

**Paper for the LegCo Panel on Constitutional Affairs
for the Meeting on 17 May 1999**

**Provisions containing the reference to “by notice in the Gazette”
in the Laws of Hong Kong**

Introduction

This is an information paper which sets out the nature of “notice in the Gazette” issued under different ordinances in order to assist members of the Panel in their discussion of item No. III on the agenda of the Panel meeting on 17 May 1999. We have set out below a general analysis to enable members to have a general view of the problems involved and to decide the way forward.

Nature of “notice in the Gazette”

2. According to our research, there are at least 330 provisions in the Laws of Hong Kong which contain the references to “by notice in the Gazette”. Notices issued under those provisions can be broadly categorized as follows:

- (a) amending a part of the ordinance, e.g. a Schedule or a subsection;
- (b) specifying the day on which an ordinance or a regulation or a provision is to come into operation;
- (c) prescribing or varying fees;
- (d) publishing guidelines for the guidance of the public or a section of the public on how a statutory power or duty is performed;
- (e) where a code or practice is approved, identifying the Code and specifying the day on which the approval is to take effect;
- (f) appointing members of statutory bodies or public officers;
- (g) regulating traffic in the air, on land and in the waters of Hong Kong;
- (h) regulating the banking and securities business;
- (i) granting exemptions from the requirements of the ordinances; and
- (j) specifying forms to be used for the purposes of ordinances.

3. It has been accepted that notices which amend a part of an ordinance and specify commencement dates for legislation are notices with legislative effect and are therefore subject to the scrutiny of the Legislative Council. On the other hand, notices which deal with appointment and the publication of guidelines and codes of practice have not been treated and published as subsidiary legislation. However, some ordinances may provide expressly that a code of practice issued is subsidiary legislation. For example, it is expressly provided in the Road Traffic Ordinance (Cap. 374) that the Road Users' Code issued by the Secretary for Transport under section 109 is deemed to be subsidiary legislation. Notices which specify forms to be used for the purposes of ordinances have not been treated and published as subsidiary legislation.

4. In some ordinances, there are express provisions on whether or not a notice is subsidiary legislation. In the absence of such express provision, the way in which notices in the Gazette have been treated varies from ordinance to ordinance even though those notices may be issued for similar purposes. Most of the notices that are regulatory in nature have been published as legal notices. Examples of these notices are those issued by the Monetary Authority under the Banking Ordinance (Cap. 155) which aim at regulating the banking business. Likewise, most of the notices that prescribe or vary fees have been treated as subsidiary legislation.

5. However, there has not been uniformity in treatment of notices relating to regulating traffic and granting exemptions. The way notices of these types have been treated in various Ordinances is set out in the table at Annex A.

Recommendation

6. The inconsistency in the treatment of "notice in the Gazette" has raised a fundamental issue of whether the existing legislative mechanism for the Legislative Council to monitor the exercise of power to make subsidiary legislation should be examined in order to provide a clear means of identifying which of the instruments (including those which bear different titles such as rules, orders etc.) with legal effect made by persons under delegated authority provided by statute should be subject to the Council's scrutiny. Members may consider whether it is necessary to invite the Administration to participate in the discussion of the issue.

Encl

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Nature of notices in the Gazette issued under various statutory provisions

Purpose for which 'notice in the Gazette' is issued	Ordinance under which the notice is issued	Relevant provisions	Treated and published as subsidiary legislation
I. Prescription/variation of fees	(1) Cap. 2 Public Finance Ordinance	section 17C - The Financial Secretary may prescribe, by notice in the gazette, fees for official signatures and miscellaneous services.	√
	(2) Cap. 50 Professional Accountants Ordinance	section 46 - The Chief Executive may prescribe by notice in the Gazette fees payable to the Registrar of Companies for the registration of documents required to be registered or delivered to the Registrar of Companies.	×
	(3) Cap. 218 Travel Agents Ordinance	(a) section 32H - Specification of percentage of levy payable to the Travel Industry Compensation Fund by notice in the Gazette. (b) section 321 - Specification of percentage of levy payable to the Travel Industry Council by notice in the Gazette.	√ √
	(4) Cap. 351 Exchanges (Special Levy) Ordinance	section 4A - The Secretary for Financial Services may by notice in the Gazette vary the amount or rate of the Commodity Exchange special levy or Stock Exchange special levy.	√
II. Regulation of air traffic	Cap. 312 Civil Aviation (Aircraft Noise) Ordinance	(a) section 5(1) - The Director of Civil Aviation may by notice in the Gazette impose duties or requirements on the operator of an aircraft as to landing and take-off.	×
		(b) section 6(1) - The Director may by notice in the Gazette prohibit aircraft from taking off or landing, or limit the number of occasions on which they may take off or land.	√

Purpose for which 'notice in the Gazette' is issued	Ordinance under which the notice is issued	Relevant provisions	Treated and published as subsidiary legislation
III. Regulation of traffic in the waters of Hong Kong	Cap. 313 Shipping and Port Control Ordinance and its subsidiary legislation	<p>(a) section 6(2) - The Director of Marine may by notice in the Gazette specify areas of the waters of Hong Kong in which any floating or other structure specified in the notice may be laid, placed or erected.</p> <p>(b) section 16A - The Director may by notice in Gazette give directions to owners of vessels belonging to a class, type or description of vessels specified in the notice.</p> <p>(c) section 16B - The Director may by notice in the Gazette close any area of waters of Hong Kong in the interests of safety.</p> <p>(d) regulation 11 of the Shipping and Port Control (Hong Kong China and Macau Ferry Terminals) Regulations - The Director may by notice in the Gazette declare any area within a terminal to be a restricted area.</p> <p>(e) regulation 67(1) of the Shipping and Port Control Regulation - The Director may by notice in the Gazette prohibit certain activities in the waters of Hong Kong and restrict the speed of vessels.</p>	<p>√</p> <p>√</p> <p>√</p> <p>√</p> <p>√</p>

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IV. Regulation of traffic on land	(1) Cap. 374 Road Traffic Ordinance and its subsidiary legislation	<p>(a) section 23 - The Chief Executive in Council by notice in the Gazette may limit the number of registered vehicles.</p> <p>(b) section 39F - The Commissioner of Police may by notice in the Gazette approve types of instruments as approved breath analysing instruments, etc.</p> <p>(c) section 40 - The Commissioner for Transport may by notice in the Gazette vary the speed limit for any road specified in the notice</p> <p>(d) section 116 - The Commissioner for Transport may specify by notice in the Gazette private roads to which certain provisions of the Ordinance do not apply.</p> <p>(e) section 123 - The Commissioner for Transport may by notice published in the Gazette designate any road as an expressway.</p> <p>(f) regulation 14(1) of the Road Traffic (Traffic Control) Regulations - The Commissioner for Transport may, by notice in the Gazette, designate any area as a prohibited zone or restricted zone.</p>	<p>√</p> <p>√</p> <p>Notice was treated and published as subsidiary legislation in 1984. Recent notices have been published in form of general notices in the Gazette instead.</p> <p>×</p> <p>×</p> <p>×</p>

Purpose for which 'notice in the Gazette' is issued	Ordinance under which the notice is issued	Relevant provisions	Treated and published as subsidiary legislation
	<p>(2) Cap. 372 Kowloon-Canton Railway Corporation Ordinance</p> <p>(3) Cap. 483 Airport Authority Ordinance</p>	<p>(g) regulation 28(3) of the Road Traffic (Construction and Maintenance of Vehicles) Regulations - The Commissioner for Transport shall by notice in the Gazette specify the type of safety glass or safety glazing approved by him.</p> <p>(h) regulations 3A and 8A of the Road Traffic (Traffic Control) Regulations - The Commissioner for Transport may, by notice in the Gazette, specify traffic signs and road markings for private roads.</p> <p>bylaw 77 of the Kowloon-Canton Railway Corporation By-laws - The Corporation may, by notice published in the Gazette, declare any area within the railway premises to be a restricted area.</p> <p>regulation 14(1) of the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg.), as modified by the Airport Authority Bylaw - The Commissioner for Transport or, the Airport Authority with the approval of the Commissioner, may by notice in the Gazette, designate any area in the airport as a prohibited zone or restricted zone.</p>	<p>√</p> <p>√</p> <p>√</p> <p>√</p>
V. Granting exemption	(1) Cap. 32 Companies Ordinance	section 38A - The Securities and Futures Commission (SFC) may, by notice in the Gazette, exempt any class of companies or any class of prospectuses issued by companies from certain provisions of the Ordinance.	×

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	(2) Cap. 155 Banking Ordinance	(a) section 13(1) - The Financial Secretary may, by notice in the Gazette, exempt any person or class of persons from the restrictions on the business of taking deposits.	√
		(b) section 106(2) - The Monetary Authority may, by notice in the Gazette, specify a charge or a class of charges to be exempted from the requirements of the Ordinance.	√
	(3) Cap. 163 Money Lenders Ordinance	section 33A - The Registrar of Money Lenders may, after consultation with the Financial Secretary, by notice in the Gazette exempt a class of persons from all or any provisions of the Ordinance.	×
	(4) Cap. 238 Firearms Ammunitions Ordinance	and section 46(3) - Exemption from storage fees by notice in the Gazette.	√
	(5) Cap. 313 Shipping and Port Control Ordinance	section 63 - The Director of Marine may by notice in the Gazette exempt any person or any vessel or any class of vessel from any requirement under this Ordinance.	√
	(6) Cap. 333 Securities Ordinance	section 60(4) - The SFC may, by notice in the Gazette, declare any licensed bank or any trustee company to be an exempt dealer for the purposes of this Ordinance.	×

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	(7) Cap. 406 Electricity Ordinance	section 24 - Where the Director of Electrical and Mechanical Services is satisfied that an electrical product is not hazardous, he may, by notice in the Gazette, exempt it from the provisions of the Ordinance.	×
	(8) Cap. 449 Amusement Rides (Safety) Ordinance	section 43 - The Director of Electrical and Mechanical Services may, by notice in the Gazette, exempt any class of amusement rides from all or any of the provisions of this Ordinance.	×