

立法會
Legislative Council

LC Paper No. LS32/14-15

**Paper for the House Committee Meeting
on 23 January 2015**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 16 January 2015**

Tabling in LegCo : Council meeting of 21 January 2015

Amendment to be made by : Council meeting of 11 February 2015 (or that of 18 March 2015 if extended by resolution)

PART I FEES REVISION

**Land (Miscellaneous Provisions) (Amendment)
Regulation 2015**

(L.N. 5)

Part III of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) provides for an excavation permit system for the management of excavations in unleased government land including streets maintained by the Highways Department. The fees and economic costs in respect of excavation permits relating to excavations in unleased government land are prescribed in Schedule 3 to the Land (Miscellaneous Provisions) Regulations (Cap. 28A).

2. L.N. 5 is made by the Chief Executive in Council under section 19 of Cap. 28. It amends Schedule 3 to Cap. 28A to (a) increase by 9.4% to 10.2% the fees payable for the issue of excavation permits and (b) increase by 14% to 22% the economic costs for extension of such permits. The relevant fees and economic costs have not been revised since the excavation permit system was first implemented in April 2004.

3. According to paragraph 2 of the LegCo Brief issued by Development Bureau in January 2015 (no file reference), the fees revision is made with a view to achieving full costs recovery gradually in accordance with the "user-pays" principle. Details of the new fees and economic costs (including the comparison of the existing and new fees/economic costs and the costs recovery rate after the fees revision) are set out at Annex 1 to the LegCo Brief.

4. As advised by the Clerk to the Panel on Development (the Panel), at the meeting of the Panel on 25 November 2014, the Administration briefed the Panel on the proposed revision of fees and economic costs under L.N. 5. Members did not raise any question on or objection to the proposal.

5. L.N. 5 will come into operation on 27 March 2015.

**Amusement Rides (Safety) (Fees) (Amendment)
Regulation 2015**

(L.N. 8)

6. L.N. 8 is made by the Secretary for Financial Services and the Treasury under section 48 of the Amusement Rides (Safety) Ordinance (Cap. 449)¹ to revise, by 5.8% to 20%, 15 fee items specified in the Amusement Rides (Safety) (Fees) Regulation (Cap. 449A). Those fees are payable for the following matters:

- (a) designation of person who may exercise the powers under sections 19 (relating to the power of a designated employee to give safety directions to persons using or being in the immediate vicinity of an amusement ride) and 20 (relating to the power of a designated employee to arrest a person whom he reasonably suspects of having contravened the safety directions or trespassed on enclosed areas of an amusement ride) of Cap. 449;
- (b) approval of persons as surveyors, competent persons and qualified persons under section 4 of the Amusement Rides (Safety) (Operation and Maintenance) Regulation (Cap. 449B);
- (c) amendment of the certificates of approval relating to persons mentioned in (b) above;
- (d) approval of commencing the operation of amusement rides under Cap. 449 ; and
- (e) approval of resuming the operation of amusement rides which have undergone major alterations.

7. According to paragraph 5 of the LegCo Brief (File Ref: HAB/CR/1/9/42) issued by the Home Affairs Bureau and the Electrical and Mechanical Services Department (EMSD) on 14 January 2015, the fees revision is made with a view to achieving full costs recovery at 2014-15 price level. Details of the fees revision, the dates of last fees revision, and a comparison of the current

¹ Section 48(1) of Cap. 449 empowers the Financial Secretary to make regulations to provide for fees payable under Cap. 449. By virtue of section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), the Financial Secretary means also the Secretary for Financial Services and the Treasury.

and the new fees are set out at Annex B to the LegCo Brief. According to Annex B to the LegCo Brief, 11 of the 15 fee items were last revised on 8 December 2000 and the other 4 items were revised on 8 March 1997.

8. As advised by the Clerk to the Panel on Home Affairs (the Panel), on 3 December 2014, the Administration issued to the Panel an information paper on the proposal to revise 15 fee items specified in Cap. 449A made pursuant to Cap. 449 for services provided by EMSD (LC Paper No. CB(2)393/14-15(01)). Members noted that owners of amusement rides only had to pay a one-off fee for installation/alternation of the rides and payment of renewal fee was not required. Members did not request discussion of or make any comments on the proposal.

9. L.N. 8 will come into operation on 26 March 2015.

Import and Export (Fees) (Amendment) Regulation 2015

(L.N. 9)

10. Section 31(1)(x) of the Import and Export Ordinance (Cap. 60) provides that the Chief Executive in Council may make regulations for prescribing fees to be collected by the Commissioner of Customs and Excise or the Director-General of Trade and Industry in respect of any matter arising under Cap. 60. Under section 29A of the Interpretation and General Clauses Ordinance (Cap. 1), the Financial Secretary (which by virtue of section 3 of the same Ordinance includes the Secretary for Financial Services and the Treasury) may vary fees which have been set by subsidiary legislation made by the Chief Executive in Council.

11. L.N. 9 is made by the Secretary for Financial Services and the Treasury under section 29A of Cap. 1 by virtue of section 31 of Cap. 60. It amends the Import and Export (Fees) Regulations (Cap. 60B) to -

- (a) increase by 9.5% the fee for the issue of a delivery verification certificate for the certification of delivery of strategic commodities into Hong Kong (i.e. an increase from \$315 to \$345); and
- (b) increase by 9.5% the fee for the issue of an international import certificate (i.e. an increase from \$105 to \$115).

12. According to paragraph 4 the LegCo Brief (File Ref: CITB CR 13/39/3) issued by Commerce and Economic Development Bureau in January 2015, the fees revision is made with a view to achieving full cost recovery within one to three years through an annual fee increase by about 10%. The relevant fees were last revised in March 2014. Details of the fees revision are set out at Annex B to the LegCo Brief.

13. As advised by the Clerk to the Panel on Commerce and Industry (C&I Panel), the Administration has issued an information paper on "Proposed Adjustment to Fees and Charges under the Purview of the Trade and Industry Department" (LC Paper No. CB(1)76/14-15(01)) in relation to the proposed fee adjustment for two strategic commodities-related fee items. The information paper was circulated to members of the C&I Panel and other Members on 21 October 2014. No request for discussion or comment was received from Members.

14. L.N. 9 will come into operation on 20 March 2015.

PART II MINIMUM WAGE

Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2015

(L.N. 6)

Employment Ordinance (Amendment of Ninth Schedule) Notice 2015

(L.N. 7)

L.N. 6

15. L.N. 6 is made by the Chief Executive in Council (CE in Council) under section 16(1) of the Minimum Wage Ordinance (Cap. 608) to amend Schedule 3 to Cap. 608 by specifying that, with effect from 1 May 2015, the prescribed minimum hourly wage rate (the PMHW rate) in the Schedule shall be \$32.5².

16. Section 16 of Cap. 608 provides that CE in Council may, by notice published in the Gazette, amend Schedule 3 to Cap. 608. In exercising the power to amend under the section, CE in Council may have regard to any recommendation included in a report made by the Minimum Wage Commission (MWC) pursuant to section 12(1) of Cap. 608 but is not bound by such recommendation. Further, by virtue of section 16(4) of Cap. 608, section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) applies to L.N. 6 to the effect that if LegCo does not agree to L.N. 6, LegCo should, by resolution, wholly revoke L.N. 6 instead of amending it.

17. According to paragraphs 4 and 15 of the LegCo Brief issued by the Labour and Welfare Bureau and Labour Department in January 2015 (File Ref.: LD SMW 86-1/2(C)), MWC, in accordance with its statutory function³, has

² According to Schedule 3 of Cap. 608, the current PMHW rate of \$30 became effective as from 1 May 2013.

³ Section 12(4) of Cap. 608 provides that before arriving at the recommendation to be included in its report, MWC may as it thinks fit -

- (a) consult any organization representative of employers or employees or any other person;
- (b) consider any submission made to it in the course of its consultations; and
- (c) analyse and consider any data derived from, and consider any other information contained in, any research or study.

conducted intensive and extensive consultation, including a six-week public consultation and consultation meetings to collect written and oral submissions, to collect views of stakeholders and members of public on the review of the PMHW rate and the impact of the statutory minimum wage on society, economy, and various sectors (in particular the low paying sectors) and small and medium enterprises. In its report published in October 2014, MWC recommended increasing the PMHW rate by 8.3% from \$30 to \$32.5. The Administration has considered the MWC's report and adopted its recommendation.

18. As advised by the Clerk to the Panel on Manpower (the Manpower Panel), the Manpower Panel has not been consulted on L.N. 6 and L.N. 7. However, the Manpower Panel met with the Administration and received views from deputations on the review of the PMHW rate at its meeting on 17 June 2014. Diverse views were expressed by members and deputations on the revised PMHW rate. Some members and employers' associations/representatives considered that there was little room for an upward adjustment of the current PMHW rate. However, some other members and labour unions/concern groups generally considered that the revised PMHW rate should not be less than \$35.

19. L.N. 6 will come into operation on 1 May 2015.

L.N. 7

20. L.N. 7 is made by the Commissioner for Labour (the Commissioner) under section 49A(6) of the Employment Ordinance (Cap. 57) (EO) to amend the Ninth Schedule to EO by increasing the monetary cap on keeping records of hours worked specified in the Schedule (the Monetary Cap) from \$12,300 per month to \$13,300 per month.

21. Section 49A(3)(ea) of EO provides that an employer is required to keep records of the total number of working hours of an employee in a wage period if the employee is an employee within the meaning of Cap. 608 and if the wages payable to that employee in that wage period are less than the Monetary Cap (or a proportionate amount if the wage period concerned is not a month). Further, Section 49A(6) provides that the Commissioner may, by notice published in the Gazette, amend the Ninth Schedule.

22. According to paragraph 11 of the LegCo Brief, the amendment in L.N. 7 is consequential to the amendment in L.N. 6 in that by increasing the PMHW rate from \$30 to \$32.5 (i.e. a 8.3% increase), the Monetary Cap will be proportionately increased from \$12,300 to \$13,300.

23. L.N. 7 will come into operation on the day on which L.N. 6 comes into operation (i.e. 1 May 2015).

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

United Nations Sanctions (Somalia) (Amendment) Regulation 2015

(L.N. 10)

24. L.N. 10 is made by the Chief Executive under section 3 of the United Nations Sanctions Ordinance (Cap. 537) on the instruction of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council.

25. Since 1992, the Security Council of the United Nations (UNSC) has adopted various resolutions to impose sanctions against Somalia having regard to the rapid deterioration of the situation in Somalia and the heavy loss of human life and widespread material damage resulting from the conflict in the country. The United Nations Sanctions (Somalia) Regulation (Cap. 537AN) was made and amended to implement these sanctions. The last amendment to Cap. 537AN was made by L.N. 53 of 2014 to give effect to Resolution 2125 (2013) and Resolution 2142 (2014) adopted by UNSC on 18 November 2013 and 5 March 2014 respectively to revise the sanctions against Somalia.

26. The sanctions provided under Cap. 537AN include prohibiting -

- (a) the supply, sale, transfer or carriage of weapons or military equipment to Somalia, a person connected with Somalia or a designated person;
- (b) the provision of technical assistance or training, or financial or other assistance related to military activities or to the supply, sale, transfer, manufacture, maintenance or use of weapons or military equipment to a designated person;
- (c) the entry or transit through Hong Kong by a designated person; and
- (d) the provision of technical advice, financial or other assistance or training related to military activities to a person connected with Somalia.

27. Determining that the situation in Somalia continues to constitute a threat to international peace and security in the region, UNSC adopted Resolution 2182 (2014) on 24 October 2014 to revise the sanctions against Somalia. To implement the Resolution 2182 (2014), L.N. 10 is made to amend Cap. 537AN to reflect the renewed exceptions to the following prohibitions or sanctions:

- (a) the prohibition against the supply, sale, transfer or carriage of certain goods to Somalia (or to persons connected with Somalia) (section 8(2)(l) of Cap. 537AN) ;

- (b) the prohibition against the provision of certain advice, assistance or training in respect of Somalia (section 9(2)(i) of Cap. 537 AN); and
- (c) the financial sanctions against Somalia in relation to providing funds, other financial assets or economic resources to certain persons or entities (section 10(2)(e) of Cap. 537AN).

Similar exceptions which had been previously provided under L.N. 53 of 2014 expired at midnight on 24 October 2014. L.N. 10 provides that the renewed exceptions will expire at midnight on 30 October 2015.

28. L.N. 10 came into operation when it was published in the Gazette on 16 January 2015.

29. Members may refer to the Lego Brief (File Ref: CITB CR 102/53/1) issued by the Commerce and Economic Development Bureau for further information.

30. Under section 3(5) of Cap. 537, sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to regulations made under Cap. 537. Therefore, L.N. 10 is not required to be tabled in the LegCo and is not subject to amendment by LegCo. However, since it comes within the terms of reference of the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions, Members may consider referring L.N. 10 to the Subcommittee for its consideration.

Concluding Observations

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

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