

立法會
Legislative Council

LC Paper No. LS12/10-11

**Paper for the House Committee Meeting
on 10 December 2010**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 3 December 2010**

Date of tabling in LegCo : 8 December 2010

Amendment to be made by : 5 January 2011 (or 26 January 2011 if extended by resolution)

Companies Ordinance (Cap. 32)

Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2010 (L.N. 158)

The Companies Ordinance (Cap. 32) (CO) provides for various requirements as to particulars in a prospectus offering shares or debentures that is issued, circulated or distributed in Hong Kong. The requirements relating to prospectuses for offering of companies' shares or debentures to the public are set out in section 38 (governing local companies) and section 342 (governing companies incorporated outside Hong Kong) of the CO respectively. Sections 38(3) and 342(3) provide, among other things, that subject to sections 38A and 342A respectively, it shall not be lawful to issue any form of application for share in or debentures of a company incorporated under the CO or outside Hong Kong unless the form is issued with a prospectus which complies with the requirements of sections 38 and 342 respectively. According to the LegCo Brief (with no reference number provided) issued by the Securities and Futures Commission (the Commission) on 26 November 2010, the requirement of distributing printed application forms together with printed form prospectuses has resulted in serious wastage of paper as most investors do not pick up the printed form prospectuses.

2. By virtue of sections 38A(2) and 342A(2) of the CO, the Commission may, by notice published in the Gazette, exempt any class of companies or any class of prospectuses issued by companies from any or all of the requirements of the relevant provisions in the CO if, having regard to the circumstances, the Commission considers that the exemption will not prejudice

the interest of the investing public and compliance with any or all of those requirements would be irrelevant or unduly burdensome or is otherwise unnecessary or inappropriate in relation to that class of companies or class of prospectuses. The Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap. 32 sub. leg. L) (the Exemption Notice) sets out the class exemptions previously made by the Commission pursuant to sections 38A and 342A of the CO.

3. L.N. 158, which is made by the Commission under sections 38A and 342A of the CO, amends the Exemption Notice by adding a new section 9A in the Exemption Notice for granting a class exemption from compliance with the requirements of sections 38(3) and 342(3) of the CO so that a company (whether incorporated in or outside Hong Kong) seeking to conduct a public offering of shares or debentures that will be listed on a stock market operated by a recognized exchange company can issue a printed application form without it being accompanied by a printed form prospectus relating to the offer, if it complies with certain conditions stipulated in the new section 9A. The major conditions are:

- (a) at the commencement of the offer period, an electronic form prospectus is readily accessible by the public from both the offeror company's website and the recognised exchange company's designated website (i.e. Hong Kong Exchanges and Clearing Limited's website);
- (b) during the offer period after its commencement, the electronic form prospectus is also readily accessible by the public from either of the above websites; and
- (c) throughout the offer period, copies of the printed form prospectus are available for collection at specified locations, free of charge, upon request by any member of the public.

4. The Panel on Financial Affairs has not been consulted on this Notice. According to paragraph 12 of the LegCo Brief, the Commission and the Hong Kong Exchanges and Clearing Limited have consulted the public and published a joint consultation paper on the proposal. The respondents generally supported the proposal with certain suggestions on its details.

5. L.N. 158 will come into operation on 1 February 2011.

District Councils Ordinance (Cap. 547)

District Councils Ordinance (Amendment of Schedule 3) Order 2010 (L.N. 161 of 2010)

District Councils Ordinance (Amendment of Schedule 3) Order 2010 (Commencement) Notice (L.N. 159 of 2010)

6. By L.N. 159, the Secretary for Constitutional and Mainland Affairs (SCMA) appoints 3 December 2010 as the day on which the District Councils Ordinance (Amendment of Schedule 3) Order 2010 (L.N. 161 of 2010) (the Amendment Order) comes into operation for the purpose only of enabling arrangements to be made for the holding of the District Council ordinary election in 2011 (the 2011 election).

7. The Amendment Order amends Schedule 3 to the District Councils Ordinance (Cap. 547) to add a total of seven elected seats to six District Councils (DCs) for the fourth term DCs starting from 1 January 2012 as follows -

- (a) addition of one more elected seat for each DC in Kwun Tong, Yau Tsim Mong, Kwai Tsing, North District and Sai Kung; and
- (b) addition of two more elected seats for Yuen Long DC.

8. Under section 1(b) of the Amendment Order, except for the purpose of enabling arrangements to be made for the holding of the 2011 election, the Amendment Order will come into operation on 1 January 2012.

9. The Amendment Order was approved by a resolution passed by the Legislative Council on 1 December 2010 and was gazetted on 3 December 2010 (L.N. 161 of 2010). The Subcommittee formed to study the Amendment Order noted that upon the Legislative Council's approval of the Amendment Order and its publication in the Gazette, SCMA would appoint the commencement date of the Amendment Order and the Electoral Affairs Commission would then commence public consultation on its provisional recommendations on the boundaries of the constituency areas for the 2011 election. In the course of its deliberations, the Subcommittee urged the Administration to advance the timetable for the delineation of the constituency areas for the 2011 election to facilitate the preparation work of prospective candidates. Members may refer to the Report of the Subcommittee on District Councils Ordinance (Amendment of Schedule 3) Order 2010 dated 25 November 2010 (LC Paper No. CB(2)371/10-11) for details of its deliberations.

10. The scrutiny of L.N. 158 is still ongoing, and the Legal Service Division will report further on L.N. 158 if necessary. No difficulties have been observed in the legal and drafting aspects of L.N. 159.

Prepared by

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