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**Paper for the House Committee Meeting
on 11 February 2011**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 21 January 2011**

Date of tabling in LegCo : 26 January 2011

Amendment to be made by : 23 February 2011 (or 16 March 2011 if extended by resolution)

PART I SCHEDULES OF PUBLIC BUS ROUTES

Public Bus Services Ordinance (Cap. 230)

Schedule of Routes (Citybus Limited) Order 2011 (L.N. 12)

Schedule of Routes (Citybus Limited) (North Lantau and Chek Lap Kok Airport) Order 2011 (L.N. 13)

Schedule of Routes (Kowloon Motor Bus Company (1933) Limited) Order 2011 (L.N. 14)

Schedule of Routes (Long Win Bus Company Limited) Order 2011 (L.N. 15)

Schedule of Routes (New Lantao Bus Company (1973) Limited) Order 2011 (L.N. 16)

Schedule of Routes (New World First Bus Services Limited) Order 2011 (L.N. 17)

The Orders in L.N. 12 to L.N. 17 were made by the Chief Executive in Council under section 5(1) of the Public Bus Services Ordinance (Cap. 230) (the Ordinance) to update the schedules of non-exclusive* bus routes operated by five franchised bus companies.

2. Under section 5(1) of the Ordinance, the Chief Executive in Council may grant to the existing franchised public bus companies the right to operate public bus service on such routes as specified by order. Section 15(1) of the Ordinance provides that the Commissioner for Transport may, after

* Exclusive bus routes no longer exist due to the Government's policy to remove exclusivity of bus routes to allow greater flexibility in service adjustment and help stimulate healthy competition.

consultation with bus companies, require them to introduce new routes and make alterations to specified routes on a temporary basis. Such changes may take effect for a period up to only 24 months unless they are specified in orders made by the Chief Executive in Council under section 5(1) before expiry of the relevant period. According to the LegCo Brief (File Ref: THB(T)L 2/4/115) issued by the Transport and Housing Bureau in January 2011, L.N. 12 to L.N. 17 were made to enable the service changes introduced under section 15(1) of the Ordinance between 1 April 2009 and 30 September 2010 to continue to take effect.

3. L.N. 12 repeals the Schedule of Routes (Citybus Limited) Order 2009 (L.N. 150 of 2009) and updates the schedule of non-exclusive bus routes operated by the Citybus Limited (other than for north Lantau and the airport at Chek Lap Kok). According to the LegCo Brief, in respect of its franchise for Hong Kong Island and cross-harbour bus services, Citybus Limited made alterations to 12 routes.

4. L.N. 13 repeals the Schedule of Routes (Citybus Limited) (North Lantau and Chek Lap Kok Airport) Order 2009 (L.N. 151 of 2009) and updates the schedule of non-exclusive bus routes operated by the Citybus Limited for north Lantau and the airport at Chek Lap Kok. According to the LegCo Brief, Citybus Limited made alterations to six routes.

5. L.N. 14 repeals the Schedule of Routes (Kowloon Motor Bus Company (1933) Limited) Order 2009 (L.N. 152 of 2009) and updates the schedule of non-exclusive bus routes operated by the Kowloon Motor Bus Company (1933) Limited. According to the LegCo Brief, Kowloon Motor Bus Company (1933) Limited cancelled five routes and made alterations to 66 routes.

6. L.N. 15 repeals the Schedule of Routes (Long Win Bus Company Limited) Order 2009 (L.N. 153 of 2009) and updates the schedule of non-exclusive bus routes operated by the Long Win Company Limited. According to the LegCo Brief, Long Win Bus Company Limited introduced one new route and made alterations to seven routes.

7. L.N. 16 repeals the Schedule of Routes (New Lantao Bus Company (1973) Limited) Order 2009 (L.N. 154 of 2009) and updates the schedule of non-exclusive bus routes operated by the New Lantao Bus Company (1973) Limited. According to the LegCo Brief, New Lantao Bus Company (1973) Limited made alterations to three routes.

8. L.N. 17 repeals the Schedule of Routes (New World First Bus Services Limited) Order 2009 (L.N. 155 of 2009) and updates the schedule of

non-exclusive bus routes operated by the New World First Bus Services Limited. According to the LegCo Brief, New World First Bus Services Limited introduced two new routes, cancelled one route and made alterations to 17 routes.

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

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

11. The Orders will come into operation on 1 April 2011.

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

PART II SUBSIDIARY LEGISLATION UNDER THE BUILDINGS ENERGY EFFICIENCY ORDINANCE

Buildings Energy Efficiency Ordinance (Cap. 610)

Buildings Energy Efficiency (Fees) Regulation (L.N. 18)

Buildings Energy Efficiency (Registered Energy Assessors) Regulation (L.N. 19)

Background

13. The Buildings Energy Efficiency Bill (enacted as the Buildings Energy Efficiency Ordinance) was passed by the Legislative Council on 24 November 2010 and the enacted Ordinance was gazetted on 3 December 2010. The Buildings Energy Efficiency Ordinance (Cap. 610) (the Ordinance) requires compliance with codes of practice promulgated by the Electrical and Mechanical Services Department concerning the energy efficiency of air-conditioning installations, electrical installations, lift and escalator installations and lighting installations and energy audits in respect of certain types of buildings.

14. The Ordinance imposes the following duties on building developers, owners of building services installations and owners of certain commercial buildings -

- (a) developers of buildings specified in Schedule 1 to the Ordinance are required to make declarations relating to compliance of buildings' design and building services installations with specified

standards and requirements. These declarations which are respectively called stage one and stage two declarations are required to be certified by registered energy assessors (REAs). After a stage two declaration has been submitted by a developer, a Certificate of Compliance Registration will be issued by the Director of Electrical and Mechanical Services (the Director) to the developer concerned;

- (b) owners of the building services installations that serve any unit or common area of buildings (which are specified in Schedule 1 to the Ordinance) are required to obtain Forms of Compliance issued by REAs in respect of the building services installations involved in major retrofitting works, and the Forms of Compliance must contain declarations by the relevant REAs that they are satisfied that the building services installations comply with the specified standards and requirements; and
- (c) owners of commercial buildings and commercial portions of composite buildings are required to cause energy audits to be carried out by REAs in respect of the central building services installations once every 10 years.

15. By virtue of the Buildings Energy Efficiency Ordinance (Commencement) Notice 2010 (L.N. 167 of 2010), Parts 1, 7 to 11 of and Schedules 1 to 5 to the Ordinance, which relate to the registration of REAs, the power of the Secretary for the Environment (the Secretary) to make regulations and other procedural matters, will come into operation on 21 February 2011. Parts 2 to 6 which contain the regulatory regime of the Ordinance have not been brought into operation pending the making of subsidiary legislation on the fees prescribed under the Ordinance and on registration of REAs.

L.N. 18

16. L.N. 18 is made by the Secretary under section 42 of the Ordinance to prescribe the fees payable under the Ordinance and the Buildings Energy Efficiency (Registered Energy Assessors) Regulation (L.N. 19 reported below). As regards fees payable under the Ordinance, for a submission of a stage two declaration by the developer or an application for the renewal of a Certificate of Compliance Registration, the respective fee is prescribed at \$760; and the fee respectively for a duplicate of Certificate of Compliance Registration, a copy of a Form of Compliance or a copy of an energy audit form is prescribed at \$155. For the fees payable under the Buildings Energy Efficiency (Registered Energy Assessors) Regulation, the fee for an application for registration as a REA is

prescribed at \$2,100, and the fee for an application for renewal of such registration is prescribed at \$1,100.

L.N. 19

17. L.N. 19 is made by the Secretary under section 42 of the Ordinance to provide for the following matters:

- (a) the information that must be contained in the Register of REAs;
- (b) the procedures for the registration of REAs (including registration of public officers as REAs), the renewal of registration and removal of names from the Register of REAs;
- (c) the criteria for registration as REAs;
- (d) the procedures for conducting disciplinary proceedings against REAs by the Director or a disciplinary board appointed by the Secretary, and the orders that may be made by the Director or the disciplinary board against an REA.

18. L.N. 18 and L.N. 19 will come into operation on 21 March 2011.

19. According to the LegCo Brief (File Ref: ENB 24/26/22) issued by Environment Bureau on 19 January 2011, after the commencement of L.N. 19, a 18-month period will be allowed for eligible persons to be registered as REAs before Parts 2 to 6 of the Ordinance are brought into operation.

20. L.N. 18 and L.N. 19 have not been discussed by the Panel on Environmental Affairs. However, during the course of its deliberations on the Buildings Energy Efficiency Bill, the relevant Bills Committee was informed that the subsidiary legislation relating to the fees payable under the Ordinance and registration of REAs would be made after the enactment of the Bill and a 18-month period would be allowed for eligible persons to be registered as REAs.

21. The Legal Service Division is seeking clarification with the Administration on some technical issues relating to L.N. 19 and would provide a further report, if necessary. Since REAs play an important role in the regulatory regime under the Ordinance and the policy aspects of L.N. 18 and L.N. 19 have not been discussed by the Panel on Environmental Affairs, Members may consider whether it is necessary to form a subcommittee to study L.N. 18 and L.N. 19.

PART III TRAVEL INDUSTRY COMPENSATION FUND RULES

Travel Agents Ordinance (Cap. 218)

Travel Industry Compensation Fund (Amount of Ex gratia Payments and Financial Penalty) (Amendment) Rules 2011 (L.N. 20)

22. The Amendment Rules were made by the Travel Industry Compensation Fund Management Board (the Board) after consulting the Secretary for Commerce and Economic Development under section 32G(2) of the Travel Agents Ordinance (Cap. 218).

23. The Amendment Rules amend the Table in section 5C of the Travel Industry Compensation Fund (Amount of Ex gratia Payments and Financial Penalty) Rules (Cap. 218 sub. leg. E). The Table sets out the maximum amounts of ex gratia payments in respect of an accident causing death of or injury to an outbound traveller when taking part in an activity provided or organized by a licensed travel agent. The Amendments Rules increase -

- (a) the maximum amount of ex gratia payments in relation to funeral-related expenses reasonably incurred in relation to the death of an outbound traveller from \$40,000 to \$100,000;
- (b) the maximum amount of ex gratia payments in connection with the compassionate visits by each relative or former spouse of an outbound traveller from \$20,000 to 25,000; and
- (c) the total maximum amount of all ex gratia payments to visiting relatives or former spouse under paragraph (b) above from \$40,000 to \$100,000; and

remove the restriction on the number of visiting relatives which is currently set at a maximum of two.

24. The Amendment Rules come into operation on 16 March 2011.

25. Members may wish to refer to the LegCo Brief (with no file reference) issued by the Tourism Commission of the Commerce and Economic Development Bureau in January 2011 for further information.

26. The Panel on Economic Development was consulted on, among others, the proposal at its meeting on 22 June 2009 and was informed by the Commissioner for Tourism that the Board had sought views from the stakeholders as well as the interested bodies including Travel Industry Council,

the Advisory Committee on Travel Agents and the Consumer Council and all proposals had received majority support. The members generally supported the proposals.

27. No difficulties have been identified in the legal and drafting aspects of the Rules.

PART IV COMMENCEMENT NOTICE

Factories and Industrial Undertakings Ordinance (Cap. 59)

Factories and Industrial Undertakings (Loadshifting Machinery) Regulation (Commencement) Notice 2011 (L.N. 21)

28. The Commissioner for Labour appoints 31 March 2011 as the day on which sections 3, 6 and 8 of the Factories and Industrial Undertakings (Loadshifting Machinery) Regulation (Cap. 59 sub. leg. AG) (Regulation) in so far as they relate to paragraphs (f) to (j) in Part II of the Schedule to the Regulation (Schedule) shall come into operation.

29. The Regulation, approved by the Legislative Council on 5 April 2000, sets out the training and certification requirements for operators of loadshifting machines as specified in the Schedule. Section 3 of the Regulation imposes a duty on a responsible person of a specified loadshifting machine to ensure that the machine is only operated by a person who has attained the age of 18 years and received recognized training and holds a valid certificate applicable to that specified machine. Under section 6, the person operating the loadshifting machine shall produce a valid certificate when so required by an occupational safety officer. Section 8 provides that contravention of section 3 or 6 constitutes an offence. Paragraphs (f) to (j) in Part II of the Schedule specifies that a compactor, a dumper, a grader, a locomotive and a scraper used on construction sites are loadshifting machines.

30. The provisions to be commenced relate to the training and certification requirements for operators of compactors, dumpers, graders, locomotives and scrapers used on construction sites. They are the only remaining provisions in the Regulation that have not come into operation. According to the LegCo Brief (with no file reference) issued by the Labour and Welfare Bureau in January 2011, the commencement of the Regulation was divided into two phases. Under the first phase, the provisions in relation to loadshifting machines specified under Part I and paragraphs (a) to (e) in Part II of the Schedule (i.e. fork-lift truck, bulldozer, loader, excavator, truck and lorry) came into operation on 1 September 2002. The Bureau considers it appropriate to bring the remaining provisions into operation as a sufficient

number of operators had been trained and issued with certificates. Members may wish to refer to the LegCo Brief for further information.

31. The Panel on Manpower was consulted on the commencement of the remaining provisions at its meeting on 12 July 2010. Apart from seeking clarification on the validity period of the certificates for operating the loadshifting machines and the scope of the Regulation, members did not raise any objection to the proposal. According to the Administration, the Committee on Occupational Safety and Health of the Labour Advisory Board has been consulted and raised no objection to the proposed commencement. The relevant trade associations, workers' unions, professional bodies, interest groups and training bodies as well as civil engineering works contractors have also been consulted on the readiness of the industry for the commencement and their feedback was generally positive.

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

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