

立法會
Legislative Council

LC Paper No. LS 249/98-99

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 16 July 1999**

Date of Tabling in LegCo : 6 October 1999

Amendment to be made by : 3 November 1999 (or 10 November 1999 if extended by resolution)

Smoking (Public Health) Ordinance (Cap. 371)
Smoking (Public Health) (Notices) (Amendment) Order 1999 (L.N. 188)

This Order amends the Smoking (Public Health) (Notices) Order (Cap. 371 sub. leg.) by providing for -

- (a) the forms of health warnings and indication of tar and nicotine yields on packets of cigarettes and retail containers of cigarette packets (new Part II in the Schedule);
- (b) the forms of health warnings on packets, containers, drums or wrapping containing cigars, pipe tobacco and cigarette tobacco (new Part IIA in the Schedule);
- (c) the forms of health warnings on a packet, container, drum or wrapping containing a cigar which is sold individually (new Part IIB in the Schedule); and
- (d) the forms of health warnings on tobacco advertisements on display (new part III in the Schedule)

There are transitional provisions in the Order on health warnings regarding packets or containers of tobacco products, indication of tar and nicotine yields regarding packets or containers of tobacco products and tobacco advertisements on display (paragraphs 5-7 of the Order).

Members may refer to LegCo Brief File Reference: HW CR 52/581/89 of July 1999 from Health and Welfare Bureau for background information.

Provisional Urban Council Ordinance (Cap. 101)
Urban Council Financial (Amendment) Bylaw 1999 (L.N. 189)

By-law 16 of the Urban Council Financial By-laws (Cap. 101 sub. leg.) provides that -

- "(1) The Council may create a Museums Acquisition Reserve Fund into which shall be paid the following—
- (a) such funds of the Council as the Committee may from time to time determine;
 - (b) such funds as may be donated to the Council for the acquisition of museum or art pieces; and
 - (c) any interest that may from time to time accrue on monies standing to the credit of the Museums Acquisition Reserve Fund.
- (2) Monies standing to the credit of the Museums Acquisition Reserve Fund shall be applied by the Museums Select Committee to defray the cost of acquisitions by the museums of the Council."

This Bylaw amends by-law 16 to subject paragraph (2) to a new provision which provides that -

- "(3) Funds paid into the Museums Acquisition Reserve Fund under paragraph (1)(a) and (c) may, with the prior approval of the standing committee, be applied for purposes other than that specified in paragraph (2)."

The legal effect of the amendment allows monies standing to the credit of the Museums Acquisition Reserve Fund to be applied for purposes other than defraying the cost of acquisitions by museums.

The Legal Service Division has asked the Administration to clarify -

- (a) What are the "other purposes" in mind?
- (b) Would those purposes ultra vires the scope of the Fund?

The Administration has replied by saying that -

- (a) The "other purposes" refer to the provision of municipal services in general, in the exercise of the powers and functions of the Council pursuant to sections 24 and 25 of the principal Ordinance;

- (b) Pursuant to section 37(2)(b) of the principal Ordinance, the Council may make bylaws for the regulation and control of its finances, including provisions as to the establishment of reserves for particular purposes and the procedure to be adopted by the Council in making transfers thereto or therefrom. It is therefore intra vires for the Council to make the Bylaw under section 37(2)(b), especially when all the monies in the Museums Acquisition Reserve Fund represent funds of the Council (in this respect, the Administration has confirmed that there has been no donations to the Fund under by-law 16(1)(b)) and the amendments only affect those funds. There are also provisions in the Urban Council Financial By-laws for other reserve funds providing similar flexibility, for example, by-law 15(2)(c) provides that with the prior approval of the Standing Committee of the Council, the Capital Projects Reserve Fund may be applied for purposes other than defraying the costs for capital works.

Copies of the correspondence between the Legal Service Division and Administration are annexed for members' reference.

Estate Agents Ordinance (Cap. 511)

Estate Agents Ordinance (Cap. 511) (Commencement) Notice 1999 (L.N. 190)

This Notice specifies certain provisions of the Estate Agents Ordinance (Cap. 511) ("the Ordinance") to come into operation on 1 November 1999. Those provisions relate to determination of commission disputes, estate agents practice and details of an estate agency agreement regarding property in Hong Kong used wholly or primarily for human habitation. The other provisions of the Ordinance have already come into operation.

Encl

Prepared by

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Assistant Legal Adviser
Legislative Council Secretariat
16 August 1999

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24 July 1999

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Dear Miss Ng,

**Urban Council Financial (Amendment) Bylaw 1999
(L.N. 189 of 1999)**

We are scrutinising the legal and drafting aspects of the captioned Bylaw. The legal effect of the Bylaw allows monies standing to the credit of the Museums Acquisition Reserve Fund to be applied for purposes other than defraying the cost of acquisitions by Museum. What are the "other purposes" in mind? Since the word "purposes" is not qualified, would it ultra vires the scope of the purposes of setting up the Fund? Has there been any donation made under bylaw 16(1)(b) of the principal Bylaws? Is it appropriate to replace "paragraph (1)(a) and (c)" with "paragraph (1)(a) or (c)"?

We would be grateful for your reply, in both languages, by the end of next week.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

市政總署總部的信頭

Letterhead of URBAN SERVICES DEPARTMENT, HEADQUARTERS

6 August 1999

Mr. Stephen LAM
Assistant Legal Adviser
Legislative Council Secretariat
Legal Service Division
Legislative Council Building,
8 Jackson Road, Central,
Hong Kong

Dear Mr. LAM,

Urban Council Financial (Amendment) Bylaw 1999
(L.N. 189 of 1999)

After consulting the Legal Advisory Unit of the Provisional Urban Council, I forward the following answers to the questions raised in your memo dated 24 July 1999:-

- (a) What are the “other purposes” in mind? Would it ultra vires the scope of the purposes of setting up the Fund?

Ans. The “other purposes” refers to the provision of municipal services in general, in the exercise of the powers and functions of the Provisional Urban Council (PUC) pursuant to sections 24 and 25 of the PUC Ordinance, Cap. 101.

Pursuant to section 37(2)(b) of the PUC Ordinance, the Council may make bylaws for the regulation and control of its finances, including provisions as to the establishment of reserves for particular purposes and the procedure to be adopted by the Council in making

transfers thereto or therefrom. It is intra vires the Council to make the Amendment Bylaw 1999 under section 37(2)(b), especially when all the monies in the Museums Acquisition Reserve Fund represent funds of the Council and the amendments only affect those funds. In fact, similar provisions are present for other reserve funds to provide for flexibility, e.g. Financial By-law 15(2)(c) provides that with the prior approval of the Standing Committee of the Council, the Capital Projects Reserve Fund may be applied for purposes other than defraying the costs for capital works.

(b) Have there been any donations to MARF?

Ans. No.

(c) Is it appropriate to replace “1(a) and (c)” with “1(a) or (c)”?

Ans. In our view, the use of the word “and” includes the disjunctive conjunction, that is “and” should include “and/or”. We have no objection, however, to the proposed amendment.

Yours sincerely,

(Miss Doris NG)
Assistant Director (Finance)
Urban Services Department