

立法會
Legislative Council

LC Paper No. LS 62/02-03

**Paper for the House Committee Meeting
on 21 February 2003**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 14 and 15 February 2003**

Date of tabling in LegCo : 19 February 2003

Amendment to be made by : 19 March 2003 (or 9 April 2003 if extended by resolution)

PART I SUBSIDIARY LEGISLATION RELATING TO THE USE OF ELECTRONIC SERVICES FOR PROCESSING CARGO MANIFESTS

Import and Export Ordinance (Cap. 60)
Import and Export (General) (Amendment) Regulation 2003 (L. N. 32)
Import and Export (Registration) (Amendment) Regulation 2003 (L.N. 33)
Import and Export (Removal of Articles) (Amendment) Regulation 2003 (L.N. 34)

Reserved Commodities Ordinance (Cap. 296)
Reserved Commodities (Control of Imports, Exports and Reserve Stocks) (Amendment) Regulation 2003 (L.N. 35)

The above Regulations are made following the enactment of the Import and Export (Electronic Transactions) Ordinance 2002 (24 of 2002) (the Ordinance) in July 2002. The Ordinance amends various Ordinances, including the Import and Export Ordinance (Cap. 60) (IEO) and the Reserved Commodities Ordinance (Cap. 296), to provide for the use of an electronic service provided by a body specified in Schedule 2 to IEO in the submission of cargo manifests by cargo carriers to the Government. At present, Tradelink Electronic Commerce Limited (the Tradelink) is the only body specified in Schedule 2 to IEO. The Ordinance has not been brought into operation pending the making of the above Regulations. The Commerce, Industry and Technology Bureau has issued a LegCo Brief (Ref.: CIB 89/18/1) dated 12 February 2003 on the above Regulations.

2. L.N. 32 amends the Import and Export (General) Regulations (Cap. 60 sub. leg.) to -

- (a) require that manifest information relating to the import and export of textiles required to be delivered to the Director-General of Trade and Industry (the Director) shall be delivered using electronic services provided by a specified body; and
- (b) provide that the above requirement shall be deemed to have been complied with if the same information has previously been provided to the Commissioner of Customs and Excise (the Commissioner) in compliance with regulation 11 or 12 of the Import and Export (Registration) Regulations (Cap. 60 sub. leg.) using electronic services provided by a specified body.

3. The principal purpose of L.N. 33 is to amend regulations 11 and 12 of the Import and Export (Registration) Regulations (Cap. 60 sub. leg.) (the Registration Regulations) to -

- (a) require the use of electronic services provided by a specified body in submitting cargo manifests to the Commissioner by cargo carriers;
- (b) extend the statutory time limit, from seven days to 14 days, within which a cargo manifest must be lodged after the cargo is imported or exported (but according to paragraph 6 of the LegCo Brief, this time limit may need to be reviewed in future having regard to an increasing international concern about cargo security after the 11 September 2001 tragedy); and
- (c) provide that the requirement under regulations 11 and 12 of the Registration Regulations to lodge a manifest with the Commissioner shall be deemed to have been complied with if a complete manifest has previously been provided to the Commissioner under section 15 of IEO using electronic services provided by a specified body.

4. L.N. 35 amends the Reserved Commodities (Control of Imports, Exports and Reserve Stocks) Regulations (Cap. 296 sub. leg.) to -

- (a) require the use of a recognized electronic service in giving to the Director manifest information relating to the import and export of reserved commodities; and
- (b) provide that the above requirement shall be deemed to have been complied with if the same information has previously been provided to the Commissioner in compliance with regulation 11 or 12 of the Registration Regulations using the electronic services provided by a specified body.

5. Legal Notices No. 32, 33 and 35 each contains a transitional provision which allows for the manifest information required to be lodged using electronic means to continue to be sent in paper form, as an alternative to using services provided by a specified body, until a date to be specified by the Commissioner by notice in the Gazette and such notice is subsidiary legislation.

6. L.N. 34 amends the Import and Export (Removal of Articles) Regulations (Cap. 60 sub. leg.) to -

- (a) specify the information to be contained in notices issued under sections 20A and 20B of IEO for the respective purpose of prohibiting the removal of cargo until the identity of importer is known and requiring imported cargo to be removed for examination; and
- (b) provide for the use of electronic services provided by a specified body, as an alternative to other modes of service, in serving notices issued under sections 20A and 20B of IEO.

7. According to paragraph 26 of the LegCo Brief, both the Government and Tradelink have consulted the industry at various stages of preparation for the launch of electronic services for processing cargo manifests (EMAN). The industry generally supports EMAN although some ocean carriers are still discussing with Tradelink on certain technical issues and the service fees to be charged by Tradelink. The policy aspects of the above four Regulations have been considered by the Bills Committee on Import and Export (Electronic Transactions) Bill 2001 and members of the Bills Committee generally supported the launch of EMAN.

8. The above four Regulations will come into operation on 11 April 2003 to tie in with the commencement of the Import and Export (Electronic Transactions) Ordinance 2002.

9. The Legal Service Division is seeking clarification from the Administration on certain drafting matters relating to L.N. 34 and L.N. 35. A further report on these two items of subsidiary legislation may be made if necessary.

PART II MISCELLEANEOUS AMENDMENTS

Electronic Transactions Ordinance (Cap. 553)

Electronic Transactions (Exclusion) (Amendment) Order 2003 (L.N. 36)

10. This Order is made under section 11(1) of the Electronic Transactions Ordinance (Cap. 553) (ETO) by the Secretary for Commerce, Industry and Technology. It amends Schedules 1, 2 and 4 to the Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg.) to -

- (a) allow certain information or documents required to be given or submitted under various Ordinances to be given or submitted in form of electronic records. These documents or information include cargo manifests required to be submitted under the Import and Export Ordinance (Cap. 60), application for permits or licences relating to dutiable commodities under the Dutiable Commodities Regulations (Cap. 109 sub. leg.) and employees' information required to be produced to the Commissioner for Labour under the Employment Ordinance (Cap. 57), the Immigration Ordinance (Cap. 115) and the Employees' Compensation Ordinance (Cap. 282);
- (b) allow applications for permits or licences relating to dutiable commodities under the Dutiable Commodities Regulations to be signed by digital signatures;
- (c) allow the retention of employees' records by employers required under the Immigration Ordinance to be in form of electronic records;
- (d) exclude the provisions relating to medical prescriptions under the Antibiotics Ordinance (Cap. 137) and the Pharmacy and Poisons Regulations (Cap. 138 sub. leg.) from the application of sections 5, 6 and 8 of ETO. The effect of this is that medical prescriptions issued under those Ordinances have to be in paper form, the signatures on those prescriptions must not be digital signatures and the prescriptions are required to be retained in paper form; and
- (e) exclude the provision relating to applications for traffic accident victims assistance under the Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229) from the application of sections 5 and 6 of ETO. The effect is that documents relating to such applications have to be in paper form and the signatures on those documents must not be digital signatures.

11. Members may refer to the LegCo Brief (File Ref.: ITBB/IT 107/4/3 (02)XIV) issued by the Commerce, Industry and Technology Bureau in February 2003 for details.

12. This Order will come into operation on 11 April 2003.

13. No difficulties relating to the legal and drafting aspects of the Order have been identified.

Import and Export Ordinance (Cap. 60)
Import and Export (General) Regulations (Amendment of Seventh Schedule)
(No. 2) Notice (L.N. 37)

14. Under section 7(2) of the Import and Export (General) Regulations (Cap. 109 sub. leg.) (the principal Regulations), the Director-General of Trade and Industry may, by notice in the Gazette, add to the Seventh Schedule to the principal Regulations (i) the name of a country or place for which the Kimberley Process Certification Scheme (KPCS) is effective; or (ii) the name of any other country or place from which the import of rough diamonds into, and to which the export of diamonds from, a country or place for which the KPCS is effective is permitted by the Kimberley Process.

15. This Notice adds five countries or places to the Seventh Schedule to the principal Regulations.

16. No difficulties relating to the legal and drafting aspects of the Notice have been identified.

Dutiable Commodities Ordinance (Cap. 109)
Dutiable Commodities Ordinance (Amendment of Schedule 1B) Notice 2003
(L.N. 38)

17. This Notice amends Schedule 1B to the Dutiable Commodities Ordinance (Cap. 109) (the Ordinance) by adding the "International Chamber of Commerce - Hong Kong, China Business Council" as a "specified eligible agent" to which the Ordinance applies. Under section 3C of the Ordinance, a specified eligible agent shall not send information to the Commissioner of Customs and Excise under the Ordinance on behalf of any person using a recognized electronic service unless the agent has obtained from the person an authorization in writing to do so. Non-compliance with this provision is an offence punishable by a fine at level 3 (\$10,000).

18. This Notice will come into operation on 11 April 2003.

19. No difficulties relating to the legal and drafting aspects of the Notice have been identified.

PART III COMMENCEMENT NOTICES

Dutiable Commodities (Amendment) Ordinance 2001 (19 of 2001)
Dutiable Commodities (Amendment) Ordinance 2001 (19 of 2001)
(Commencement) Notice 2003 (L.N. 39)

Import and Export (Electronic Transactions) Ordinance 2002 (24 of 2002)
Import and Export (Electronic Transactions) Ordinance 2002 (24 of 2002)
(Commencement) Notice 2003 (L.N. 40)

20. L.N. 39 and L.N. 40 respectively appoint 11 April 2003 as the day on which section 9 of the Dutiable Commodities (Amendment) Ordinance 2001 (19 of 2001) (the 2001 Ordinance) and the Import and Export (Electronic Transactions) Ordinance 2002 (24 of 2002) (the 2002 Ordinance) will come into operation.

21. The 2001 Ordinance provides the legal basis for traders to use services provided by Tradelink Electronic Commerce Limited to process applications for dutiable commodities permits electronically. The 2001 Ordinance, except section 9, commenced operation on 10 January 2002. Section 9 of the 2001 Ordinance provides that the requirement for a carrier to submit an import and export statement of dutiable commodities to the Commissioner of Customs and Excise is deemed to be complied with, if a manifest containing particulars of the dutiable commodities in question has already been submitted using electronic services provided by a specified body under the Import and Export (Registration) Regulations.

22. The 2002 Ordinance amends various Ordinances, in particular, the Import and Export Ordinance (Cap. 60) to provide the legal basis for the use of an electronic service provided by a specified body in submitting cargo manifests.

23. According to the LegCo Brief (Ref.: CIB 89/18/1) issued by the Commerce, Industry and Technology Bureau on 12 February 2003, section 9 of the 2001 Ordinance and the 2002 Ordinance are brought into operation on 11 April 2003 to tie in with the commencement of the Import and Export (General) (Amendment) Regulation 2003 (L.N. 32), the Import and Export (Registration) (Amendment) Regulation 2003 (L.N. 33), the Import and Export (Removal of Articles) (Amendment) Regulation 2003 (L.N. 34) and the Reserved Commodities (Control of Imports, Exports and Reserve Stocks) (Amendment) Regulation 2003 (L.N. 35).

Pilotage Ordinance (Cap. 84)
Pilotage (Dues) (Amendment) Order 2002 (L.N. 234 of 2002) (Commencement)
Notice 2003 (L.N. 41)

24. This Notice appoints 14 February 2003 as the day on which the Pilotage (Dues) (Amendment) Order 2002 (L.N. 234 of 2002) (the Order) will come into operation. The Order amends the Pilotage (Dues) Order (Cap. 84 sub. leg.) by reducing the standard pilotage dues and one item of additional pilotage due. For details, Members may refer to our report for the House Committee meeting on 3 January 2003 (LC Paper No. LS35/02-03).

PART IV ELECTORAL LAW

Electoral Affairs Commission Ordinance (Cap. 541)

Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation (L.N. 47)

25. Under section 7(1) of the Electoral Affairs Commission Ordinance (Cap. 541), the Electoral Affairs Commission is empowered to make regulation governing the registration of electors at an election which includes, as amended by the Village Representative Election Ordinance (Ord. No. 2 of 2003), electing a Village Representative.

26. In relation to Village Representative election, the Regulation provides for application for registration as electors, compilation and publication of provisional electoral register, arrangements for making claims and objections in respect of the provisional register, correction of the provisional register, compilation and publication of an omissions list and the final register as well as offences and other miscellaneous matters. According to the LegCo Brief issued by the Home Affairs Department, the Regulation is basically modelled upon the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541 sub. leg.) ("the EAC (RE)(LCGC)(DCC)R"). We have requested the Administration to supply us with a table comparing the provisions of the Regulation with those of the EAC (RE)(LCGC)(DCC)R. We are still awaiting its reply.

27. The Administration has not consulted the Panel on Home Affairs about the Regulation.

28. According to the Administration, four more regulations relating to the Village Representative election will be gazetted by March this year.

29. Members may refer to LegCo Brief (with no file reference) of 12 February 2003 issued by the Home Affairs Department for background information.

30. We are still scrutinising the legal and drafting aspects of the Regulation and will make a further report as soon as possible.

Prepared by

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18 February 2003