasting Panel has not been consulted on this Regulation.

13. This Regulation shall come into operation on 1 December 2008.

14. Members may wish to refer to the LegCo Brief issued by the Communications and Technology Branch of Commerce and Economic Development Bureau on 23 September 2008 (File Ref.:CTB(CR) 9/19/9 (02) Pt.4) for background information.

**Road Traffic Ordinance (Cap. 374)**

**Road Traffic (Public Service Vehicles) (Amendment) Regulation 2008 (L.N. 219)**

15. This Regulation is made by the Chief Executive in Council under section 7(1C) of the Road Traffic Ordinance (Cap. 374). It amends the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg. D) (RT(PSV)R) to adjust certain fares specified in Schedule 5 to RT(PSV)R. Under the adjustment –

- (a) for taxis licensed to operate in Hong Kong and Kowloon –
  - (i) the fare for the first 2 kilometres or any part of those 2 kilometres is increased from \$16.00 to \$18.00;
  - (ii) the fare for every further 200 metres or any part of those 200 metres is increased from \$1.40 to \$1.50, until the amount of fares chargeable under Schedule 5 of RT(PSV)R, as amended by this Regulation (“the chargeable amount”) reaches \$70.50;
  - (iii) the fare for every 200 metres or any part of those 200 metres is adjusted to \$1.00, after the chargeable amount has reached \$70.50;
  - (iv) the fare for every period of 1 minute, or any part of that period, during which the taxi is hired but not in motion is increased from \$1.40 to \$1.50, until the chargeable amount reaches \$70.50; and
  - (v) the fare for every period of 1 minute, or any part of that period, during which the taxi is hired but not in motion is adjusted to \$1.00, after the chargeable amount has reached \$70.50; and
- (b) for taxis licensed to operate within Lantau –
  - (i) the fare for the first 2 kilometres or any part of those 2 kilometres is increased from \$12.00 to \$13.00;
  - (ii) the fare for every further 200 metres or any part of those 200 metres is increased from \$1.20 to \$1.30, until the chargeable amount reaches \$130.00;
  - (iii) the fare for every 200 metres or any part of those 200 metres is adjusted back to \$1.20, after the chargeable amount has reached \$130.00;



- (iv) the fare for every period of 1 minute, or any part of that period, during which the taxi is hired but not in motion is increased from \$1.20 to \$1.30, until the chargeable amount reaches \$130.00; and
- (v) the fare for every period of 1 minute, or any part of that period, during which the taxi is hired but not in motion is adjusted back to \$1.20, after the chargeable amount has reached \$130.00.

16. According to the Administration, due to the substantial increases in the operating costs of the taxi trade in recent years which exert considerable pressure on its operating conditions, the Lantau taxi trade and the urban taxi trade applied for their fare increase on 2 May 2008 and 12 June 2008 respectively.

17. According to the LegCo Brief, when the urban taxi trade applied for the \$1 increase in flagfall fare in August 2007, it indicated that it would propose changes to the taxi fare structure in response to the review undertaken by the Transport Advisory Committee (TAC) on the mode of operation and quality of the taxi services in Hong Kong. In its Report on the Review of Taxi Operation issued on 5 June 2008, TAC suggests that the taxi fare structure should be “front-loaded” and thereafter on a varying descending scale of incremental charges.

18. Under the Administration’s recommended option as reflected in this Regulation, the average rate of fare increase is 7.67% for Lantau taxis and the average rate of fare increase is 5.46%, or 7.8% if the \$1 flagfall increase implemented in February 2008 is included for urban taxis. According to the Administration, the approved fare adjustments will lead to a year-on-year increase in the Composite Consumer Price Index (CCPI) by about 0.03 of a percentage point for the month of December 2008. For the year 2008 as a whole, the fare adjustments (to be effective in late November) will only lead to a rise of less than 0.01 of a percentage point. Taking into account also the \$1 increase in the flagfall charge for urban taxi in February 2008, the cumulated impact on CCPI for 2008 would be around 0.01 of a percentage point.

19. TAC was consulted on 29 July 2008 on the fare increase and supported the proposal. TAC considered that the Administration’s recommended options as reflected in this Regulation could maintain a balance between helping the Lantau and urban taxi trades to cope with operation difficulties and catering for consumer interest.

20. The Panel on Transport was consulted on 30 June 2008 on the fare adjustment applications submitted by the Lantau and urban taxi trades. Members noted the Administration's assessment of the financial positions and operations of the Lantau and urban taxi trades. Panel members expressed concern about public acceptability of the proposed fare increase, given that a \$1 increase in flagfall fare has just been implemented for urban taxis in February 2008. Panel members were also concerned whether the fare increase could effectively curb problems in taxi operation

in the longer term, given that the fuel price might continue to surge. Members questioned whether the change in taxi fare structure could effectively curtail discount gang activities, especially in the absence of legislative prohibition against fare bargaining.

21. This Regulation shall come into operation on 30 November 2008.

22. Members may wish to refer to the LegCo Brief issued by the Transport and Housing Bureau in September 2008 (File ref.:THB(T)L 3/3/5) for further information.

**Tate's Cairn Tunnel Ordinance (Cap. 393)**

**Tate's Cairn Tunnel Ordinance (Replacement of Schedule) Notice 2008 (L.N. 220)**

23. This Notice is made by the Commissioner for Transport under section 36(7) of the Tate's Cairn Tunnel Ordinance (Cap. 393) (TCTO). This Notice replaces the Schedule to TCTO with a new Schedule to reflect the increase of the tolls payable under TCTO.

24. Under section 36 of TCTO, the tolls which may be collected shall be those specified in the Schedule to TCTO. The tolls specified in the Schedule may be varied by agreement between the Chief Executive in Council and the Tate's Cairn Tunnel Company Limited (TCTC), or in default of agreement, by submission of the question of the variation of tolls to arbitration. The Commissioner for Transport shall by notice in the Gazette, as soon as is practicable after such agreement or arbitration award, amend the Schedule to TCTO.

25. A comparison of the existing and new tolls is as follows-

**Tate's Cairn Tunnel Tolls**

<b>Category</b>	<b>Vehicle</b>	<b>Toll (\$) (as from 30 November 2008)</b>	<b>Existing Toll (\$)</b>	<b>Percentage Increase</b>
1.	Motorcycles, motor tricycles	11	10	10%
2.	Private cars, electrically powered passenger vehicles, taxis	14	12	17%
3.	Public and private light buses	21	18	17%
4.	Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	21	18	17%

Category	Vehicle	Toll (\$) (as from 30 November 2008)	Existing Toll (\$)	Percentage Increase
5.	Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight of or exceeding 5.5 tonnes but not exceeding 24 tonnes	25	23	9%
6.	Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight of or exceeding 24 tonnes but not exceeding 38 tonnes	25	23	9%
7.	Public and private single-decker buses	28	24	17%
8.	Public and private double-decker buses	31	26	19%
9.	Each additional axle in excess of 2	18	15	20%

26. TCTC's original application with the increases ranging from 13% to 28% was discussed at the meeting of the Panel on Transport on 25 April 2008. The Panel was concerned about the traffic implications of the proposed toll increases, as the toll disparity between Tate's Cairn Tunnel and the Lion Rock Tunnel (LRT) would further increase and vehicles would be diverted to LRT as a result. Panel members urged the Administration to map out other measures to obviate the need for toll increase, such as by extending TCTC's franchise, or by buying back Tate's Cairn Tunnel at reasonable price. Panel members considered the rate of the proposed toll increases, at over 20% on average, too significant and unacceptable to the public. The Panel passed the following motion at the meeting on 25 April 2008:

"That this Panel strongly opposes the substantial increase in tolls for Tate's Cairn Tunnel, and urges the Government to reject it."

27. After the Panel meeting, the Administration continued to urge TCTC to consider its toll increase proposal in the light of public acceptability, and TCTC agreed in July 2008 to revise the application with the increases ranging from 9% to 20%. In parallel, the Administration has commenced discussion with TCTC to explore the option of franchise extension.

28. The Transport Advisory Committee (TAC) was consulted on TCTC's application in July 2008. Taking into account all relevant factors including interpretation of what amounts to "reasonable but not excessive remuneration" referred to in section 36(4) of TCTO, financial position of TCTC, traffic impact of the

proposed toll increase and public acceptability, TAC advised that TCTC's current application was justified.

29. Based on the above proposed toll increases, TCTC estimated that about 700 and 200 vehicles would be diverted to LRT and Tai Po Road (TPR) respectively per day. However, as Route 8 between Cheung Sha Wan and Shatin was commissioned in March this year to provide a further alternative to LRT and TPR, it is the Administration's assessment that the traffic impact on the road system linking Shatin and Kowloon is unlikely to be significant.

30. According to the Administration, with the proposed toll increase, the estimated additional royalty revenue to be paid to the Government will be about \$1.4 million, these estimates have taken into account the diversionary impact of the toll increase on existing traffic, on the basis of the estimated traffic flow using Tate's Cairn Tunnel in 2008-09. TCTC's annual total royalty payment to the Government will be increased to \$18.5 million as a result. Further, given that tolls for using the Tate's Cairn Tunnel constitute an insignificant proportion of average household spending, TCTC's proposed toll increase would have a minimal lifting effect on the Consumer Price Index.

31. So far, the Tate's Cairn Tunnel has had four toll increases that came into effect in May 1995, November 1996, January 2000 and August 2005 respectively. A Subcommittee was formed in June 2005 to deliberate on the TCT Ordinance (Replacement of Schedule) Notice 2005 (L.N. 93 of 2005) which subsequently came into effect in August 2005. The Subcommittee notes, inter alia, that the power of the Commissioner for Transport to make L.N. 93 of 2005 does not cover the determination of toll levels and the timing for implementation of the new tolls. According to section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1), LegCo's power to amend subsidiary legislation has to be consistent with the power to make such subsidiary legislation. In other words, there is little room for Members to amend the notice other than making minor technical amendments. Similarly, LegCo could not repeal the notice as the exercise of such power would also be inconsistent with the power of the Commissioner for Transport to make L.N. 93 of 2005. While LegCo is not in a position to amend or repeal L.N. 93 of 2005, the Subcommittee has examined the justifications for and implications of the toll increase, and how the current toll adjustment mechanisms could be improved. The Subcommittee has also explored measures to enhance the transparency of TCTC's financial position and performance.

32. This Notice shall come into operation on 30 November 2008.

33. Members may wish to refer to the LegCo Brief issued by the Transport and Housing Bureau in September 2008 (File ref.:THB(T)CR 1/4651/94) for background information.

## **PART II COMMENCEMENT NOTICES**

### **Mandatory Provident Fund Schemes (Amendment) (No. 2) Ordinance 2008 (18 of 2008)**

### **Mandatory Provident Fund Schemes (Amendment) (No. 2) Ordinance 2008 (Commencement) Notice (L.N. 221)**

34. By L.N. 221 made under section 2 of the Mandatory Provident Fund Schemes (Amendment) (No. 2) Ordinance (18 of 2008) (MPFS(A)O), the Secretary for Financial Services and the Treasury has appointed 1 December 2008 as the day on which MPFS(A)O shall come into operation.

35. The object of MPFS(A)O is to amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) to implement the proposals of the Mandatory Provident Fund Schemes Authority. The main proposals include the following :

- (a) to increase the maximum penalty for failure to enrol a relevant employee in an Mandatory Provident Fund (MPF) scheme or to make mandatory contributions for the employee, and to impose a heavier penalty on an employer who, having deducted an employee's mandatory contribution from the latter's relevant income, fails to pay the contribution to the approved MPF trustee;
- (b) to impose an obligation on an employer to pay mandatory contributions to the Mandatory Provident Fund Schemes Authority even if the relevant employee has not been enrolled in an MPF scheme, and to provide for relevant procedures for handling such contributions;
- (c) to add a new Part to Cap. 485 sub. leg. A for regulating controllers, including indirect controllers and substantial shareholders, of approved trustees; and
- (d) to create a new offence against an employer participating in an MPF scheme for providing false or misleading information in the pay-records given to employees.

36. Before the passage of Mandatory Provident Fund Schemes (Amendment) (No.2) Bill 2007 (the Bill) at the Council meeting of 18 June 2008, the Bill had been scrutinized by a Bills Committee. Members may wish to refer to the report of the Bills Committee (LC Paper No. CB(1)1834/07-08) for further information. According to section 2 of MPFS(A)O, MPFS(A)O shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette. The Bills Committee raised no query on this provision. The Bills Committee supported the Bill which sought to improve the operation, in

particular the enforcement, of the MPF system. Neither the public nor any LegCo Panel has been consulted on the Notice.

**Race Discrimination Ordinance (29 of 2008)**

**Race Discrimination Ordinance (Commencement) Notice 2008 (L.N. 222)**

37. By L.N. 222 made under section 1(2) of the Race Discrimination Ordinance (29 of 2008) (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 shall come 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).

38. The main objects of RDO are –

- (a) to render discrimination, harassment and vilification, on the ground of race, unlawful, and to prohibit serious vilification of persons on that ground;
- (b) to extend the jurisdiction of EOC to include such unlawful acts, to confer on EOC the function of eliminating such discrimination, harassment and vilification and promoting equality and harmony between people of different races;
- (c) to extend the unlawful sexual harassment under the Sex Discrimination Ordinance (Cap. 480) to cover rendering the environment in which a person works, studies or undergoes training sexually hostile or intimidating; and
- (d) to make other consequential and related amendments to legislation; and for related purposes

39. Before the passage of Race Discrimination Bill (the Bill) at the Council meeting of 10 July 2008, the Bill had been scrutinized by a Bills Committee. Members may wish to refer to the report of the Bills Committee (LC Paper No. CB(2)2478/07-08) for further information. According to section 1(2) of RDO, RDO 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. Neither the public nor any LegCo Panel has been consulted on the Notice.

***Concluding observation***

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

Prepared by

LO Wing-yee, Winnie  
Assistant Legal Adviser  
Legislative Council Secretariat  
8 October 2008

## **Legislative Council Brief**

### **Broadcasting Ordinance (Chapter 562)**

#### **LICENCE FEES FOR DOMESTIC FREE AND TYPE A OTHER LICENSABLE TELEVISION PROGRAMME SERVICE LICENCES**

#### **INTRODUCTION**

A At the meeting of the Executive Council on 23 September 2008, the Council ADVISED and the Chief Executive ORDERED that the Broadcasting (Licence Fees) (Amendment) Regulation 2008 at **Annex A** should be made under section 42(1)(f) of the Broadcasting Ordinance (Cap. 562) .

#### **LICENCE FEES FOR TELEVISION PROGRAMME SERVICES**

##### Existing licence fee structure for domestic free television programme service licence

2. The current licence fees of domestic free television programme service licensees, i.e. Asia Television Limited (ATV) and Television Broadcasts Limited (TVB), are based on a formula comprising a fixed component and a variable component. Section 2(1) of Schedule 1 to the Broadcasting (Licence fees) Regulation (Cap. 562 sub. leg. A) (the Regulation) provides that a licensee shall pay an annual licence fee comprising—

- (a) a fixed fee of \$4,308,900; and
- (b) a variable fee of \$1,421,600 per television programme service channel.

The fixed component reflects the cost incurred by the Television and Entertainment Licensing Authority (TELA) in administering the provisions of the licence. The variable fee is calculated based on the costs incurred in handling complaints and thus on the number of television programme service channels provided. The number of such channels is currently



determined by the actual number of television programme service channels provided on the anniversary of the day the licence comes into force (i.e. 1 December of each year for both licensees). Under section 3 of Schedule 1 to the Regulation and the provisions of the existing licences, the two licensees are required to pay the annual licence fee in advance by 15 December each year (i.e. within 14 days after the anniversary of the day their respective licences came into force).

### Need for review

3. With the launch of digital terrestrial broadcasting (DTT) on 31 December 2007, ATV and TVB have been assigned frequency multiplexes<sup>1</sup> to provide digital services. With the use of the additional radio frequency spectrum, they simulcast the existing services in digital format and provide new digital television programme channels<sup>2</sup> of both high definition television (HDTV) and standard definition television (SDTV) quality. ATV and TVB currently provide eight and four<sup>3</sup> DTT programme channels respectively<sup>4</sup>.

4. Based on the current charging mechanism as described in paragraph 2 above, the variable fees payable by the two licensees on programme channel basis will substantively increase in a DTT environment. However, the DTT platform is capable of providing multiple programme channels and is expected to lead in practice to audience fragmentation rather

<sup>1</sup> A frequency multiplex is a digital transmission channel which combines programme materials and other data in a digital form for transmission via a frequency channel. Apart from a set of frequency multiplexes which have been assigned for simulcasting the four traditional programme channels (i.e. Jade, Pearl, Home & World), a frequency multiplex is allocated to each of the broadcasters for transmission of new digital services.

<sup>2</sup> Under the technology-neutral regulatory regime, broadcasters should separately obtain licences for “transmission” and “provision” of television programme service. ATV and TVB possess fixed carrier licences issued by the Telecommunications Authority for “transmission” of the service, whilst the domestic free television programme service licence under the Ordinance is for the “provision” of the service. To recover the administrative cost in relation to the management of the frequency multiplexes newly assigned to ATV and TVB, the spectrum fee under the fixed carrier licences has been adjusted.

<sup>3</sup> TVB plans to launch the fifth DTT programme channel, known as Interactive Information Channel.

<sup>4</sup> Including two television programme service channels simulcast on both digital and analogue service on each licensee’s service.

than a significant increase in viewership for the domestic free television services and thus the total number of complaints is not expected to increase proportionately. There will be a significant departure from the full-cost recovery principle if the current formula is used to calculate the licence fee under the DTT environment.

5. Furthermore, under the DTT environment, licensees can introduce seasonal or event-based programme channels on an ad hoc basis at certain times, e.g. during the Olympics, and make use of the available frequency to provide enhanced services by reducing the number of programme channels at other times. Without a new fee structure, such ad hoc programme channels would not be counted towards the variable fee if the broadcast ceases on the specified date (i.e. 1 December in the year) (paragraph 2 above refers), whilst some programme channels with limited hours of television programmes in a day (e.g. ATV's HDTV channel which only broadcasts two to three hours each day at prime-time) would be unfairly charged as if they were full-fledged programme channels.

6. We therefore propose to replace the current formula for charging a variable fee on a per programme channel basis by one which is based on the yearly total number of hours of television programme time provided by a licensee. At the initial stage of DTT implementation, it is anticipated that the primary source of complaints and the complaints handling work involved will still primarily be in respect of the four simulcast programme channels (Jade and Pearl of TVB and Home and World of ATV). We therefore propose that a higher rate for the variable fee should be applied to the first 17 000 hours<sup>5</sup> of programme time provided by each licensee (which will cover the hours of television programme time on the four simulcast programme channels in a year) and that a lower rate be applied for the hours of television programme time on the remaining channels.

#### Proposed new licence fee for domestic free television programme service licence

7. On the basis of the proposed new licence fee structure and taking into account the costing exercise carried out at 2008-09 price level, we propose that each licensee be charged a fixed fee of \$4,701,400 and a

<sup>5</sup> The 17 000-hour threshold is a round off of the total hours of television programmes each licensee is providing on its two simulcast channels for 24 hours per day and 365 days per year.

variable fee at \$13,200 per 100 hours of television programme time for the first 17 000 hours and \$1,630 per every 100 hours of television programme time after those 17 000 hours of programme time.

8. Based on the current operating model of the two licensees, under the proposed formula TVB will be charged a fixed fee of \$4,701,400 and a variable fee estimated at \$2.67 million; ATV will be charged a fixed fee of \$4,701,400 and a variable fee estimated at \$2.94 million. As compared with the licence fees for the 2007-08 licensing year, the licence fee payable by the two licensees for 2008-09 will slightly increase by 3% to 7%, subject to the actual hours of television programme time. This revised fee proposal would adhere to the full-cost recovery principle in the DTT environment. The detailed cost computations are set out in **Annex B**.

B

9. Under the proposed formula, the existing licensees should pay the licence fees in advance for the licensing year based on the total number of hours of television programme time provided in the preceding licensing year. Following the end of a licensing year, the licensees are required to provide audited number of hours of television programme time for confirmation and fee adjustment, if any.

#### Licence fee for “Type A other licensable television programme service licence”

10. The existing annual licence fee for “Type A other licensable television programme service licence” (Type A licence) comprises a fixed fee of \$171,200 and a variable fee of \$4 per subscriber. This type of licence aims at internal television services within private residential premises or housing estates.

11. We have received an enquiry from potential service providers who claim that the fee level inhibits their operation, particularly when we compare it with that for the “Type B other licensable television programme service licence”, which is for television services for hotels, at \$16,800 plus \$5,400 per hotel. The licence fee is thus considered as a possible hurdle for developing internal television services in residential premises or housing estates. As a matter of fact, no Type A licence has been granted so far. Whilst the current fee level is calculated on a notional basis for administering the licence, we see a strong case for a review if the fee level has become a market barrier. It is also in line with our policy objective to

encourage investment and more television programme choice if more operators are interested in such niche television markets.

12. Taking into account market development, we propose that the estimated costs in administering the Type A licence should make reference to the “Type B non-domestic television programme service<sup>6</sup>” as they are both small-scale pay television services targeting a limited number of viewers and have similar regulatory requirements and will incur similar resources for the service. We have carried out a costing exercise on this basis. We estimate that the notional cost of administering a Type A licence is about \$73,500 and therefore propose to revise the fee downward to this estimated sum accordingly. This represents a 57% deduction. The variable fee at \$4 per subscriber remains the same. The detailed cost computations are set out in **Annex C**.

C

## THE AMENDMENT REGULATION

13. **Section 1** provides that the commencement date of the Broadcasting (Licence Fees) (Amendment) Regulation 2008 (the Amendment Regulation) is 1 December 2008, which tallies with the next anniversary of the effective date of the two existing domestic free television programme service licences.

14. **Section 4** replaces the existing Schedule 1 by a new Schedule 1 (Annual Licence Fee for Domestic Free Television Programme Service Licence) which provides for the following matters:

- (a) the fixed fee for a domestic free television programme service licence is \$4,701,400 (section 2(1)(a) of Schedule 1 refers);
- (b) the variable fee for a domestic free television programme service licence is to be calculated on the basis of the aggregate duration of television programmes provided by the licensee and the rate is \$13,200 per 100 hours for the first 17 000 hours and \$1,630 per every 100 hours of television programmes after those 17 000 programme hours (section 4 of Schedule 1 refers); and

<sup>6</sup> “Type B Non-domestic Television Programme Service” is a service intended or available for reception by the public on payment, whether periodically or otherwise, of a subscription in Hong Kong and does not primarily target Hong Kong. Currently, there are two such licensees.

- (c) the existing licensees must pay a provisional amount of the variable fee based on the aggregate duration of television programmes provided in the preceding year. Licensees must make up any shortfall of the variable fee or be refunded in case of surplus (sections 3(3), 3(5) and 3(6) of Schedule 1 refer).

15. **Section 6** stipulates that the fixed fee for a Type A licence under section 2(a) of Schedule 4 is \$73,500.

16. **Sections 2, 3 and 5** repeal the provisions in the Regulation relating to “deemed domestic free television programme service licences” and “deemed domestic pay television programme service licences”. We take the opportunity to remove those outdated provisions as those deemed licences no longer exist.

## **LEGISLATIVE TIMETABLE**

17. The legislative timetable is as follows—

Publication in the Gazette	3 October 2008
Tabling at the Legislative Council	8 October 2008

## **IMPLICATIONS OF THE PROPOSAL**

18. The fee revisions, if implemented, will lead to an increase in Government revenue of about \$500,000 per annum. The Amendment Regulation is in conformity with the Basic Law, including the provisions concerning human rights. There will be an obligation on the Government to repay overpaid licence fees and the Amendment Regulation is binding on the Government in this respect. It has no civil service, productivity, economic, environmental or sustainability implications.

## **PUBLIC CONSULTATION**

19. We have consulted the two domestic free television programme service licensees and they have no objection to the new licence fee structure and the fee level payable by them.

## **PUBLICITY**

20. A press release will be issued on 23 September 2008 and a spokesman will be available to answer media and public enquiries.

## **BACKGROUND**

21. It is Government policy that fees should in general be set at levels sufficient to recover the full costs of providing the services. The television programme service licensees generally agreed to the cost recovery principle when consulted in the 1998 Review of Television Policy.

22. Section 13 of Schedule 4 to the Broadcasting Ordinance (the Ordinance) provides that a television programme service licensee shall pay annually to the Director of Accounting Services a licence fee and such other fees as may be prescribed. Section 42(1)(f) of the Ordinance provides that the Chief Executive in Council (CE-in-Council) may by regulation prescribe anything that may be prescribed under the Ordinance. The existing fee structure for domestic free television programme service licence as stipulated under Schedule 1 to the Regulation was endorsed by the CE-in-Council in January 2001.

23. Type A licence is for reception by not more than 5 000 specified premises or a single housing estate free of charge in Hong Kong or on payment, whether periodically or otherwise, of a subscription in Hong Kong.

24. The licence fees for various categories of television programme service licences<sup>7</sup> under the Ordinance are subject to annual review. The existing fee level was last revised in 2006 following a full costing exercise. According to the costing exercise conducted in 2008-09, except for domestic free and Type A licences, the licence fees for other categories of television programme service licences shall remain unchanged.

<sup>7</sup> There are four categories of television programme service licence under the Ordinance. They are:

- (a) domestic free television programme service licence;
- (b) domestic pay television programme service licence;
- (c) non-domestic television programme service licence; and
- (d) other licensable television programme service licence.

25. ATV and TVB officially launched DTT on 31 December 2007. The network coverage has been extended in early August 2008 to all 18 districts reaching 75% of the population. The phased construction of DTT network will continue, with 22 more fill-in stations to be built from 2009 to 2011. The ultimate DTT coverage will be at least on a par with that of the existing analogue television broadcasting. The Government will then consider analogue switch-off subject to market and technology development. According to a survey conducted jointly by the Government and the two broadcasters in end-July 2008, about 15% of households (approximately 350 000 families) are now watching DTT via DTT receivers (including set-top boxes or integrated digital television sets) or computer.

## **ENQUIRIES**

26. Enquiries about this brief can be directed to Mr Kevin Choi, Principal Assistant Secretary for Commerce and Economic Development (Communications and Technology) A, on 2189 2236 or at [kevinchoi@cedb.gov.hk](mailto:kevinchoi@cedb.gov.hk).

Communications and Technology Branch  
Commerce and Economic Development Bureau

23 September 2008

## **BROADCASTING (LICENCE FEES)(AMENDMENT) REGULATION 2008**

(Made by the Chief Executive in Council under section 42(1)(f) of the  
Broadcasting Ordinance (Cap. 562))

### **1. Commencement**

This Regulation shall come into operation on 1 December 2008.

### **2. Interpretation**

(1) Section 2 of the Broadcasting (Licence Fees) Regulation (Cap. 562 sub. leg. A) is amended by repealing the definitions of “deemed domestic free television programme service licence” and “deemed domestic pay television programme service licence”.

(2) Section 2 is amended, in the Chinese text, in the definition of “用戶”, by repealing the semicolon and substituting a full stop.

### **3. Deemed licences**

Section 4 is repealed.

### **4. Schedule 1 substituted**

Schedule 1 is repealed and the following substituted –

“SCHEDULE 1

[s. 3(1)]

#### **ANNUAL LICENCE FEE FOR DOMESTIC FREE TELEVISION PROGRAMME SERVICE LICENCE**

##### **1. Interpretation**

In this Schedule –

“licence” (牌照) means a domestic free television programme service licence;

“licence year” (牌照年度) means, in relation to a licence –



- (a) the period commencing on the specified day and expiring at the end of the day immediately before the first anniversary of the specified day; or
- (b) the period commencing on an anniversary of the specified day and expiring at the end of the day immediately before the next anniversary of the specified day;

“programme time” (節目時間) means, in relation to a licence, the duration of a television programme included in a television programme service broadcast under the licence;

“specified day” (指明日期) means, in relation to a licence, the day the licence comes into force.

## 2. **Annual licence fee**

(1) The annual licence fee for a licence is payable in respect of a licence year and consists of the following –

- (a) a fixed fee of \$4,701,400; and
- (b) a variable fee calculated at the rates specified in section 4 and on the basis of the aggregate programme time of the television programmes broadcast in the licence year.

(2) The fixed fee is to be calculated on a pro rata basis if before the end of a licence year –

- (a) the licence is surrendered or revoked; or
- (b) the period of validity of the licence expires.

## 3. **Time and manner of payment**

(1) The holder of a licence shall pay to the Director of Accounting Services the fixed fee not later than 14 days after the commencement of a licence year.

(2) The holder of a licence shall, in respect of a licence year, pay to the Director of Accounting Services a provisional amount of the variable fee not later than 60 days after the commencement of the licence year.

(3) The provisional amount is to be calculated at the rates specified in section 4 –

- (a) in relation to a licence year commencing on the specified day, on the basis of the estimated aggregate programme time of the television programmes to be broadcast in the licence year as recorded in the licence; and
- (b) in relation to a licence year commencing on an anniversary of the specified day, on the basis of the aggregate programme time of the television programmes broadcast in the preceding licence year.

(4) If a television programme service, television programme or any part of a television programme service or television programme is approved or directed by the Broadcasting Authority to be simulcast in both analogue and digital formats, the programme time is to be calculated only by reference to the duration of the television programme or the part of the programme broadcast in digital format.

(5) If in respect of a licence year the variable fee payable for a licence exceeds the provisional amount paid for the licence, the holder of the licence shall, on demand by the Director of Accounting Services, pay the difference to the Director of Accounting Services.

(6) If in respect of a licence year the provisional amount paid for a licence exceeds the variable fee payable for the licence, the Director of Accounting Services shall pay the difference to the holder of the licence.

**4. Rates of variable fee**

The rates specified for the purposes of sections 2(1)(b) and 3(3) are as follows –

- (a) for the first 17 000 hours of programme time:  
\$13,200 for every 100 hours or any part of those 100 hours; and
- (b) for the programme time after those 17 000 hours:  
\$1,630 for every 100 hours or any part of those 100 hours.”.

**5. Annual licence fee for domestic pay television programme service licence or deemed domestic pay television programme service licence**

(1) Schedule 2 is amended, within the square brackets, by repealing “ss. 3(2) & 4(2)” and substituting “s. 3(2)”.

(2) Schedule 2 is amended, in the heading, by repealing “OR DEEMED DOMESTIC PAY TELEVISION PROGRAMME SERVICE LICENCE”.

(3) Schedule 2 is amended by repealing section 1 and substituting –

**“1. Interpretation**

In this Schedule –

“licence” (牌照) means a domestic pay television programme service licence;

“specified day” (指明日期) means, in relation to a licence, the day the licence comes into force.”.

**6. Annual licence fees for type A and type B other licensable television programme service licences**

Schedule 4 is amended, in section 2(a), by repealing “\$171,200” and substituting “\$73,500”.

Clerk to the Executive Council

COUNCIL CHAMBER

2008

### **Explanatory Note**

The object of this Regulation is to amend the annual licence fees payable under the Broadcasting (Licence Fees) Regulation (Cap. 562 sub. leg. A) (“principal Regulation”) for domestic free television programme service licences (“Licences”) and type A other licensable television programme service licences (“type A licences”). This Regulation also repeals provisions in the principal Regulation relating to deemed domestic free television programme service licences and deemed domestic pay television programme service licences (“deemed licences”) as those licences no longer exist.

2. Sections 2 and 3 repeal provisions relating to deemed licences.
3. Section 4 creates a new Schedule 1 under the principal Regulation (“new Schedule”) which provides for the annual licence fee for Licences.
4. Section 2 of the new Schedule provides that the annual licence fee for Licences consists of a fixed fee of \$4,701,400 and a variable fee calculated on the basis of the aggregate duration of the television programmes broadcast in a licence year (“variable fee”).
5. Section 3 of the new Schedule provides for the time and manner of payment of the annual licence fee for Licences.
6. Section 4 of the new Schedule provides for the rates of the variable fee.
7. Section 5 amends Schedule 2 to the principal Regulation by repealing provisions relating to deemed licences.

8. Section 6 amends the fixed portion of the annual licence fee for type A licences.

## COST COMPUTATIONS

**Annual Fee of Domestic Free Television Programme Service Licence  
under the Broadcasting (Licence Fees) Regulation**

<b>Cost at 2008-09</b>	<b>Fixed</b>	<b>Variable</b>
	\$	\$
Staff cost	7,177,374	3,972,554
Departmental expenses	690,218	666,507
Accommodation cost	801,951	577,533
Depreciation	61,632	29,273
Central administrative overhead	671,714	371,782
Total cost	<u>9,402,889</u>	<u>5,617,649</u>

Proposed licence fee	\$4,701,400 (per licence)	First 17 000 hours of television programmes:	\$13,200 per 100 hours of television programmes
		From 17001th hours onwards:	\$1,630 per 100 hours of television programmes

Estimated licence fees  
for—

		<u>Estimated increase</u>
ATV	$\$4.70\text{M} + \$2.94\text{M}^1 = \$7.64\text{M}$	(+6.86%)
TVB	$\$4.70\text{M} + \$2.67\text{M}^2 = \$7.37\text{M}$	(+3.06%)

<sup>1</sup> The variable fee for ATV is estimated based on the number of total hours of television programmes provided for 2008-2009 i.e. 59 781.

<sup>2</sup> The variable fee for TVB is estimated based on the number of total hours of television programmes provided for 2008-2009 i.e. 43 057.

## COST COMPUTATIONS

**Annual Fee of Type A Other Licensable Television Programme Service Licence  
under the Broadcasting (Licence Fees) Regulation**

	<b>Fixed</b>	<b>Variable</b>
	\$	\$
Staff cost	54,415	10,497
Departmental expenses	7,690	221
Accommodation cost	5,924	1,210
Depreciation	369	1,242
Central administrative overheads	5,092	982
Total cost	73,490	14,152
Estimated number of subscribers per licence		3 333 subscribers
Unit cost at 2008-09 prices	73,490	\$4.246 per subscriber
Proposed licence fee formula under the Regulation	\$73,500 + \$4 per subscriber <sup>1</sup>	

<sup>1</sup> The variable fee of \$4 per subscriber to Type A Other Licensable TV Programme Service remains unchanged.

## **LEGISLATIVE COUNCIL BRIEF**

Road Traffic Ordinance  
(Chapter 374)

### **LANTAU AND URBAN TAXI FARE ADJUSTMENT APPLICATIONS**

### **ROAD TRAFFIC (PUBLIC SERVICE VEHICLES) (AMENDMENT) REGULATION 2008**

#### **INTRODUCTION**

At the meeting of the Executive Council on 23 September 2008, the Council ADVISED and the Chief Executive ORDERED that under section 7(1C) of the Road Traffic Ordinance (Cap. 374), the Road Traffic (Public Service Vehicles) (Amendment) Regulation 2008 (“the A Amendment Regulation”), at Annex A, be made to give effect to an adjustment in the fares for the hiring of Lantau and urban taxis, with effect from 30 November 2008.

#### **JUSTIFICATIONS**

##### **(A) CONSIDERATION OF TAXI FARE ADJUSTMENT APPLICATIONS**

2. Taxis provide a personalised point-to-point public transport service. Taxi fare adjustment applications are considered in accordance with the following guiding principles -



- (a) the need to ensure the financial viability of taxi operations, taking into consideration changes in revenue and operating costs;
- (b) the need to maintain an acceptable level of taxi service in terms of taxi availability, passenger waiting time and feedback from passengers;
- (c) the need to maintain a reasonable differential between taxi fares and those of other public transport modes;
- (d) the likely public acceptability of the proposed fares; and
- (e) taxi fare structure should be “front-loaded” and thereafter on a varying descending scale of incremental charges<sup>1</sup>.

3. The scale of fares for the hiring of taxis is specified in Schedule 5 to the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg. D) (“the principal Regulations”) and is determined by the Chief Executive in Council, subject to negative vetting by the Legislative Council.

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<sup>1</sup> This revised policy on taxi fare structure is recommended by the Transport Advisory Committee in its Report on the Review of Taxi Operation issued on 5 June 2008.

## (B) THE APPLICATIONS AND ASSESSMENTS

### (1) Lantau Taxis' Application

4. The Lantau Taxi Association<sup>2</sup> has submitted the following fare increase application to the Transport Department ("TD") –

Lantau Taxis	Fares	
	Existing	The Application
Flagfall charge for the first 2 km or any part thereof	\$12	\$15
Incremental charge for every subsequent 200 m or part thereof and for every waiting period of 1 minute or part thereof	\$1.20	Before 20 km \$1.30
		20 km onwards \$1.20
Average rate of fare increase	---	+9.17%

### *Financial Position of the Lantau Taxi Trade*

5. Lantau taxi fares were last increased in March 1998, by an average rate of 9.1%. There are at present 50 Lantau taxis and about 91 Lantau taxi operators<sup>3</sup>. Amongst the 91 operators, there are 26 rentor-owners (29%), 15 owner-drivers (16%) and about 50 rentee-drivers (55%), including some part-time drivers.

#### (a) Operating Revenue

6. The changes in the average monthly operating revenue received by a Lantau taxi rentee-driver since the last fare increase and since 2004, i.e. the year of conversion to liquefied petroleum gas ("LPG")-operation, are set out below -

---

<sup>2</sup> This is the only association representing members of the Lantau taxi trade.

<sup>3</sup> There are three types of taxi operators, namely rentee-drivers, owner-drivers and rentor-owners. **Rentee-drivers** hire taxis from taxi owners. **Owner-drivers** own and drive the taxis themselves; some also rent their taxis out to rentee-drivers for one shift. **Rentor-owners** do not drive their taxis but rent them out to drivers.

<b>Lantau Taxis</b>					
<b>Year</b>	<b>1998</b>	<b>2004</b>	<b>2008 (Jan – Mar)</b>	<b>Change 2008 (Jan – Mar) over 1998</b>	<b>Change 2008 (Jan – Mar) over 2004</b>
Average total monthly revenue <sup>4</sup>	\$25,645	\$29,443	\$35,703	+\$10,058 <i>or +39.2%</i>	+\$6,260 <i>or +21.3%</i>

(b) Operating Costs

7. For a rentee-driver, the average monthly operating costs in January to March 2008 have increased by 49.3% compared with the average monthly position in 1998. Among various cost components, fuel cost and rental cost have increased by 30.6% and 60.9% respectively. As compared with the position in 2004, the average monthly operating costs have increased by 32.4%, with fuel cost up by 138.1% and rental cost up by 8.3%. During this period, fuel price has increased by 109% while fuel consumption has risen by 14% because of an increase in operating mileage.

8. For a taxi owner, the average monthly parking, maintenance and miscellaneous costs together in the first quarter of 2008 have increased by 30.1% since 1998 and by 14.8% since 2004.

(c) Net Income

9. The average monthly net income of a Lantau taxi operator in 1998, 2004 and January to March 2008 is set out below -

<b>Lantau Taxi</b>	<b>Average monthly net income</b>		
	<b>Rentee-driver</b>	<b>Owner-driver</b>	<b>Rentor-owner</b>
1998	\$10,277	\$10,659	\$4,054
2004	\$12,103	\$17,734	\$7,928

<sup>4</sup> Per Lantau taxi. Usually one Lantau taxi is operated by one driver per day.

<b>Lantau Taxi</b>	<b>Average monthly net income</b>		
	<b>Rentee-driver</b>	<b>Owner-driver</b>	<b>Rentor-owner</b>
Jan – Mar 2008	\$12,753	\$17,298	\$8,111
<i>Change over 1998 (in real terms)</i>	+24.1% (+33.3%)	+62.3% (+74.3%)	+100.1% (+114.9%)
<i>Change over 2004 (in real terms)</i>	+5.4% (-3.2%)	-2.5% (-10.4%)	+2.3% (-6.0%)

10. The general price level has decreased by 6.9% since 1998 and increased by 8.9% since 2004. The average monthly net income of a Lantau taxi operator in the first quarter of 2008 is higher than that in 1998 but lower than that in 2004 in real terms.

11. The above analysis shows that there have been substantial increases in the operating costs of the trade in recent years, exerting considerable pressure on its operating conditions. The average monthly net income of a Lantau taxi is lower than that in 2004 in real terms. There is a case for them to propose fare increases.

#### ***Approved Fare Adjustment for Lantau taxis***

12. Under the application, the average rate of fare increase is 9.17%. Having regard to all the relevant factors mentioned in paragraph 2 above, including changes in the operating costs and revenue, public acceptability and TAC's recommended revised taxi fare structure policy, the proposed rate of fare increase is considered to be on the high side and an average rate of fare increase of **7.67%** for Lantau taxis is approved. Details are set out below.

Lantau Taxis	Fares				
	Existing	The Application		Approved Fare Adjustment	
Flagfall charge for the first 2 km or any part thereof	\$12	\$15		<b>\$13</b>	
Incremental charge for every subsequent 200 m or part thereof and for every waiting period of 1 minute or part thereof	\$1.20	Before 20 km (i.e. \$132 <sup>5</sup> )	\$1.30	<b><i>Before \$130 (20 km<sup>6</sup>)</i></b>	<b><i>\$1.30</i></b>
		20 km (i.e. \$132) onwards	\$1.20	<b><i>\$130 onwards</i></b>	<b><i>\$1.20</i></b>
Average rate of fare increase	---	+9.17%		<b>+7.67%</b>	

### ***Estimated Impact of Approved Fare Adjustment on Passengers***

13. The estimated impact on fares for trips of different journey distances<sup>7</sup> is set out below.

Trip Distance	Existing Fare	The Application	Approved Fare Adjustment
Below 2km	\$12	\$15.0 (+25.0%)	\$13.0 (+8.3%)
8km	\$48	\$54.0 (+12.5%)	\$52.0 (+8.3%)
16.7km	\$100	\$110.6 (+10.6%)	\$108.6 (+8.3%)
33.3km	\$200	\$211.8 (+5.9%)	\$209.8 (+4.9%)
50km	\$300	\$312 (+4.0%)	\$310.0 (+3.3%)
<b>Average rate of increase</b>	---	+9.17%	+7.67%

<sup>5</sup> This is the total fare, according to the fare scale proposed in the application, for a journey of 20km if no charge for “waiting time” is incurred.

<sup>6</sup> The total fare for a journey of 20km will be \$130 under the approved fare adjustment, if no charge for “waiting time” is incurred.

<sup>7</sup>The estimation has not taken into account any “waiting time” charge that may be incurred in respect of a journey.

### ***Level of Services***

14. To monitor the service level of Lantau taxis, TD has conducted surveys at taxi stands in Lantau. The survey results show that though the passenger waiting time during holidays are relatively longer, the level of Lantau taxi service is generally adequate to meet passenger demand on weekdays.

### ***Fare Differential***

15. The effect of the approved fare adjustment on the fare differentials<sup>8</sup> is expected to be minimal. Existing fare differential between Lantau taxis and other public transport modes is 4.32. It is estimated that the differential will become 4.65 after the approved fare adjustment is implemented.

### **(2) Urban Taxis' Applications**

16. TD has received the following two different fare adjustment applications from urban taxi associations –

Urban Taxis	Fares				
	Existing	Application A		Application B	
Flagfall charge for the first 2 km or any part thereof	\$16	\$18		\$18	
Incremental charge for every subsequent 200m or part thereof and for every waiting period of 1 minute <sup>9</sup> or part thereof	\$1.40	Before 8 km	\$1.50	Before 11 km	\$1.50
		8 km onwards	\$1	11 km onwards	\$1
Average rate of fare increase	---	+4.64%		+6.69%	

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<sup>8</sup> Fare differentials refer to the difference between the fare level of taxi and that of other public transport modes.

<sup>9</sup> Application B proposes to change “every 1 minute” to “every 50 seconds” for calculating incremental charge for waiting time.

### ***Financial Position of the Urban Taxi Trade***

17. There are at present 15,250 urban taxis and about 32,500 urban taxi operators, 63% of which are rentee-drivers, 13% are rentor-owners and 24% are owner-drivers.

18. Prior to the \$1 increase in flagfall fare in February 2008, the urban taxi fares were last increased in June 1998, by an average rate of 5.9%. At the time when the urban taxi trade submitted the \$1 flagfall fare increase application last year, the trade was deliberating among themselves on longer term fare restructuring proposals. Pending the outcome of its deliberation on these proposals, the trade put up the \$1 flagfall fare increase application as a temporary measure to partially address the impact of rising operating costs on the trade. In assessing the trade's current financial position, the data reflecting the situations in 1998, 2004 (year of conversion to LPG operation) and early 2008 are provided for reference.

#### **(a) Operating Revenue**

19. The changes in the average monthly operating revenue received by an urban taxi rentee-driver are set out below.

<b>Urban Taxis</b>					
<b>Year</b>	<b>1998</b>	<b>2004</b>	<b>2008 (Jan – Mar)<sup>10</sup></b>	<b>Change 2008 (Jan – Mar) over 1998</b>	<b>Change 2008 (Jan – Mar) over 2004</b>
Average total monthly revenue <sup>11</sup>	\$24,774	\$20,505	\$22,121	-\$2,653 or -10.7%	+\$1,616 or +7.9%

<sup>10</sup> This reflects the latest revenue situation after the \$1 flagfall fare increase.

<sup>11</sup> Per urban taxi rentee-driver. Usually one urban taxi is operated by two drivers per day.

(b) Operating Costs

20. For a rentee-driver, the average monthly operating costs in January to March 2008 have increased by 5.0% compared with the position in 1998, with rental cost rising by 17.6% and fuel cost reducing by 21.1%. As compared with 2004, the average monthly operating costs have increased by 15.1%, with fuel cost rising by 61.2% and rental cost up by 5.3%. Although fuel price has risen dramatically in past few years, fuel cost has not increased in tandem because of a 19% drop in fuel consumption due to a decrease in operating mileage.

21. For a taxi owner, the average monthly parking, maintenance and miscellaneous costs together in the first quarter of 2008 have decreased by 13.9% since 1998 and increased by 1.2% since 2004.

(c) Net Income

22. The average monthly net income of an urban taxi operator in 1998, 2004 and January to March 2008 is set out below.

Urban Taxi	Average monthly net income		
	Rentee-driver	Owner-driver	Rentor-owner
1998	\$13,381	\$19,663	\$6,932
2004	\$10,117	\$19,965	\$8,026
Jan – Mar 2008	\$10,164	\$20,969	\$9,886
<i>Change over 1998 (in real terms)</i>	-24.0% (-17.7%)	+6.6% (+15.5%)	+42.6% (+54.5%)
<i>Change over 2004 (in real terms)</i>	+0.5% (-7.7%)	+5.0% (-3.5%)	+23.2% (+13.2%)

The above analysis shows that there have been substantial increases in the operating costs of the urban taxi trade in recent years, exerting considerable pressure on their operating conditions. The average monthly



net income of an urban taxi rentee-driver in early 2008, after the \$1 flagfall fare increase, is still lower than that in 2004 in real terms. There is a case for them to propose fare adjustments.

### ***Approved Fare Adjustment for Urban Taxis***

23. Under Application A and Application B, the average rate of fare increase is 4.64% and 6.69% respectively, or 7.0% and 9.1% respectively if the \$1 flagfall increase implemented in February is included. In assessing the above taxi fare increase applications, we have to take into account the impact on passengers as well as on the trade as a whole.

24. For Application B, its public acceptability is relatively lower given the higher average rate of fare increase at 9.1%.

25. On the other hand, Application A will provide a modest increase to the income of a rentee-driver. It is envisaged that such a modest increase in net income on the part of rentee-drivers and owner-drivers under this scenario can easily be eroded should there be any further rise in operating costs, such as the LPG prices.

26. On balance, a fare adjustment that maintains the flagfall charge at \$18 with the incremental charge set at \$1.5 up to \$70.50 (i.e. the total fare for a journey of **9 km**<sup>12</sup>) and \$1 after the total fare has reached \$70.50 is approved. This stands between Application A and Application B but closer to the former. It provides reasonable, but still modest, rates of increase in the income of rentee-drivers and owner-drivers; it provides a modest margin for rentee-drivers to cope with cost escalation; and it will

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<sup>12</sup> The total fare for a journey of 9km is \$70.50 if no “waiting time” charge is incurred.

still to a large extent mitigate the encroachment of the “discount” gangs. In short, it provides a more equitable arrangement to balance the various interests of the taxi trade. This is also in line with the Transport Advisory Committee (“TAC”)’s recommended revised taxi fare structure. The resulting average rate of fare increase is **5.46%**, or 7.8% taking into account the \$1 increase in flagfall charge in February 2008. Having regard to the fact that taxis provide personalized transport service as an additional choice for passengers, the approved fare adjustment maintains a balance between helping the taxi trade to cope with operation difficulties and catering for consumer interest.

### ***Impact of Approved Fare Increases on Passengers***

27. The estimated impact on fares for trips of different journey distances<sup>13</sup> is set out below.

<b>Trip Distance</b>	<b>Existing Fare</b>	<b>App. A (\$1 from 8km)</b>	<b>App. B (\$1 from 11km)</b>	<b>Approved Fare Adjustment (\$1 from \$70.50 (9km<sup>14</sup>))</b>
Below 2km	\$16	\$18.0 (+12.5%)	\$18.0 (+12.5%)	\$18.0 (+12.5%)
8km	\$58	\$63.0 (+8.6%)	\$63.0 (+8.6%)	\$63.0 (+8.6%)
14km	\$100	\$93.0 (-7.0%)	\$100.5 (+0.5%)	\$95.5 (-4.5%)
28.3km	\$200	\$164.5 (-17.8%)	\$172.0 (-14.0%)	\$167.0 (-16.5%)
42.6km	\$300	\$236.0 (-21.3%)	\$243.5 (-18.8%)	\$238.5 (-20.5%)
<b>Average rate of increase</b>	--	+4.64%	+6.69%	+5.46%

<sup>13</sup> The estimation has not taken into account any “waiting time” charge that may be incurred in respect of a journey.

<sup>14</sup> The total fare for a journey of 9km is \$70.50 if no “waiting time” charge is incurred.

<i>Average rate of increase, including the \$1 flagfall increase</i>	--	+7.0%	+9.1%	+7.8%
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### ***Level of Services***

28. To monitor the service level of urban taxis, TD has conducted surveys at taxi stands. The survey results show that the level of urban taxi service is generally adequate in catering for passenger demand.

### ***Fare Differential***

29. The effect of the approved fare adjustment on the fare differentials is expected to be minimal. The existing fare differential between urban taxis and other public transport modes is 3.96. It is estimated that the differential will become 4.18 after the approved fare adjustment is implemented.

## **(C) NECESSARY ADJUSTMENT TO REGULATION 62 OF CAP. 374D**

30. It is required under existing regulation 62(1) and (1A) of the principal Regulations to display the conversion table specified by the Commissioner for Transport in a prominent position inside a taxi and to mark in manuscript on the receipt issued to the passenger the appropriate fare chargeable under the amended scale of fares in Schedule 5 to the principal Regulations, until the taximeter of the taxi has been calibrated to reflect the amended fare scale approved by the Chief Executive in Council. If regulation 62(1) or (1A) is not complied with, the fare for the hiring of the taxi is to be the old fare shown in the taximeter, notwithstanding

regulation 47 of the principal Regulations<sup>15</sup>. This does not pose any problem so long as the amended fares are higher than the old fares. However, under the approved fare adjustment, the total fares for longer-haul trips would in general be lower than those charged according to the existing fare scale. To plug the potential loophole in order to protect passengers' interest, appropriate amendments were made to Regulation 62 of the principal Regulations to the effect the fare for the hiring of the taxi under this Regulation does not exceed the appropriate amount of fares chargeable under the amended scale of fares in Schedule 5 to the principal Regulations.

## **THE AMENDMENT REGULATION**

31. The main provisions of the Amendment Regulation are as follows-

(a) Section 1 provides for the commencement of the Amendment Regulation, which is on 30 November 2008;

(b) Section 2 adds a definition of "chargeable amount" to the interpretation section (section 2) to the principal Regulations;

(c) Section 3 introduces amendments to the existing provision providing for transitional arrangements (regulation 62) and specifies the fare that should be charged if the taximeter of a taxi has not yet been

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<sup>15</sup> Regulation 47 of the principal Regulations provides, amongst other things, that the scale of fares for the hiring of taxis shall be as specified in Schedule 5 and that no registered owner or driver of a taxi shall charge for hiring of the taxi a fare exceeding the appropriate scale of fares specified in that Schedule.

adjusted to record the fare chargeable under the amended scale of fares and-

- (i) the conversion table stipulated by the Commissioner for Transport is not displayed in a prominent place in the taxi; or
- (ii) the total amount of fare chargeable under the amended scale of fares in Schedule 5 to the principal Regulations is not set out in manuscript on the receipt issued to the passenger.

The fare in such case should be the fare specified in the new regulation 62(3), a fare that does not exceed the appropriate amount of fares chargeable under the amended scale of fares; and

(d) Section 4 amends items 1, 2 and 3 of Schedule 5 to the principal Regulations to put into effect the approved fare adjustments in paragraphs 16 and 35 above.

## **LEGISLATIVE TIMETABLE**

32. The legislative timetable is as follows-

Publishing in the Gazette	3 October 2008
Tabling at the Legislative Council	8 October 2008
Effective date	30 November 2008

## **IMPLICATIONS OF THE PROPOSAL**

33. The Amendment Regulation has economic implications as set out at Annex B. It has no civil service, financial, productivity, environmental or sustainability implications, and is in conformity with the Basic Law, including the provisions concerning human rights. The Amendment Regulation will not affect the current binding effect of the Ordinance.

## **PUBLIC CONSULTATION**

34. TAC was consulted on 29 July 2008 and supported the proposed increase. TAC considered that the Administration's recommended options could maintain a balance between helping the taxi trades to cope with operation difficulties and catering for consumer interest. The detailed advice of the TAC is set out in its letter to the Secretary for Transport and Housing at Annex C. The Legislative Council Panel on Transport was consulted on 30 June 2008.

## **PUBLICITY**

35. A press release will be issued in the afternoon of 23 September 2008. A spokesman will be available to handle media enquiries.

## **BACKGROUND**

36. When the urban taxi trade applied for the \$1 increase in flagfall fare in end 2007, it indicated that it would propose changes to the taxi fare structure in response to the review undertaken by the TAC on the mode of operation and quality of the taxi services in Hong Kong. In its Report on the Review of Taxi Operation issued on 5 June 2008, TAC suggests that

the taxi fare structure should be “front-loaded” and thereafter on a varying descending scale of incremental charges.

### **ENQUIRIES**

37. For any enquiries, please contact Mr Don Ho, Assistant Commissioner for Transport at 2829 5208.

Transport and Housing Bureau

Transport Department

September 2008

## **ROAD TRAFFIC (PUBLIC SERVICE VEHICLES) (AMENDMENT) REGULATION 2008**

(Made by the Chief Executive in Council under section 7(1C) of the Road Traffic Ordinance (Cap. 374))

### **1. Commencement**

This Regulation shall come into operation on [30 November 2008].

### **2. Interpretation**

Regulation 2(1) of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg. D) is amended by adding –

““chargeable amount” ( ) means the amount of fares chargeable under Schedule 5, but does not include any amount chargeable under item 4 of that Schedule;”.

### **3. Transitional. Conversion of Taximeters**

(1) Regulation 62 is amended by repealing the heading and substituting “**Transitional provisions relating to conversion of taximeters**”.

(2) Regulation 62(2)(a) is amended by adding “in” before “subregulation (1)”.

(3) Regulation 62(2) is amended by repealing everything after “the fare for” and substituting “the hiring of the taxi shall be the fare specified in subregulation (3).”.

(4) Regulation 62 is amended by adding –

“(3) The fare specified for the purposes of subregulation (2) shall be –

(a) if the fare recorded on the taximeter does not exceed the appropriate amount chargeable under Schedule 5, the fare recorded on the taximeter; and



- (b) if the fare recorded on the taximeter exceeds the appropriate amount chargeable under Schedule 5, that amount.”.

#### **4. Taxi fares**

Schedule 5 is amended –

- (a) by repealing “[reg. 47]” and substituting “[regs. 2, 47 & 62]”;
- (b) in item 1, by repealing everything from “\$16.00” to “thereafter.” and substituting –
  - “(A) \$18.00 for the first 2 kilometres or any part of those 2 kilometres;
  - (B) \$1.50 for every further 200 metres or any part of those 200 metres, until the chargeable amount reaches \$70.50; and
  - (C) \$1.00 for every 200 metres or any part of those 200 metres, after the chargeable amount has reached \$70.50.”;
- (c) in item 2, by repealing everything from “\$12.00” to “thereafter.” and substituting –
  - “(A) \$13.00 for the first 2 kilometres or any part of those 2 kilometres;
  - (B) \$1.30 for every further 200 metres or any part of those 200 metres, until the chargeable amount reaches \$130.00; and
  - (C) \$1.20 for every 200 metres or any part of those 200 metres, after the chargeable amount has reached \$130.00.”;
- (d) by repealing item 3(i) and substituting –

- “(i) Taxis licensed to  
operate in Hong Kong  
and Kowloon ..... (A) \$1.50 for every  
period of 1  
minute, or any  
part of that  
period, during  
which the taxi is  
hired but not in  
motion, until the  
chargeable  
amount reaches  
\$70.50; and  
(B) \$1.00 for every  
period of 1  
minute, or any  
part of that  
period, during  
which the taxi is  
hired but not in  
motion, after the  
chargeable  
amount has  
reached  
\$70.50.”;

(e) by repealing item 3(ii) and substituting –

- “(ii) Taxis licensed to  
operate within Lantau .. (A) \$1.30 for every  
period of 1

minute, or any  
part of that  
period, during  
which the taxi is  
hired but not in  
motion, until the  
chargeable  
amount reaches  
\$130.00; and

(B) \$1.20 for every  
period of 1  
minute, or any  
part of that  
period, during  
which the taxi is  
hired but not in  
motion, after the  
chargeable  
amount has  
reached  
\$130.00.”.

Clerk to the Executive Council

COUNCIL CHAMBER

2008

## **Explanatory Note**

This Regulation amends the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg. D) (“principal Regulations”) to adjust certain fares specified in Schedule 5 to the principal Regulations. Under the adjustment –

- (a) for taxis licensed to operate in Hong Kong and Kowloon –
  - (i) the fare for the first 2 kilometres or any part of those 2 kilometres is increased from \$16.00 to \$18.00;
  - (ii) the fare for every further 200 metres or any part of those 200 metres is increased from \$1.40 to \$1.50, until the chargeable amount\* reaches \$70.50;
  - (iii) the fare for every 200 metres or any part of those 200 metres is adjusted to \$1.00, after the chargeable amount\* has reached \$70.50;
  - (iv) the fare for every period of 1 minute, or any part of that period, during which the taxi is hired but not in motion is increased from \$1.40 to \$1.50, until the chargeable amount\* reaches \$70.50; and

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\* The expression “chargeable amount” ( ) means the amount of fares chargeable under Schedule 5 of the principal Regulations, as amended by this Regulation, but does not include any amount chargeable under item 4 of that Schedule.

- (v) the fare for every period of 1 minute, or any part of that period, during which the taxi is hired but not in motion is adjusted to \$1.00, after the chargeable amount<sup>\*</sup> has reached \$70.50; and
- (b) for taxis licensed to operate within Lantau –
  - (i) the fare for the first 2 kilometres or any part of those 2 kilometres is increased from \$12.00 to \$13.00;
  - (ii) the fare for every further 200 metres or any part of those 200 metres is increased from \$1.20 to \$1.30, until the chargeable amount<sup>\*</sup> reaches \$130.00;
  - (iii) the fare for every 200 metres or any part of those 200 metres is adjusted back to \$1.20, after the chargeable amount<sup>\*</sup> has reached \$130.00;
  - (iv) the fare for every period of 1 minute, or any part of that period, during which the taxi is hired but not in motion is increased from \$1.20 to \$1.30, until the chargeable amount<sup>\*</sup> reaches \$130.00; and
  - (v) the fare for every period of 1 minute, or any part of that period, during which the taxi is hired but not in motion is adjusted back to \$1.20, after the chargeable amount<sup>\*</sup> has reached \$130.00.

**Economic Implications**

The approved fare adjustments will lead to a year-on-year increase in the Composite Consumer Price Index (“CCPI”) by about 0.03 of a percentage point for the month of December 2008. For the year 2008 as a whole, the fare adjustments (to be effective in late November) will only lead to a rise of less than 0.01 of a percentage point. Taking into account also the \$1 increase in the flagfall charge for urban taxi in February 2008, the cumulated impact on CCPI for 2008 would be around 0.01 of a percentage point.



29 August 2008

Ms Eva Cheng, JP  
Secretary for Transport and Housing  
16/F, Murray Building  
Garden Road  
Central, Hong Kong

Dear Ms Cheng,

**Lantau and Urban Taxi Fare Increase Applications**

This letter sets out Transport Advisory Committee's advice to the Chief Executive in Council ("CE-in-Council") on the fare increase applications of Lantau and urban taxis.

In advising on the taxi fare increase applications, TAC has taken into account the following guiding principles -

- (a) the need to ensure the financial viability of taxi operations, taking into consideration changes in revenue and operating costs;
- (b) the need to maintain an acceptable level of taxi service in terms of taxi availability, passenger waiting time and feedback from passengers;
- (c) the need to maintain a reasonable differential between taxi fares and those of other public transport modes;
- (d) the likely public acceptability of the proposed fares; and
- (e) taxi fare structure should be "front-loaded" and thereafter on a varying descending scale of incremental charges, as recommended by TAC in its Report on the Review of Taxi Operation issued on 5 June 2008.

Members noted that there had been substantial increase in the operating costs of both the Lantau and urban taxi trades in recent years, exerting considerable pressure on their operating conditions. The average monthly net income of urban and Lantau taxi drivers in the first quarter of 2008 were lower than in 2004 (the year of full conversion to LPG mode) in real terms and their income is expected to continue to decrease at the existing fares as operating costs continue to rise in line with the general inflation.

On Lantau taxis' application, the average fare increase rate is 9.17%. TAC considers that this proposed rate of fare increase is on the high side having regard to public acceptability and changes in the revenue and operating costs of Lantau taxis. Members were advised that the trip distribution records show that the vast majority of the trips are for a distance of less than 20 km. TAC agrees that the dividing line of 20 km proposed by the trade for the descending scale for incremental charge is appropriate. The flagfall rate of \$15 applied for however is too high and a modest increase of \$1 from \$12 as recommended by the Administration would be more acceptable to the passengers. Members were of the view that the Administration's recommended option, which represents an average fare increase rate of 7.67%, provides a better balance between the interests of the taxi trade and that of the passengers and is to be preferred.

As regards urban taxi, members noted that the two applications received from the urban taxi associations represented an average rate of fare increase of 4.64% and 6.69%. The corresponding average rate of fare increase when the \$1 increase in flagfall charge implemented in February 2008 is included would be 7% and 9.1%. The only difference between these two applications is the dividing line adopted for the descending scale of incremental charge, one at 8 km and the other 11 km.

The Administration recommended that the proposed increase for the flagfall charge of \$18 be accepted. Members were of the view that the increase was reasonable and would be acceptable to the passengers. The incremental charges applied for is in line with the descending scale principle set out in TAC's Report on the Review of Taxi Operation, and



members were of the view that this would generally be accepted by the public. The Administration further advised that the vast majority of the trips have been for a travelling distance of less than 9 km. It recommended that 9 km be adopted as the dividing line for the incremental charge. If that is adopted, Members noted that the taxi fare would be lower than the existing fare when the trip distance exceeded about 14 km.

Under the Administration's recommended option, the average fare increase rate is 5.46%, or 7.8% if the \$1 flagfall increase implemented in February 2008 is included. Members were of the view that this option is more appropriate than the two proposals.

The average fare increase of 7.67% for Lantau taxis and 7.8% for urban taxis is, in TAC's view, reasonable as well as comparable. In the premises, having taken into account all the relevant circumstances and information provided, TAC supports the Administration's recommended options for urban and Lantau taxi fare adjustment.

I would be grateful if you would kindly convey TAC's advice to the CE-in-Council for consideration. TAC's advice may be released for public information in due course after the Council's decision is announced.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Teresa Cheng', with a long horizontal line extending from the end of the signature.

(Teresa Cheng)

Chairman

Transport Advisory Committee

## **LEGISLATIVE COUNCIL BRIEF**

Tate's Cairn Tunnel Ordinance  
(Chapter 393)

### **Application for Toll Increase by Tate's Cairn Tunnel Company Limited**

## **INTRODUCTION**

At the meeting of the Executive Council on 9 September 2008, the Council ADVISED and the Chief Executive ORDERED that the Tate's Cairn Tunnel Company Limited (TCTC)'s application for toll increase should be approved, and that the new tolls should take effect from 30 November 2008.

## **JUSTIFICATIONS**

### **Background**

2. TCTC was granted a franchise under the Tate's Cairn Tunnel Ordinance (Cap. 393, the Ordinance) to build and operate the Tate's Cairn Tunnel for 30 years starting from July 1988, inclusive of the construction period. The tunnel was built at a cost of \$1.96 billion and was opened to traffic in June 1991. The franchise granted to TCTC will expire in July 2018.

3. Section 36(3) of the Ordinance provides that the tolls specified in the Schedule to the Ordinance may be varied by agreement between the Chief Executive-in-Council and the TCTC. If an agreement cannot be reached, either party may resort to arbitration. The Ordinance has not set out the criteria for determining toll adjustments. It only stipulates that if the matter is submitted for arbitration, the arbitrator shall be guided by the need to ensure that TCTC is reasonably but not excessively remunerated for its obligations under the Ordinance. A copy of section 36 of the Ordinance is at **Annex A**.

## TCTC's Application for Toll Increase

4. So far, the Tate's Cairn Tunnel has had four toll increases that came into effect in May 1995, November 1996, January 2000 and August 2005 respectively. TCTC applied for its fifth toll increase in December 2006, proposing increases ranging from 13% to 28% for different vehicle types. The Administration repeatedly urged TCTC to consider the timing and level of increase in the light of public acceptability, and TCTC agreed in July 2008 to revise the application with increases ranging from 9% to 20%. Details of the original and revised proposals are set out below –

	<b>Motor-cycles</b>	<b>Private cars &amp; taxis</b>	<b>Light buses and light goods vehicles</b>	<b>Medium and heavy goods vehicles</b>	<b>Single-decker buses</b>	<b>Double-decker buses</b>	<b>Extra axle</b>
<b>Existing Tolls</b>	\$10	\$12	\$18	\$23	\$24	\$26	\$15
<b>Original Proposed Tolls</b>	\$12	\$15	\$23	\$26	\$30	\$33	\$19
<b>Increase %</b>	20%	25%	28%	13%	25%	27%	27%
<b>Revised Proposed Tolls</b>	\$11	\$14	\$21	\$25	\$28	\$31	\$18
<b>Increase %</b>	10%	17%	17%	9%	17%	19%	20%

## TCTC's Financial Position

5. By the end of June 2007, TCTC accumulated losses of \$53 million, representing a shortfall of \$2,343 million as compared with the expected cumulative profit of \$2,290 million in the base case projection made by TCTC in its franchise bid of 1988<sup>1</sup>. The difference between the actual profit/losses of TCTC and base case projections over the years is set out below.

<sup>1</sup> The base case projection refers to the traffic, toll revenue and profit/loss projections included in TCTC's franchise bid, on which the expected IRR of 13.02% was derived.

<b>Profit &amp; Loss (in \$million)</b>			
<b>Year<sup>2</sup></b>	<b>Base Case Projection (A)</b>	<b>Actual Profit/Losses (B)</b>	<b>Difference (B-A)</b>
<b>1991/92</b>	(149)	(176)	(26)
<b>1992/93</b>	(148)	(159)	(11)
<b>1993/94</b>	(147)	(147)	0
<b>1994/95</b>	(69)	(143)	(74)
<b>1995/96</b>	(56)	(94)	(38)
<b>1996/97</b>	41	(71)	(112)
<b>1997/98</b>	66	(43)	(109)
<b>1998/99</b>	88	(41)	(129)
<b>1999/2000</b>	194	(10)	(204)
<b>2000/01</b>	212	18	(194)
<b>2001/02</b>	265	92	(173)
<b>2002/03</b>	356	103	(253)
<b>Deferred tax adjustment<sup>3</sup></b>	-	120	120
<b>2003/04</b>	371	97	(273)
<b>2004/05</b>	372	112	(260)
<b>2005/06</b>	448	141	(307)
<b>2006/07</b>	447	146	(301)
<b>Cumulative</b>	2,290	(53)	(2,343)

6. TCTC started to make an operating profit in 2000/01. It repaid its bank loan in October 2004, and thereafter in 2004/05, repaid the shareholders' loan. According to TCTC, at the current toll levels, it would be able to wipe off the accumulated loss by 2007/08, with an accumulated profit of \$103 million at the end of the year. TCTC also forecasts that it will start to pay dividends in 2008/09.

<sup>2</sup> TCTC's financial year is from 1 July to 30 June of the following year.

<sup>3</sup> The deferred tax adjustment was a result of the adoption of a revised accounting standard.

## Internal Rate of Return

7. In planning its franchise bid in 1988, TCTC assumed that the project would generate an Internal Rate of Return (IRR) of 13.02% over the 30-year franchise period. If no toll increase is to be made until the end of the franchise, TCTC will only achieve an IRR of 5.81%. If only the current toll increase application and no other is approved, TCTC will achieve an IRR of 6.11%. If, however, four further increases are made after the current one, TCTC will be able to achieve an IRR of 8.33%.

## Reasons for Financial Underperformance

8. TCTC considers that the financial underperformance has been caused by lower-than-expected toll revenue because the traffic volume through the tunnel has been lower than the traffic forecast in the franchise bid. A comparison of its base case forecast in the franchise bid and the actual traffic throughput is shown below –

Daily Average Traffic Volume (in thousands)			
Year <sup>4</sup>	Base Case Forecast	Actual	Difference
1991/92	64.7	56.6	-12%
1992/93	69.2	68.7	-1%
1993/94	73.8	79.6	+8%
1994/95 <sup>5</sup>	78.3	80.7	+3%
1995/96 <sup>5</sup>	82.9	75.5	-9%
1996/97	87.0	71.9	-17%
1997/98	90.6	69.5	-23%
1998/99	93.1	62.5	-33%
1999/2000	93.8	64.1	-32%
2000/01	93.8	64.0	-32%
2001/02	93.8	63.5	-32%
2002/03	93.8	61.5	-34%
2003/04	93.8	61.2	-35%
2004/05	93.8	60.0	-36%
2005/06	93.8	55.3	-41%
2006/07	93.8	55.6	-41%

9. TCTC attributes the lower-than-expected toll revenue to the following: -

<sup>4</sup> TCTC's financial year is from 1 July to 30 June of the following year.

<sup>5</sup> Two toll increases took effect on 1 May 1995 and 1 November 1996 respectively.

- (a) increasing toll disparity between the Lion Rock Tunnel and Tate's Cairn Tunnel;
- (b) relocation of the airport to Chek Lap Kok;
- (c) relocation of industrial/manufacturing activities to the Mainland;
- (d) prolonged economic difficulties between 1998/99 and 2003/04; and
- (e) more choices of transportation modes and alternative roads.

### **Administration's Assessment**

#### *(A) Guiding Principle – Reasonable but not Excessive Remuneration*

10. In considering TCTC's Base Toll Proposal in 1988, we agreed to the initial tolls but gave no undertaking in respect of subsequent adjustments. Neither was there any agreement on a targeted or expected IRR. However, based on the Base Toll Proposal that accompanied its franchise bid, we understand TCTC expected that it would achieve an IRR of 13.02% over the 30-year franchise period. This is in fact the lowest among the four Build-Operate-Transfer tunnels in Hong Kong. The Route 3 (Country Park Section) aims at a targeted IRR of 15.18%, while the targets for the Eastern Harbour Crossing (EHC) and the Western Harbour Crossing are both 16.5%. The initial toll and TCTC's expectation on subsequent toll levels in its Base Toll Proposal are as follows –

<b>Category of Vehicles</b>	<b>Initial Toll</b>	<b>TCTC's Own Expectations on Subsequent Toll Levels</b>				
	<b>July 1991</b>	<b>July 1994</b>	<b>July 1996</b>	<b>July 1999</b>	<b>July 2002</b>	<b>July 2005</b>
<b>Private cars, taxis and motorcycles</b>	\$4	\$6	\$8	\$10	\$13	\$15
<b>Light buses and light goods vehicles</b>	\$7	\$10	\$14	\$17	\$23	\$26
<b>Medium and heavy goods vehicles and buses</b>	\$8	\$12	\$16	\$20	\$26	\$30
<b>Extra axle</b>	\$5	\$8	\$10	\$13	\$16	\$20

*(B) Traffic Implications*

11. Currently, the Tate's Cairn Tunnel has an average daily throughput of 56,400 vehicles, against a design capacity of 78,500. Based on its revised proposed toll increases, TCTC estimated that about 700 and 200 vehicles would be diverted to the Lion Rock Tunnel (LRT) and Tai Po Road (TPR) respectively per day. However, it should be noted that Route 8 between Cheung Sha Wan and Shatin was commissioned in March this year to provide a further alternative to LRT and TPR<sup>6</sup>. Our assessment is therefore that the traffic impact on the road system linking Shatin and Kowloon is unlikely to be significant.

*(C) Arbitration*

12. As mentioned above, if an agreement on the toll increase cannot be reached between the Government and TCTC, either party may resort to arbitration. TCTC may therefore resort to arbitration if its application for the toll increase is rejected. In this connection, our experiences in handling the two toll increase applications of the EHC and the subsequent arbitrations may be used as reference, since the EHC has a similar toll adjustment and arbitration mechanism. In both arbitrations, the EHC franchisee was allowed to raise its tolls substantively<sup>7</sup> so as to achieve an IRR of 15-17% over the life of the franchise. Besides, any arbitration proceedings will mean cost implications to the Government.

## **IMPLICATIONS OF THE PROPOSAL**

13. The financial and economic implications of the proposed toll increase are in **Annex B**. The proposed increase is in conformity with the Basic Law, including the provisions concerning human rights. It has no environmental, sustainability, productivity or civil service implications.

<sup>6</sup> The daily throughput of Lion Rock Tunnel in July 2008 was 82,200 vehicles, compared to 90,900 vehicles in January 2008. The daily throughput of Tai Po Road was 27,200 in April 2008, compared to 32,400 in January 2008. These figures indicate the diversion effect of Route 8.

<sup>7</sup> The tolls at EHC were increased by 50% to 60% in January 1998 and 63% to 67% in May 2005.

## **PUBLIC CONSULTATION**

14. TCTC's original application was discussed at the Legislative Council Panel on Transport's meeting on 25 April 2008. Panel Members expressed objection to the high level of increase sought by TCTC, and passed a motion urging the Government to reject the application. In addition, the Panel suggested that Government and TCTC should enter into discussion on possible measures including extension of franchise in exchange for lower tolls. After the Panel meeting, the Administration continued to urge TCTC to consider its toll increase proposal in the light of public acceptability, and TCTC agreed in July 2008 to revise the application with the increases ranging from 9% to 20%. In parallel, the Administration has commenced discussion with TCTC to explore the option of franchise extension.

15. The Transport Advisory Committee (TAC) was consulted on TCTC's application in July 2008. Taking into account all relevant factors<sup>8</sup>, the TAC advised that TCTC's current application was justified. TAC considered that with the current application and another four future toll increases set out in TCTC's application, an IRR of 8.33% would represent a reasonable but not excessive return. Nevertheless, TAC considered that this did not mean that the four projected increases should be accepted and that each application had to be considered in the light of the then prevailing circumstances. TAC's detailed advice is set out in its letter to the Secretary for Transport and Housing at **Annex C**.

## **PUBLICITY**

16. A press release was issued on 9 September 2008 on the decision of the Chief Executive-in-Council.

## **ENQUIRIES**

17. Any enquiries concerning this Brief can be directed to Miss Rosanna Law, Principal Assistant Secretary for Transport and Housing, at 2189 2182.

Transport and Housing Bureau  
September 2008

<sup>8</sup> Including interpretation of what amounts to "reasonable but not excessive remuneration", financial position of TCTC, traffic impact of the proposed toll increase and public acceptability.



## **LEGISLATIVE COUNCIL BRIEF**

Tate's Cairn Tunnel Ordinance  
(Chapter 393)

**Application for Toll Increase  
by Tate's Cairn Tunnel Company Limited**

### **List of Annexes**

- Annex A - Section 36 of the Tate's Cairn Tunnel Ordinance (Cap. 393)
- Annex B - Implications of TCTC's Proposed Toll Increase
- Annex C - TAC's Advice

Chapter: 393	Title:	TATE'S CAIRN TUNNEL ORDINANCE	Gazette Number:
Section: 36	Heading:	<b>Company to charge approved tolls for use of tunnel</b>	Version Date: 30/06/1997

## **PART VIII**

### **COLLECTION OF TOLLS**

(1) Subject to this Ordinance, the Company may demand and collect tolls in respect of the passage of motor vehicles through the tunnel.

(2) The tolls that may be collected under subsection (1) shall be those specified in the Schedule.

(3) The tolls specified in the Schedule may be varied-

- (a) by agreement between the Governor in Council and the Company; or
- (b) in default of agreement by submission of the question of the variation of tolls to arbitration under the Arbitration Ordinance (Cap 341) by either the Governor in Council or the Company.

(4) On a submission to arbitration under subsection (3), the arbitrators shall be guided by the need to ensure that the carrying out by the Company of its obligations, or the exercise of its rights, under this Ordinance is reasonably but not excessively remunerative to the Company, having regard to-

- (a) any material change in the economic conditions of Hong Kong since the enactment of this Ordinance or, as the case may be, since tolls were last determined under this section;
- (b) the dismissal of any appeal by the Company made under section 53;
- (c) any material change in any other circumstances affecting the exercise by the Company of its rights under the franchise;
- (d) the effect of the introduction of, or alteration in, any tax or levy imposed on the use of the tunnel;
- (e) the project agreement; and
- (f) any other relevant matter.

(5) In determining for the purposes of subsection (4) whether the carrying out by the Company of its obligations, or the exercise of its rights has been reasonably but not excessively remunerative to the Company, the arbitrators shall, if there has been any failure by a guarantor under the further guarantee agreement to comply with the terms of that agreement, deem the Company to be in the financial position it would have been in had the further guarantee agreement been honoured, and subject to this subsection nothing in that subsection shall be deemed to render such failure a relevant matter which the arbitrators may take into consideration.

(6) Where under subsection (3)-

(a) the Governor in Council and the Company agree to a variation of the tolls; or

(b) in an award pursuant to a submission to arbitration it is determined that the tolls should be varied,

the tolls specified in the Schedule shall be varied in compliance with such agreement or award, as the case may be.

(7) The Commissioner shall, by notice in the Gazette, as soon as is practicable after such agreement or award as is referred to in subsection (6), amend the Schedule.

(Enacted 1988)

## **Implications of TCTC's Proposed Toll Increase**

### **Financial Implications**

With approval by Chief Executive-in-Council of TCTC's proposed toll increase, the estimated additional royalty revenue to be paid to the Government will be about \$1.4 million, these estimates have taken into account the diversionary impact of the toll increase on existing traffic, on the basis of the estimated traffic flow using Tate's Cairn Tunnel in 2008-09. TCTC's annual total royalty payment to the Government will be increased to \$18.5 million as a result.

### **Economic Implications**

2. Given that tolls for using the Tate's Cairn Tunnel constitute an insignificant proportion of average household spending, TCTC's proposed toll increase would have a minimal lifting effect on the Consumer Price Index.

25 August 2008

Ms Eva Cheng, JP  
Secretary for Transport and Housing  
2/F, Main and East Wings  
Central Government Offices  
Lower Albert Road, Central

Dear Ms Cheng,

**Application for Toll Increase  
by Tate's Cairn Tunnel Company Limited**

The Transport Advisory Committee has examined in detail the toll increase application submitted by the Tate's Cairn Tunnel Company Limited (TCTC). This letter sets out the Committee's views and advice to the Chief Executive-in-Council.

Members noted the last toll increase was implemented in August 2005. TCTC originally applied for toll increases ranging from 13% to 28% for different vehicle types in December 2006. After careful consideration, TCTC later submitted a revised application with lower toll increases ranging from 9% to 20% for different vehicle types.

In considering the revised application, Members took the view that all relevant factors and circumstances should be taken into account. These factors include the financial position of TCTC, what constituted "reasonable but not excessive remuneration", the prevailing economic conditions, public acceptability and the traffic implications that might be brought about by the proposed toll increase.

In submitting its franchise bid in January 1988, TCTC had assumed that the project, with construction cost of about \$1,962 million, would generate an Internal Rate of Return (IRR) of 13.02% over the 30-year franchise period. Members were informed that the projected IRR of 13.02% was not an agreed figure. Nonetheless, it was the lowest targeted IRR amongst the four Build-Operate-Transfer tunnels in Hong Kong.

Members noted that based on the current forecast, if the current toll increase application was acceded to, as well as four subsequent similar applications in the remaining 10-year franchise period, TCTC would achieve an IRR of 8.33%. If only the current toll increase application and no other was acceded to during the remainder of the franchise, TCTC would achieve an IRR of 6.11%. If there is no toll increase for the rest of the franchise period, TCTC would achieve an IRR of 5.81%. Members were of the view that for such a large-scale and long-term infrastructure investment, an IRR of 8.33% would not be unreasonable nor excessive. We hasten to add this review is by no means indicative of our views in respect of any future toll increase application nor that an IRR of 8.33% is acceptable for future applications. Each application must be considered in the light of the then prevailing circumstances.

Members were informed of the financial performance of TCTC. Its bank loan and shareholders' loan have been repaid. It is expected to write off the accumulated loss by 2007/08 and the cumulative return will become one of profit. When compared with a similar infrastructure project, namely, the Eastern Harbour Crossing, which was commissioned around the same time as TCTC, the company's financial position was substantially less favourable. TCTC explained that this was largely because of the lower than expected traffic volume through the tunnel as compared to that envisaged in the franchise bid. TCTC attributed this situation to a number of factors, including increasing toll disparity between Lion Rock Tunnel and Tate's Cairn Tunnel, relocation of the airport, a wider choice in public transportation modes and roads for commuters and migration of industrial/manufacturing activities to the Mainland. Whilst the return achieved in other franchise is strictly irrelevant, these factors nonetheless are relevant to why the actual volume of traffic flow is what it is.

From the traffic management perspective, Members noted that with the proposed toll increase, about 700 and 200 vehicles would be diverted to Lion Rock Tunnel and Tai Po Road respectively each day. Nevertheless, Members noted that the section between Cheung Sha Wan and Shatin of Route 8 was commissioned in March this year and provided a further alternative to Lion Rock Tunnel and Tai Po Road. As such, the traffic impact on the road system linking Shatin and Kowloon would unlikely be significant.

Public acceptability and the possible financial impact on road users are factors which have to be taken into account. One Member commented that the high percentage increase would likely attract adverse reactions from the public. This is not an invalid concern given the percentage increase figure was between 9% and 20%.

Members noted that the tunnel was mainly used by private cars and taxis (about 70%), to be followed by goods vehicles (about 20%). Buses constituted about 8% among all vehicle types. The percentage in toll increase is at the low end for the majority of the users. The expenditure on toll for buses is less than 1% of its operating costs. Importantly, commuters have a choice of alternate routes as well as alternative transport mode.

Having regard to all these considerations, Members are of the view that a balance had to be struck between public acceptability and TCTC's entitlement to a reasonable but not excessive remuneration.

Members were aware of the right of TCTC to resort to arbitration. If the toll increase is considered to be generally justifiable, it would be much better from an overall perspective to reach an agreement with TCTC than to incur public spending by way of legal costs in resolving such differences through contentious proceedings.

After weighing all the above factors, the Committee has concluded that TCTC's current application for toll increase is justified. I should be grateful if you would convey this Committee's advice to the Chief Executive-in-Council.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Teresa Cheng', with a horizontal line underneath.

(Ms Teresa Cheng)  
Chairman  
Transport Advisory Committee