

立法會
Legislative Council

LC Paper No. LS27/09-10

**Paper for the House Committee Meeting
on 18 December 2009**

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

Date of tabling in LegCo : 16 December 2009

Amendment to be made by : 13 January 2010 (or 3 February 2010 if extended by resolution)

PART I INLAND REVENUE ORDINANCE

Inland Revenue Ordinance (Cap. 112)

Exemption from Profits Tax (Renminbi Sovereign Bonds) Order (L.N. 246)

L.N. 246 exempts a person from the payment of profits tax chargeable under Part IV of the Inland Revenue Ordinance (Cap. 112) in respect of sums received by or accrued to the person as interest or profits arising from Reminbi sovereign bonds.

2. According to paragraph 7 of the LegCo Brief File Ref: B6/17/9C (2009) of 11 December 2009 issued by the Financial Services and the Treasury Bureau, as the Reminbi sovereign bonds were issued in October 2009, i.e. in the year of assessment commencing on 1 April 2009, this exemption applies in relation to profits tax chargeable for the year of assessment commencing on 1 April 2009 and for all subsequent years of assessment.

3. The Administration has provided an information note on the Order to the Panel on Financial Affairs (the Panel) (LC Paper No. CB(1)680/09-10(01) issued on 14 December 2009). The Panel has not discussed the Order.

4. L.N. 246 will come into operation on 5 February 2010.

PART II COMMENCEMENT NOTICES

Buildings (Amendment) Ordinance 2008 (20 of 2008)

Buildings (Amendment) Ordinance 2008 (Commencement) Notice 2009 (L.N. 247)

Building (Minor Works) Regulation (L.N. 51 of 2009)

Building (Minor Works) Regulation (Commencement) Notice 2009 (L.N. 248)

Building (Minor Works) (Fees) Regulation (L.N. 178 of 2009)

Building (Minor Works) (Fees) Regulation (Commencement) Notice (L.N. 249)

Prevention of Bribery Ordinance (Amendment of Schedule 1) Order 2009 (L.N. 179 of 2009)

Prevention of Bribery Ordinance (Amendment of Schedule 1) Order 2009 (Commencement) Notice (L.N. 250)

5. L.N. 247 appoints 30 December 2009 as the day on which the following provisions of the Buildings (Amendment) Ordinance 2008 (BAO) (20 of 2008) will come into operation :

- (a) section 10(1), (2) and (3) which provide for the establishment of a register or provisional register of minor works contractors; and
- (b) section 14(2), (3) and (4)(a) which provide for the composition of the disciplinary board appointed to hear and determine any proceedings against a registered minor works contractor.

6. Certain provisions of BAO, including provisions for the Secretary for Development to make regulations in respect of minor works, were brought into operation on 15 December 2008 by the Buildings (Amendment) Ordinance 2008 (Commencement) Notice 2008 (L.N. 225 of 2008) gazetted on 13 October 2008.

7. The Administration intends to commence the remaining provisions of BAO not earlier than March 2010.

8. L.N. 248 appoints 30 December 2009 as the day on which the following provisions of the Building (Minor Works) Regulation (B(MW)R) (L.N. 51 of 2009) will come into operation :

- (a) Part 1 which provides for the definition of terms;
- (b) Part 2 which provides for matters designated or prescribed for purposes of the Buildings Ordinance (Cap. 123) (the principal Ordinance);
- (c) Part 3 which provides for the establishment of the Minor Works Contractors Registration Committees;

- (d) Part 4 which provides for matters relating to registration as registered minor works contractor;
- (e) Schedule 1 which provides for types and classes of minor works; and
- (f) Schedule 2 which provides for a list of designated exempted works from compliance with certain provisions of the principal Ordinance.

9. The Administration intends to commence the remaining provisions of B(MW)R not earlier than March 2010.

10. L.N. 249 appoints 30 December 2009 as the day on which the Building (Minor Works) (Fees) Regulation (L.N. 178 of 2009) will come into operation. The Regulation prescribes various fees payable under B(MW)R.

11. L.N. 250 appoints 30 December 2009 as the day on which the Prevention of Bribery Ordinance (Amendment of Schedule 1) Order 2009 (L.N. 179 of 2009) will come into operation. The Order amends Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) (POBO) to specify a Minor Works Contractors Registration Committee as a public body for the purposes of POBO.

12. The Administration has not briefed the Panel on Development about the Commencement Notices.

PART III LEGAL NOTICE NOT REQUIRED TO BE TABLED AND NOT SUBJECT TO AMENDMENT

Carriage by Air Ordinance (Cap. 500)

Carriage by Air (Provision of Limits of Liability) (Montreal Convention) Notice 2009 (L.N. 251)

13. The Unification of Certain Rules for International Carriage by Air (the Montreal Convention) is an international instrument governing carriers' liability for injury or death of passengers, damage or loss of baggage and cargo, and losses caused by delays. Hong Kong has implemented the Montreal Convention through the Carriage by Air Ordinance (Cap. 500) (the Ordinance) and the provisions of the Convention are set out in Schedule 1A to the Ordinance.

14. According to Article 24 of the Montreal Convention, the limits of liability in respect of the carriage of passengers, baggage and cargo as stipulated in Articles 21 and 22 of the Montreal Convention are subject to review by the International Civil Aviation Organization (ICAO) every 5 years based on a built-in mechanism. As advised by ICAO recently, the first review has concluded that the inflation factor is 13.1% and the limits of liability will be revised with effect from 30 December 2009 to reflect changing prices.

15. Under section 21(1) of the Ordinance, by notice published in the Gazette, the Director-General of Civil Aviation (DGCA) may revise the limits of liability specified in Article 21 or 22 of the Montreal Convention where those limits have been revised in accordance with Article 24 of that Convention. Section 21(3) of the Ordinance further provides that section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to a notice published under section 21(1). In other words, the Gazette notice published by DGCA is not required to be tabled before the Legislative Council and is not subject to amendment by the Legislative Council.

16. L.N. 251 revises the limits of liability specified in paragraphs (1) and (2) of Article 21 and paragraphs (1) to (3) of Article 22 of the Montreal Convention.

17. Details of the revision are as follows –

- (a) the limit for the first tier of liability for each passenger for damage sustained in case of death or bodily injury of a passenger is increased from 100,000 Special Drawing Rights (SDRs)¹ to 113,100 SDRs (see Article 21(1) and (2) of the Montreal Convention);
- (b) the limit of liability for each passenger in relation to damage caused by delay in the carriage of persons is increased from 4,150 SDRs to 4,694 SDRs (see Article 22(1) of the Montreal Convention);
- (c) the limit of liability for each passenger in case of destruction, loss, damage or delay in relation to the carriage of baggage is increased from 1,000 SDRs to 1,131 SDRs (see Article 22(2) of the Montreal Convention); and
- (d) the limit of liability in case of destruction, loss, damage or delay in relation to the carriage of cargo is increased from 17 SDRs per kilogramme to 19 SDRs per kilogramme (see Article 22(3) of the Montreal Convention).

18. Members may refer to LegCo Brief File Ref: THB(CR) 6/951/01 of 9 December 2009 issued by the Transport and Housing Bureau for background information.

19. The Administration has not briefed the Panel on Economic Development about the Notice.

20. The revision will come into effect on 30 December 2009.

¹ Article 23 of the Montreal Convention provides that the sums mentioned in terms of Special Drawing Right in the Montreal Convention shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. A conversion table on the currency value of the SDRs can be found at http://imf.org/external/np/fin/data/rms_sdrv.aspx

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

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