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on 22 May 2015**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 15 May 2015**

**Tabling in LegCo** : Council meeting of 20 May 2015

**Amendment to be made by** : Council meeting of 17 June 2015 (or that of 8 July 2015 if extended by resolution)

**PART I AVOIDANCE OF DOUBLE TAXATION**

**Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of South Africa) Order** (L.N. 86)

**Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (United Arab Emirates) Order** (L.N. 87)

**Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Japan) (Amendment) Order 2015** (L.N. 88)

L.N. 86 and L.N. 87

Under section 49(1A) of the Inland Revenue Ordinance (Cap. 112), the Chief Executive (CE) in Council may, by order, declare that arrangements have been made with the government of any territory outside Hong Kong for the purposes of affording relief from double taxation and/or exchanging information in relation to any tax imposed by the laws of Hong Kong or the territory concerned.

2. L.N. 86 and L.N. 87 are made by CE in Council under section 49(1A) of Cap. 112 to give effect to the following Comprehensive Agreements for Avoidance of Double Taxation (CDTAs) respectively –

- (a) the Agreement between the Government of the HKSAR of the People's Republic of China (HKSARG) and the Government of Republic of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 16 October 2014 (the South African Agreement); and
- (b) the Agreement between the HKSARG and the Government of the United Arab Emirates (UAE) for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 11 December 2014 (the UAE Agreement).

3. According to the LegCo Briefs (File Ref: TsyB R 183/800-1-1/26/0 (C) and TsyB R 183/800-1-1/41/0 (C) issued by the Financial Services and the Treasury Bureau on 13 May 2015, while a local resident's income derived from sources outside Hong Kong would not be taxed in Hong Kong and hence would not be subject to double taxation, double taxation may occur where a foreign jurisdiction taxes its own residents' income derived from Hong Kong. Although many jurisdictions do provide their residents with unilateral tax relief for the Hong Kong tax they paid on income derived therefrom, the existence of a CTDA will enhance the certainty and stability in respect of the elimination of double taxation. Besides, the tax relief provided under a CDTA may exceed the level provided unilaterally by a tax jurisdiction.

4. For the purposes of section 49(1A) of Cap. 112, L.N. 86 and L.N. 87 declare respectively that the following arrangements have been made for the purposes of affording relief from double taxation and for exchanging information in relation to any tax imposed by the laws of Hong Kong or the territory concerned, and that it is expedient that those arrangements should have effect –

- (a) the arrangements specified in Articles 1 to 28 of the South African Agreement as well as Paragraphs 1 to 2 of the Protocol thereto; and
- (b) the arrangements specified in Articles 1 to 28 of the UAE Agreement as well as Paragraphs I to V of the Protocol thereto.

5. The provisions in the South African Agreement and the UAE Agreement set out the allocation of taxing rights between HKSARG and the respective jurisdictions and the relief on tax rates on different types of income. Each of the above Agreements contains an article on exchange of information which is based on the Organisation for Economic Cooperation and Development 2004 version of the Exchange of Information (EoI) Article. A sample EoI Article was presented to the Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2009 vide LC Paper No. CB(1)106/09-10(02). It is noted that both Agreements provide that information should only be exchanged upon request, that the requested information

must be foreseeably relevant, that the information received by a contracting party shall be treated as secret, that the information must be disclosed only to the tax authorities and not their oversight bodies nor any third jurisdiction and that there is no obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy. According to the LegCo Briefs, the South African Agreement and the UAE Agreement have adopted all the safeguards in the sample EoI Article.

6. The effect of the declarations mentioned in paragraph 4 above are that –
  - (a) the arrangements have effect in relation to tax under Cap. 112 despite anything in any enactment; and
  - (b) the arrangements, for the purposes of any provision of those arrangements that require disclosure of information concerning tax of the Republic of South Africa and UAE, have effect in relation to any tax of the respective jurisdictions that is the subject of that provision.
7. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 86 and L.N. 87.
8. Both L.N. 86 and L.N. 87 come into operation on 3 July 2015.

#### L.N. 88

9. On 9 November 2010, the Government of the HKSAR and the Government of Japan (the Parties) signed an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (the Japanese Agreement) together with a protocol to the Agreement (the Protocol). The Japanese Agreement and the Protocol have effect by virtue of the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Japan) Order (Cap. 112BS).
10. Subsequent to the making of the Japanese Agreement on 9 November 2010, the Parties reached an agreement, through an exchange of Notes (the Notes) on 10 December 2014, for the exchange of information concerning the scope of tax types that can be covered by the EoI provisions in the Agreement. The additional types of tax to be covered are, namely, (i) inheritance tax, (ii) gift tax, (iii) consumption tax, and (iv) any identical or substantially similar taxes that are imposed after the date of signature of the Note in addition to, or in place of, the existing taxes referred to in (i), (ii) and (iii).

11. L.N. 88 amends Cap. 112BS to specify the arrangements set out in the Notes as arrangements under section 49(1A) of Cap. 112 and declare that it is expedient that those arrangements should have effect.

12. According to paragraph 4 of the LegCo Brief (File Ref: TsyB R 183/800-1-1/23/0 (C)) issued by the Financial Services and Treasury Bureau on 13 May 2015, the various safeguards to protect taxpayers' privacy and confidentiality of any information exchanged, as provided under the EoI article in the Japanese Agreement as set out in Cap. 112BS would remain unchanged.

13. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 88.

14. L.N. 88 comes into operation on 3 July 2015.

## **PART II SUBSIDIARY LEGISLATION MADE UNDER THE ROAD TRAFFIC ORDINANCE**

### **Road Traffic Ordinance (Amendment of Schedule 3) Order 2015**

**(L.N. 89)**

15. Section 86(1) of the Road Traffic Ordinance (Cap. 374) provides that a fee as specified in Schedule 3 shall be payable in respect of an examination under section 78. Under section 78(1)(d), before licensing a vehicle, the Commissioner for Transport may by notice require production of a vehicle of any class for examination at a vehicle examination centre as the Commissioner may determine. Section 86(2) further provides that CE in Council may by order published in the Gazette amend Schedule 3.

16. L.N. 89, made by CE in Council under section 86(2) of Cap. 374, amends Schedule 3 to Cap. 374 to reduce to \$0 the fee for a qualified vehicle examination that is required under section 78(1)(d) of Cap. 374 and takes place within the period from 13 July 2015 to 11 November 2016 (both days inclusive), in respect of a taxi, goods vehicle, special purpose vehicle, light bus, single-decked bus, double-decked bus or trailer (other than a trailer towed by a private car). The reduction applies only once for each vehicle. This is to give effect to the waiver as announced by the Financial Secretary (FS) in his 2015-16 Budget Speech.

17. Members may refer to the LegCo Brief (File Ref.: THB(T)CR11/3371/00) issued by the Transport and Housing Bureau on 13 May 2015 for further details.

18. As advised by the Clerk to the Panel on Financial Affairs and the Clerk to the Panel on Transport, the Panels have not been consulted on L.N. 89.

19. L.N. 89 comes into operation on 13 July 2015.

**Road Traffic Ordinance (Amendment of Schedule 10) Order  
2015**

**(L.N. 90)**

20. L.N. 90 is made by CE under section 77H(1) of Cap. 374 after consultation with the Executive Council to amend paragraph 6(b) of Schedule 10 to Cap. 374.

21. At present, a flat fee of \$310, as specified in paragraph 6(b) of Schedule 10 to Cap. 374, is charged for a vehicle emission test carried out under section 77B of Cap. 374 in respect of a motor vehicle. The fee was fixed in 1998. L.N. 90 amends that paragraph to specify different fees for different types of motor vehicles. The current and new fees are set out as follows –

<b>For a test in respect of a motor vehicle with the following</b>	<b>Current Fee (\$)</b>	<b>New Fee (\$)</b>
(i) positive-ignition engine	310	620
(ii) compression-ignition engine and having a permitted gross vehicle weight not exceeding 5.5 tonnes	310	730
(iii) compression-ignition engine and having a permitted gross vehicle weight exceeding 5.5 tonnes	310	680

22. According to paragraph 12 of the LegCo Brief (no reference number) issued by the Environment Bureau and the Environmental Protection Department in May 2015, two consultation sessions were held in September 2014 to seek the views of stakeholders. A few stakeholders commented that the proposed fee increase was too high.

23. As advised by the Clerk to the Panel on Environmental Affairs, the Panel was consulted on the Administration's proposal at its meeting on 23 July 2014. Members were generally supportive of the proposal. Noting that the emission test fee for designated vehicle emission testing centres ("DVETCs") had not been revised since 1998, some members requested and the Administration agreed to review and adjust the fee regularly in future. On members' concerns about the capacity of DVETCs and the impact of the fee increase on the transport trades, the Administration advised that it had tried to strike an appropriate balance between addressing vehicle owners' concern and promoting the sustainable operation of DVETCs. Should there be too many petrol and liquefied petroleum gas vehicles

awaiting test services, the Administration would consider extending the time limit for passing the emission test on a case-by-case basis.

24. L.N. 90 comes into operation on 1 August 2015.

**Road Traffic (Public Service Vehicles) (Amendment)  
Regulation 2015**

**(L.N. 91)**

25. L.N. 91 is made by the Secretary for Transport and Housing under section 7(1) of Cap. 374 to amend the Road Traffic (Public Service Vehicles) Regulations (Cap. 374D) to remove the requirement for the payment of a fee for the issue of –

- (a) a passenger service licence (PSL) in respect of a school private light bus (SPLB); and
- (b) a passenger service licence certificate (PSLC) in respect of SPLB.

26. According to paragraph 3 of the LegCo Brief (File Ref.: THB(T)CR 25/5591/00) issued by the Transport and Housing Bureau on 13 May 2015, SPLB was brought under the PSL regime to bring them in line with other non-franchised bus services. The fees for PSL and PSLC in respect of SPLB have been waived by the Commissioner on an annual basis under regulation 9 of Cap. 374D since the commencement of the relevant fee items in 1999. L.N. 91 is to make the waiver permanent to provide certainty over the operators' operational cost so as to maintain a stable supply of school transport service.

27. As advised by the Clerk to the Panel on Transport, the Panel was consulted by the Administration on 27 February 2015 and members were generally in support of the amendment in L.N. 91.

28. L.N. 91 comes into operation on 1 September 2015.

**Road Traffic (Registration and Licensing of Vehicles)  
(Amendment) Regulation 2015**

**(L.N. 92)**

29. Section 6(2)(a) of Cap. 374 provides that CE in Council may make regulations to provide for the fees that may be charged for registration, licensing, permits, certificates of fitness and extracts from the register and the waiving, exemption, reduction or refund of fees. These fees are set out in Schedule 2 to the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374E).

30. L.N. 92 is made by the Secretary for Financial Services and the Treasury (SFST) under section 29A of the Interpretation and General Clauses Ordinance (Cap. 1)<sup>1</sup> by virtue of section 6(2) of Cap. 374 to amend Schedule 2 to Cap. 374E to increase by 10% to 20% certain fees payable under Cap. 374E. These current and new fees are set out as follows –

<b>Fee description</b>	<b>Current fee (\$)</b>	<b>New fee (\$)</b>
Registration fee for a motor vehicle under regulation 5 of Cap. 374E	83	91
The issue of a duplicate trade licence or permit under regulation 59(2) of Cap. 374E	65	75
Annual licence fee for invalid carriage under regulation 21(1) of Cap. 374E	12	14
Annual licence fee for rickshaw under regulation 40(1) of Cap. 374E	50	55
The issue of a duplicate vehicle licence for a rickshaw under regulation 59(1) of Cap. 374E	10	12
Fee for an excess passengers permit under regulation 52(1) of Cap. 374E	155	170
Fee for a movement permit under regulation 53(1) of Cap. 374E	560	670

31. According to paragraph 3 of the LegCo Brief (File Ref.: THB(T)CR 25/5591/79) issued by the Transport and Housing Bureau on 13 May 2015, the relevant fees are revised in line with the Government's policy that fees and charges of government services should in general be set at levels sufficient to recover the full cost of providing the services.

32. As advised by the Clerk to the Panel on Transport, the Panel was consulted by the Administration on 27 February 2015 regarding the proposed fee revision. Panel members were generally in support of the proposed revision in view of the fact that these fee items had not been revised in recent years and the proposed increase would not directly affect people's livelihood. Panel members also agreed to the Government's approach to recover the full cost of providing government services on a gradual basis.

33. L.N. 92 comes into operation on 20 July 2015.

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<sup>1</sup> Under section 29A(1) of Cap. 1, where the amount of any fee or charge is for the time being specified in, or otherwise fixed or determined by, subsidiary legislation made by CE in Council, FS (which means FS and SFST under section 3 of Cap. 1) may by similar subsidiary legislation increase or decrease, or otherwise vary, the amount of the fee or charge.

### **PART III SUBSIDIARY LEGISLATION MADE UNDER THE BUILDINGS ORDINANCE**

**Building (Administration) (Amendment) Regulation 2015 (L.N. 93)**

**Building (Minor Works) (Fees) (Amendment) Regulation 2015 (L.N. 94)**

#### L.N. 93 and L.N. 94

34. Under section 38(1A) of the Buildings Ordinance (Cap. 123), CE in Council may by regulation provide for the imposition of fees in respect of any matter with regard to which provision is made in Cap. 123 or its regulations. These fees are set out in regulation 42 of the Building (Administration) Regulations (Cap. 123A) and the Building (Minor Works) (Fees) Regulation (Cap. 123O).

35. L.N. 93 is made by SFST under section 29A of Cap. 1<sup>2</sup> by virtue of section 38(1A) of Cap. 123 to increase by 5.1% to 68% the fees prescribed in regulation 42 of Cap. 123A relating to the registration of –

- (a) authorized persons, structural engineers, geotechnical engineers, general building contractors and specialist contractors (such fees were last revised in 2005); and
- (b) inspectors (such fee was last revised in 2011).

36. L.N. 94 is similarly made by SFST to revise the fees (last revised in 2009) prescribed in Cap. 123O relating to the registration of registered minor works contractors. The fee revisions range from -4.9% to +45.1%.

37. Members may refer to Annex C and Annex D to the LegCo Brief (File Ref.: DEVB(PL-B) 30/30/) for a comparison of the current and new fees. According to paragraph 11 of the LegCo Brief, the stakeholders were consulted on the proposed fee revision through the Building Sub-committee of the Land and Development Advisory Committee as well as the Authorized Persons, Registered Structural Engineers and Registered Geotechnical Engineers Committee. The two committees raised no objection to the proposal.

38. As advised by the Clerk to the Panel on Development, the Administration briefed the Panel on the proposed revision of fees. Members did not raise any objection to the proposal. Some members suggested that the Administration should continue its efforts in streamlining the relevant work procedures so as to reduce or contain the costs of providing the services.

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<sup>2</sup> Please see footnote 1 above.



39. L.N. 93 and L.N. 94 come into operation on 20 July 2015.

**PART IV SUBSIDIARY LEGISLATION MADE UNDER THE  
SECURITIES AND FUTURES ORDINANCE**

**Securities and Futures (Amendment) Ordinance 2014  
(Commencement) Notice 2015 (L.N. 95)**

**Securities and Futures (OTC Derivative Transactions –  
Reporting and Record Keeping Obligations) Rules (L.N. 96)**

**Securities and Futures (Stock Markets, Futures Markets and  
Clearing Houses) Notice (L.N. 97)**

Background

40. The Securities and Futures (Amendment) Bill 2014 was passed by the Legislative Council on 26 March 2014, and gazetted as the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) (SFAO) on 4 April 2014. The main object of SFAO is to establish a statutory framework for the regulation of over-the-counter (OTC) derivative products. According to paragraph 3 of the LegCo Brief (File Ref.: SF&C/1/2/11/6C), SFAO will be implemented in phases starting with the mandatory reporting and related record keeping obligations together with the general framework of the regime. Other aspects of the regime, including the mandatory clearing and its related record keeping obligations will be implemented in later phases after consultation with market participants.

41. L.N. 95 to L.N. 97 implement the first phase of the new OTC derivatives regulatory regime.

L.N. 95

42. By L.N. 95 made under section 1(2) of SFAO, SFST has appointed 10 July 2015 as the day on which certain provisions of SFAO come into operation. These provisions relate to the general framework and the mandatory reporting and related record keeping obligations<sup>3</sup> (the details of such obligations are set out in L.N. 96), as well as Part 3 (Amendments Relating to Protections under Part III of Securities and Futures Ordinance (Cap. 571)), Part 5 (Amendments Relating to

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<sup>3</sup> The reporting obligation refers to the obligation to report specified OTC derivative transactions to MA imposed on prescribed persons (licensed corporations, authorized financial institutions, approved money brokers and others) by section 101B of Cap. 571. The record keeping obligation refers to the obligation to keep records relating to specified OTC derivative transactions imposed on prescribed persons by section 101E of Cap. 571.

Disgorgement Orders for Market Misconduct Offences), and Part 6 (Consequential Amendments).

#### L.N. 96

43. L.N. 96 is made by the Securities and Futures Commission (SFC) under sections 101L and 101P<sup>4</sup> of the Securities and Futures Ordinance (Cap. 571) with the consent of Monetary Authority (MA) and after consultation with FS.

44. The new section 101B, as added by SFAO, provides for the obligation on the part of prescribed persons (i.e. authorized financial institutions, approved money brokers, licensed corporations and persons specified in the reporting rules) to report specified OTC derivatives transactions to MA in accordance with the reporting rules. The new section 101E, as added by SFAO, provides for the obligation on the part of authorized financial institutions, approved money brokers, licensed corporations and persons specified in the reporting rules to keep records relating to specified OTC derivative transactions. For the purposes of the reporting and record keeping obligations, L.N. 96 specifies –

- (a) the additional prescribed persons and the transactions that are subject to the obligations;
- (b) the circumstances relating to the transactions in which the obligations apply to prescribed persons; and
- (c) matters relating to compliance with the obligations.

45. Subject to Rule 15 which will come into operation on a day to be appointed by SFC by notice published in the Gazette, L.N. 96 comes into operation on 10 July 2015. Rule 15 relates to the reporting obligation of ATS-CCPs<sup>5</sup>. In response to our enquiry, the Administration has explained that Rule 15 is intended to come into effect when mandatory clearing is implemented. This is because, under the phased implementation arrangement, the amendments to the definition of ATS (i.e. to cover the clearing of OTC derivative transactions) will not come into effect until that time.

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<sup>4</sup> These two provisions are brought into operation by L.N. 95.

<sup>5</sup> Under Rule 2 of L.N. 96, ATS-CCP is defined as "a person authorized under section 95(2) of Cap. 571 to provide automated trading services, but only when the persons –  
(a) providing services that it is authorized to provide; and  
(b) acting in its capacity as a central counterparty."

## L.N. 97

46. Under section 1B(2)(c) of Part 1 of new Schedule 1 to Cap. 571, as added by SFAO, an OTC derivative product does not include a securities or futures contract that is –

- (a) traded on a stock market or futures market prescribed under section 392A of SFAO; and
- (b) cleared through a clearing house prescribed under that section.

47. L.N. 97 is made by FS under section 392A of Cap. 571 to prescribe certain stock markets, futures markets and clearing houses for the purpose of section 1B(2)(c)<sup>6</sup> of Part 1 of Schedule 1 to Cap. 571.

48. The effect of L.N. 97 is that securities and futures contracts that are traded on the stock or futures markets, and cleared through the clearing houses, prescribed in L.N. 97 will be excluded from the OTC derivatives regulatory regime.

49. L.N. 97 comes into operation on 10 July 2015.

## Public Consultation

50. According to the LegCo Brief (File Ref.: SF&C1/2/11/6C) issued by the Financial Services and the Treasury Bureau, MA and SFC on 13 May 2015, MA and SFC conducted a joint public consultation on L.N. 96 together with a further joint public consultation on L.N. 97 in November 2014 which ended in December 2014. According to the Administration, the respondents generally supported the proposed mandatory reporting and related record keeping requirements set out in L.N. 96, and generally welcomed the opportunity to provide input to the lists of markets and clearing houses to be prescribed in L.N. 97.

## Consultation with LegCo Panel

51. As advised by the Clerk to the Panel on Financial Affairs, at its meeting on 5 January 2015, the Panel was briefed on the legislative proposals in respect of mandatory reporting and record keeping for the first phase of implementation of OTC derivatives regulatory regime in Hong Kong. Members had no objection to the proposals. Members emphasized the need to minimize compliance costs on market participants, and made enquiries on issues including the scope of reportable OTC derivatives transactions, reporting requirements, grace period for reporting and backloading of historical transactions, retention period of relevant transaction records, exemptions and exclusions as well as safeguards on information disclosure.

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<sup>6</sup> Section 1B(2)(c) is brought into operation by L.N. 95.

## **PART V MISCELLANEOUS**

### **Prevention of Bribery Ordinance (Amendment of Schedule 1) Order 2015**

**(L.N. 84)**

52. L.N. 84 is made by CE in Council under section 35 of the Prevention of Bribery Ordinance (Cap. 201) to amend Schedule 1 to Cap. 201.

53. Section 2 of Cap. 201 defines public body to include any body specified in Schedule 1 to Cap. 201. L.N. 84 adds HK Television Entertainment Company Limited (HKTVE) to Schedule 1. The effect is that employees and members of HKTVE become public servants<sup>7</sup> and thus are subject to the provisions of Cap. 201.

54. According to the LegCo Brief (File Ref: CTB/A 200-10-10/1 (C)) entitled "Application for Domestic Free Television Programme Service Licence of HK Television Entertainment Company Limited" issued by the Communications and Technology Branch of the Commerce and Economic Development Bureau on 1 April 2015, L.N. 84 is made following CE in Council's approval of HKTVE's application for a domestic free television programme service licence on 1 April 2015. According to the Administration, this is in line with the current practice that all domestic free television programme service licensees under the Broadcasting Ordinance (Cap. 562) and sound broadcasting licensees (both analogue and digital audio broadcasting) under the Telecommunications Ordinance (Cap. 106) are specified as public bodies under Schedule 1 to Cap. 201 because they are regarded as being placed in a position of special trust by the Government (paragraph 18 of the LegCo Brief).

55. As advised by the Clerk to the Panel on Information Technology and Broadcasting, the Panel has not been consulted on L.N. 84.

56. L.N. 84 comes into operation on 10 July 2015.

### **Consular Relations (Additional Privileges and Immunities) (Japan) Order**

**(L.N. 85)**

#### Background

57. The Consular Relations Ordinance (Cap. 557) makes provisions for the implementation in Hong Kong of certain provisions of the Vienna Convention on Consular Relations and of other agreements concerning consular relations to which the Government of the People's Republic of China is a party and which are applied to Hong Kong by the Central People's Government.

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<sup>7</sup> Under section 2(1) of Cap. 201, public servant is defined to include any employee and member of a public body specified under Schedule 1 to Cap. 201.

58. The People's Republic of China and Japan reached a bilateral agreement entitled "Agreement on Consular Relations between People's Republic of China and Japan" on 24 October 2008 (the Agreement). According to Annex B to the LegCo Brief (File Ref: SF (9) to PROT CR 6/1126/98) issued by the Administration Wing of the Chief Secretary for Administration's Office on 13 May 2015, the Agreement was applied to Hong Kong on 16 February 2010.

59. Under section 4(1) of Cap. 557, CE in Council may by order in the Gazette, declare that the additional privileges and immunities (i) accorded to a State under an international agreement; and (ii) specified in the order, shall have the force of law in Hong Kong.

#### L.N. 85

60. L.N. 85 is made by CE in Council under section 4(1) of Cap. 557 to declare that additional privileges and immunities accorded to a consular post of Japan, or to persons connected with the consular post, or to both, under the relevant provisions of the Agreement, shall have the force of law in the Hong Kong Special Administrative Region (HKSAR). These additional privileges and immunities are summarized below –

- (a) consular premises shall be inviolable;
- (b) the authorities of the receiving State<sup>8</sup> shall not enter the consular premises except with the consent of the head of the consular post or of his or her designee, or of the head of the diplomatic mission of the sending State or of his or her designee;
- (c) the residence of a consular officer enjoys the same inviolability and protection as the consular premises; and
- (d) the inviolability of consular archives under the 1963 Vienna Convention on Consular Relations is extended to cover data stored in memory medium.

61. Members may refer to the LegCo Brief for background information. According to paragraph 8 of the LegCo Brief, L.N. 85 was made in line with the common law practice that provisions of bilateral agreements applicable to the HKSAR which affect private rights and obligations or require exceptions to be made to the existing laws of the HKSAR, should be underpinned by way of domestic legislation.

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<sup>8</sup> Under section 3(2) of Cap. 557, "authorities of the receiving State" is defined to include any police officer and any person exercising a power of entry to any premises under any enactment.

62. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Panel was consulted at its meeting on 23 March 2015. Members of the Panel had no objection to the Administration's tabling of this item of subsidiary legislation in the Legislative Council for negative vetting in the second quarter of 2015.

63. L.N. 85 comes into operation on 17 July 2015.

**Mandatory Provident Fund Schemes (Amendment)  
Ordinance 2015 (Commencement) Notice 2015**

**(L.N. 98)**

64. The Mandatory Provident Fund Schemes (Amendment) Bill 2014 was passed by the Legislative Council on 21 January 2015, and gazetted as the Mandatory Provident Fund Schemes (Amendment) Ordinance 2015 (1 of 2015) (MPFSAO) on 30 January 2015. The main purpose of MPFSAO is to amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) to provide for benefits withdrawal on terminal illness and by instalments from mandatory provident fund schemes, and on terminal illness from certain schemes under the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485B). By virtue of section 1(3) of MPFSAO, certain provisions came into operation on 30 January 2015.

65. By L.N. 98 made under section 1(2) of MPFSAO, SFST has appointed 1 August 2015 as the day on which the following provisions of MPFSAO come into operation: (a) sections 4, 6(4) to (8), 16, 21(1), 22, 27 to 29, 32 to 35, 39, 40 to 44; (b) section 45(1) in so far as it relates to the new section 166(1A) only; (c) section 45(2); (d) section 45(3) in so far as it relates to the new section 166(1A) only; (e) section 45(4); (f) sections 48, 49, 51(1), (3) and (6) and 53; and (g) Parts 5, 7 and 8 (i.e. sections 54 to 55 and sections 58 to 60).

66. In response to our enquiries, the Administration has explained that these provisions cover the following matters –

- (a) allowing early withdrawal of mandatory provident fund accrued benefits (MPF benefits) on terminal illness ground (i.e. sections 6(4) to (7), 16, 39, 40, 42, 48, 53, 58 and 59 of MPFSAO);
- (b) clarifying the expressions "permanently ceased employment or self-employment" and "departs from Hong Kong permanently" for the purpose of making early withdrawal (i.e. sections 6(8) and 39 of MPFSAO);

- (c) simplifying the process for withdrawal on total incapacity ground (i.e. sections 41 and 51(6) of MPFSAO);
- (d) reducing the compliance burden on trustees and employers by simplifying operational processes and communication (i.e. sections 22, 27, 28, 29, 33, 35, 49, 51(1) and (3) of MPFSAO);
- (e) clarifying the definitions of permitted period and contribution day for employees and self-employed persons in different contexts (i.e. sections 4, 21(1), 32, 34, 54, 55 and 60 of MPFSAO);
- (f) allowing a committee of estate appointed under the Mental Health Ordinance (Cap. 134) to claim MPF benefits on behalf of mandatory provident fund scheme members (i.e. section 44 of MPFSAO); and
- (g) making a minor technical amendment in relation to a claim for payment of MPF benefits of small balance (i.e. section 43 of MPFSAO) and clarifying the time frame for payment of MPF benefits (i.e. section 45 of MPFSAO).

67. As regards the remaining provisions of MPFSAO (i.e. sections 6(1), (2) and (3), 25, 45(1) and (3), 46, 47, 51(2) and 51(7)) which relate to the withdrawal of MPF benefits by instalments, the Administration intends to bring them into operation in early 2016 taking into account the time required by trustees to update their procedural guidelines, systems and forms.

68. No LegCo Brief has been issued for L.N. 98.

69. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 98. According to the Clerk to the Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2014, the Bills Committee had not discussed any specific issue concerning the commencement of the Bill. The Administration and Mandatory Provident Fund Authority have undertaken to launch a publicity exercise to help the community understand the salient features of Cap. 485 as amended.

## **Statutes of the University of Hong Kong (Amendment) Statute 2015**

**(L.N. 99)**

70. L.N. 99 is made by the Chancellor of the University of Hong Kong (HKU) under section 13(2) of the University of Hong Kong Ordinance (Cap. 1053) on the recommendation of the Court of HKU. It amends the Statutes of HKU in the Schedule to Cap. 1053 to add certain masters degrees (i.e. Master of Arts in Teaching

English to Speakers of Other Languages, Master of Clinical Pharmacy and Master of Expressive Arts Therapy) which may be conferred by HKU.

71. According to paragraphs 4 and 5 of the LegCo Brief (no reference number) issued by HKU in May 2015, the three taught Master programmes are added in recognition of the rising needs of academic education and training in the respective disciplines. HKU has consulted the relevant parties (i.e. its relevant departments and faculties, Senate and Council) and the Education Bureau on L.N. 99.

72. As advised by the Clerk to the Panel on Education, the Panel has not been consulted on L.N. 99.

73. L.N. 99 comes into operation on 10 July 2015.

### **Concluding Observations**

74. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 84, L.N. 85, L.N. 89 to L.N. 94, L.N. 98 and L.N. 99.

75. The Legal Service Division is scrutinizing L.N. 86 to L.N. 88 and L.N. 95 to L.N. 97. A further report will be issued if necessary.

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