

立法會
Legislative Council

LC Paper No. LS13/09-10

**Paper for the House Committee Meeting
on 20 November 2009**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 13 and 14 November 2009**

Date of tabling in LegCo : 18 November 2009

Amendment to be made by : 16 December 2009 (or 6 January 2010 if extended by resolution)

PART I SUBSIDIARY LEGISLATION GAZETTED ON 13 NOVEMBER 2009

**Import and Export Ordinance (Cap. 60)
Import and Export (Strategic Commodities) Regulations (Amendment of
Schedule 1) Order 2009 (L.N. 226)**

By this Order made by the Director-General of Trade and Industry under section 6B of the Import and Export Ordinance (Cap. 60) (the Ordinance), Schedule 1 to the Import and Export (Strategic Commodities) Regulations (Cap. 60 sub. leg. G) (the Regulations) is amended to reflect the latest changes in the control lists of strategic commodities adopted by various international non-proliferation regimes up to the end of 2008. The Order also seeks to rectify certain textual errors in the Schedule.

2. This Order is subject to a mechanism of scrutiny by the Legislative Council (LegCo) provided in section 6B(2) to (6) of the Ordinance. The mechanism is similar to that provided in section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), except that section 6B(3) of the Ordinance restricts LegCo's power to only repeal the Order. Under 6B(7) of the Ordinance, the Order shall only come into operation on a day to be appointed by the Director-General of Trade and Industry by notice published in the Gazette after the expiry of the period in which LegCo may exercise the power to repeal.

3. The Regulations relate to the imposition of licensing control on the import, export, transshipment, and in some cases, transit of strategic commodities. The licensing system is administered by the Trade and Industry Department and enforced by the Customs and Excise Department. Schedule 1 to the Regulations sets out the strategic commodities under control, which include materials, equipment, software and technology capable of being used for both industrial and military purposes. It has been drawn up on the basis of the control lists adopted by various international non-proliferation regimes and convention.

4. According to the Administration, Schedule 1 to the Regulations is under regular review and, where appropriate, is amended to take into account the most up-to-date control lists adopted by relevant international regimes and convention.

The last amendment of the Schedule came into effect in February 2009. Members may refer to the LegCo Brief (File Ref.: TRA CR 1506/2) issued by the Trade and Industry Department on 11 November 2009 for further information.

5. Neither the public nor any LegCo Panel has been consulted on the amendments made by the Order.

PART II SUBSIDIARY LEGISLATION GAZETTED ON 14 NOVEMBER 2009

Immigration (Amendment) Ordinance 2009 (13 of 2009)

Immigration (Amendment) Ordinance 2009 (Commencement) Notice (L.N. 230)

6. By this Notice, the Secretary for Security appoints 14 November 2009 as the day on which the Immigration (Amendment) Ordinance 2009 (13 of 2009) (the Amendment Ordinance) comes into operation. The corresponding Immigration (Amendment) Bill 2009 was passed by the Legislative Council on 11 November 2009 (the Amendment Bill).

7. The Amendment Ordinance expands the scope of, and allows the issue of visa other than by endorsement on, valid travel documents, and prohibits illegal immigrants (IIs) and persons subject to removal or deportation orders from taking employment or establishing or joining in any business.

8. The Amendment Bill had been scrutinized by a Bills Committee. Members of the Bills Committee noted the recent upsurge of foreign IIs (many of whom had made torture claims), and in general appreciated the need for expeditious action to tackle the problem of unlawful employment of IIs by specifying the taking of employment by IIs as an offence urgently. Some members, however, expressed concern over the appropriateness for the Administration to introduce the new offence when the outcome of its review on the torture claim screening mechanism was still pending. In response to members' concern, the Administration had undertaken to implement the enhanced screening procedures for torture claimants in October 2009 and brief the Panel on Security on the legislative proposal to introduce a legislative regime with comprehensive and effective procedures for assessing torture claims by the end of 2009. Members may wish to refer to the report of the Bills Committee on the Amendment Bill (LC Paper No. CB(2)200/09-10) for further formation.

9. The Panel on Security has not been consulted on this Notice.

Concluding Observation

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

Prepared by
YICK Wing-kin
Assistant Legal Adviser
Legislative Council Secretariat
17 November 2009