

立法會
Legislative Council

LC Paper No. LS29/02-03

**Paper for the House Committee Meeting
on 13 December 2002**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 6 December 2002**

Date of Tabling in LegCo : 11 December 2002

Amendment to be made by : 8 January 2003 (or 12 February 2003 if extended
by resolution)

**PART I LEGISLATION MADE UNDER OR RELATED TO SECURITIES
AND FUTURES ORDINANCE (CAP 571)**

Securities and Futures Ordinance (Cap. 571)

Securities and Futures (Client Securities) Rules (L.N. 201)

Securities and Futures (Client Money) Rules (L.N. 202)

Securities and Futures (Associated Entities—Notice) Rules (L.N. 203)

**Securities and Futures (Registration of Appeals Tribunal Orders) Rules
(L.N. 205)**

**Securities and Futures (Registration of Market Misconduct Tribunal Orders)
Rules (L.N. 206)**

Securities and Futures (Collective Investment Schemes) Notice (L.N. 207)

Companies Ordinance (Cap. 32)

**Companies Ordinance (Exemption of Companies and Prospectuses from
Compliance with Provisions) (Amendment) Notice 2002 (L.N. 204)**

Introductory

Seven sets of subsidiary legislation are tabled for Members' scrutiny. Except for one made under the Companies Ordinance (Cap. 32)(CO), all are made under the Securities and Futures Ordinance (Cap. 571) (the Ordinance). The Ordinance was enacted in March 2002 but has not yet commenced. One of the reasons is that the provisions of the Ordinance have merely provided the legal framework of the regulatory regime for the financial markets in Hong Kong, leaving

detailed rules and regulations necessary for the functioning of the regime to be made by way of subsidiary legislation. The Administration has identified 37 sets of subsidiary legislation that are required to be made before the Ordinance may come into operation. Seven sets of Rules were gazetted the week before the last and tabled last week. The current seven sets of subsidiary legislation constitute the second batch tabled before the Legislative Council. The remaining subsidiary legislation will probably be tabled next week.

2. The House Committee was informed of the large volume of subsidiary legislation required to be made under the Ordinance. On 22 February 2002, the House Committee resolved to establish the Subcommittee on Draft Subsidiary Legislation to be made under the Securities and Futures Ordinance (the Subcommittee) to study the drafts of the subsidiary legislation in advance of their gazettal.

3. The subsidiary legislation described in the following paragraphs has been studied by the Subcommittee. Members may wish to refer to the relevant paragraphs in the Report of the Subcommittee to the House Committee (Ref: CB(1) 434/02-03) for information on matters and issues considered by the Subcommittee. *(References to the relevant paragraphs of the Report are provided below in square brackets after the title of each set of subsidiary legislation.)*

4. Prior to the scrutiny by the Subcommittee, public consultation has been conducted by the Securities and Futures Commission (SFC) in respect of each set of subsidiary legislation in its draft form. The conclusions of such public consultations have been published with the written responses of SFC to the comments received, if any, set out in table form attached as an annex. The SFC has taken into account such comments where it considers appropriate when revising the drafts.

5. The expressions used in the subsidiary legislation are either defined in the subsidiary legislation or in Part 1 of Schedule 1 to the Ordinance.

Securities and Futures (Client Securities) Rules (L.N. 201) [Para. 60-62]

6. These Rules apply to (i) securities listed or traded on a recognized stock market, and (ii) interests in a collective investment scheme authorized by the SFC, which are received in Hong Kong from clients by or on behalf of an intermediary in the course of its conduct of any regulated activities for which it is licensed or registered under the Ordinance or an associated entity of such intermediary. Hence, not only all intermediaries but also their associated entities are covered.

7. The Rules prescribe the manner in which client securities and securities collateral received by an intermediary or its associated entity must be deposited or be registered. They also provide for circumstances under which an intermediary or its associated entities may dispose of or withdraw client securities or securities collateral. An intermediary or its associated entity must have an oral or written direction or a standing authority from a client before any disposition or withdrawal may be made.

A standing authority from a client who is not a professional investor will only be valid for at most 12 months, and must be renewed if it is to remain valid. To reduce the resulting burden on the intermediaries, section 4 of the Rules provides that renewal will be deemed if a client does not object within 14 days after having received a written notice from the intermediary proposing the renewal of the standing authority for a period not more than 12 months. Any breach of the Rules may attract criminal penalties.

Securities and Futures (Client Money) Rules (L.N. 202) [Para. 63-67]

8. These Rules apply to client money received or held in Hong Kong by or on behalf of a licensed corporation in the course of the conduct of a regulated activity for which it is licensed or its associated entity in relation to such conduct. An amount of client money received in form of a cheque will only be regarded as received by the licensed corporation or its associated entity when the proceeds of the cheque has been received. Client money received or held outside Hong Kong is not subject to the Rules.

9. The Rules require that client money of a licensed corporation or an associated entity must be deposited in a segregated account designated as a trust account or client account established and maintained in Hong Kong with an authorized financial institution or any other person approved by the SFC. They also prescribe the manner in which client money received by a licensed corporation or an associated entity may be dealt with and the circumstances under which payments out of segregated accounts may be made. The licensed corporation or associated entity will have only one business day within which to pay the client money received into a segregated account or to the client on whose behalf it is received or in accordance with a written direction or a standing authority from the client. Interest derived from the holding of client money belongs to the client unless the licensed corporation or associated entity has an agreement in writing with the client to retain such interest. Such retained interest must be paid out of the segregated account within one business day after the interest is credited into the account or the licensed corporation or associated entity has become aware of that fact. A contravention of the Rules may attract criminal penalties.

Securities and Futures (Associated Entities - Notice) Rules (L.N. 203) [Para. 50-54]

10. These Rules are entirely new and prescribe, for the purposes of section 165 of the Ordinance, the particulars that an associated entity of an intermediary must provide in its notice in writing to the SFC when it becomes or ceases to be such associated entity. A distinction is drawn between associated entities that are licensed corporations or registered institutions and those that are not. For the latter category of associated entities more particulars are required to be provided in the written notice upon their becoming and ceasing to be such entities.

Securities and Futures (Registration of Appeals Tribunal Orders) Rules (L.N. 205)
[Para. 88-89]

11. These Rules made by the Chief Justice prescribe the manner in which a notice in writing by the Securities and Futures Appeals Tribunal (established under section 216 of the Ordinance) may be given for the registration of an order made by it with the Court of First Instance of the High Court pursuant to section 226 of the Ordinance. The provisions stipulate that the written notice requesting the registration of the order shall be produced to the Registrar of the High Court together with the original order and a copy of it.

Securities and Futures (Registration of Market Misconduct Tribunal Orders) Rules (L.N. 206) [Para. 90-93]

12. These Rules made by the Chief Justice prescribe the manner in which a notice in writing by the Market Misconduct Tribunal (established under section 251 of the Ordinance) may be given for the registration of an order made by it with the Court of First Instance of the High Court pursuant to section 264(1) of the Ordinance. The provisions stipulate that the written notice requesting the registration of the order shall be produced to the Registrar of the High Court together with the original order and a copy of it.

Securities and Futures (Collective Investment Schemes) Notice (L.N. 207) [Para. 32-34]

13. Paragraph (b) in the definition of "collective investment scheme" in section 1 of Part 1 of Schedule 1 to the Ordinance includes arrangements which are of a class or description of arrangements prescribed by notice under section 393 of the Ordinance as being regarded as collective investment schemes in accordance with the terms of the notice. Section 393 of the Ordinance empowered the Financial Secretary (FS) to prescribe by notice published in the Gazette, inter alia, any class or description of arrangements to be regarded as collective investment schemes.

14. By this Notice made by the FS, any arrangements for the purchase of gold coins or gold bullion that are made available in the course of business and have the purpose or effect, or pretended purpose or effect, of enabling the participating persons to acquire gold coins or bullion for valuable consideration, to defer taking possession of such coins or bullion, and to transfer the ownership of the coins or bullion to a party to the arrangements, are to be regarded as collective investment schemes.

15. The Notice essentially replicates the provisions of the existing Protection of Investor (Gold Purchase) Order (Cap. 335 sub. leg.). There is no change in policy. An effect of the Notice is that no person may lawfully offer any "paper gold schemes" to the public without first having obtained the authorization of SFC under section 105 of the Ordinance.

Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2002 (L.N. 204) [Para. 157-158]

16. The existing untitled notice (G.N. 433) gazetted on 12 February 1993 exempts any mutual fund corporation authorized by SFC under section 15(1) of the Securities Ordinance (Cap. 333) (SO) from compliance with the requirements of sections 38(1) and (3) and 342(1) and (3) of the Companies Ordinance. SO will be repealed when the Ordinance comes into operation. The power of SFC to authorize mutual fund corporations under SO will be subsumed in its enlarged power to authorize collective investment schemes under the Ordinance. It is therefore necessary to provide for the exemptions to be applicable to collective investment schemes after the commencement of the Ordinance.

17. By this Notice made by SFC, the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap. 32 sub. leg.) is amended by adding a new provision as section 7. The new provision stipulates that where a company incorporated under CO is a collective investment scheme authorized by SFC under section 104(1) of the Ordinance and it proposes to offer any shares or debentures by a prospectus issued generally, the company and the prospectus are exempted from compliance with the requirements of section 38(1) and (3) of CO. It also stipulates that where a company incorporated outside Hong Kong is a collective investment scheme authorized by SFC under section 104(1) of the Ordinance and it proposes to offer any shares or debentures by a prospectus issued generally, the company and the prospectus are exempted from compliance with the requirements of section 342(1) and (3) of CO.

LegCo Briefs

18. The SFC has issued a LegCo Brief in respect of each set of the above subsidiary legislation, all dated 6 December 2002. Members may wish to refer to them for further information.

Commencement

19. All the above subsidiary legislation will only come into operation upon the commencement of the Ordinance. The Administration has indicated that the Ordinance will probably come into operation in the first quarter of 2003.

Conclusion

20. Both the contents of and the underlying policies reflected in the above subsidiary legislation have the support of the Subcommittee. No difficulties in relation to the legal or drafting aspects of the subsidiary legislation have been identified.

PART II OTHER SUBSIDIARY LEGISLATION

*** Nurses Registration Ordinance (Cap. 164)**

Nurses (Registration and Disciplinary Procedure) (Amendment) Regulation 2002 (L.N. 196)

Enrolled Nurses (Enrolment and Disciplinary Procedure) (Amendment) Regulation 2002 (L.N. 197)

21. The two Amendment Regulations prescribe the fees payable to the Nursing Council of Hong Kong for requests for review of results of examinations in respect of registered and enrolled nurses respectively under sections 8A and 14A of the Nurses Registration Ordinance (Cap. 164). The fees are set at full cost recovery level and shall be \$425 per application.

22. Members may refer to the LegCo Brief File Ref. HWF CR/1D/3261/92(02) issued by the Health, Welfare and Food Bureau on 4 December 2002 for background information.

23. The two Amendment Regulations shall come into operation on 14 February 2003. We note that sections 8A and 14A of the Ordinance have come into operation on 12 July 2002. The Administration has been asked to clarify how the Nursing Council has dealt with such requests for review (if any) since 12 July 2002, and how the Nursing Council would deal with requests between now and 13 February 2003. The Administration's reply is at **Annex A**.

24. No difficulties relating to the legal and drafting aspects of the two Amendment Regulations have been identified.

Airport Authority Ordinance (Cap. 483)

Airport Authority Ordinance (Map of Airport Area) Order (L.N. 198)

Airport Authority Ordinance (Map of Restricted Area) Order (L.N. 199)

25. The two Orders specify respectively the new boundaries of the Airport Area and the Restricted Area for the purposes of the Airport Authority Ordinance (Cap. 483) and replace the existing Airport Authority Ordinance (Map of Airport Area) Order (Cap. 483 sub. leg.) and the existing Airport Authority Ordinance (Map of Restricted Area) Order (Cap. 483 sub. leg.).

26. L.N. 198 shall come into operation on 15 February 2003. Sections 2(a) and (b) and 3 of L.N. 199 shall also come into operation on 15 February 2003. Section 2(c) of L.N. 199 shall come into operation on a day to be appointed by the Director-General of Civil Aviation by notice published in the Gazette.

* prescription of new fees

27. According to the Administration, section 2(c) of L.N. 199 relates to the Restricted Area comprising the existing ferry terminal and the proposed connecting road for the purpose of facilitating cross boundary ferry services between the Hong Kong International Airport and selected ports in the Pearl River Delta for transit passengers. The LegCo Panel on Economic Services discussed the two Orders on 25 November 2002 and members supported the proposals in principle. Members may refer to the Information Paper to Panel members (LC Paper No. CB(1) 327/02-03(04) refers) for background information.

28. At the Panel meeting, members expressed concern about the customs and immigration clearance requirements relating to entry or departure of these transit passengers. Some members were also concerned that the Airport Authority might compete for profit with the private sector, particularly when the cross boundary ferry service might be extended to cover in-bound/out-bound tourists.

29. No difficulties relating to the legal and drafting aspects of the two Orders have been identified.

Public Health and Municipal Services Ordinance (Cap. 132)

Appeal Board on Closure Orders (Immediate Health Hazard) Rules (L.N. 200)

30. These Rules—

- (a) regulate the making of appeals to the Appeal Board on Closure Orders (Immediate Health Hazard);
- (b) specify the documents to be served in relation to an appeal; and
- (c) provide for the hearing and determination of those appeals.

The Rules shall come into operation on 14 February 2003.

31. The Appeal Board is established under section 128D of the Public Health and Municipal Services Ordinance (Cap. 132) to hear and determine any appeal against a closure order made by the Director of Food and Environmental Hygiene or his decision not to rescind a closure order. Under section 128C, a closure order may be made if the Director has reasonable cause to believe that the use of any premises to which that section applies or any activity conducted on those premises poses an immediate health hazard.

32. We have sought clarifications from the Administration on certain technical points. The Administration's reply dated 11 December 2002 (English version only) is at **Annex B**. Annexes to the letter are available on request. The Legal Service Division is still studying the reply and recommends that the period for scrutiny of the Rules be extended to 12 February 2003.

PART III COMMENCEMENT NOTICE

Chiropractors Registration Ordinance (Cap. 428)

Chiropractors Registration Ordinance (Cap. 428) (Commencement) Notice 2002 (L.N. 208)

33. By this Notice, the Chief Executive, after consultation with the Executive Council, appoints 13 February 2003 as the day on which the remaining provisions of the Chiropractors Registration Ordinance (Cap. 428) that have not come into operation shall come into operation.

34. Other than section 24(h) and (i), all of the provisions of the Chiropractors Registration Ordinance have come into operation. Section 24(h) and (i) provides that a person who, without having his name entered in the register, or not being the holder of a practising certificate then in force, practises chiropractic commits an offence and is liable to a fine of \$50,000 and to imprisonment for 1 year.

35. Members may refer to the LegCo Brief File Ref. HWF/H/22/16 issued by the Health, Welfare and Food Bureau on 4 December 2002 for background information. Paragraph 2 of the LegCo Brief gives an account of the progress of applications for registration.

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

Encl

Prepared by

KAU Kin-wah (Legal Notices No. 201 to 207)

WONG Sze-man, Bernice (Legal Notices No. 196 to 200 and 208)

Assistant Legal Advisers

Legislative Council Secretariat

11 December 2002

10 December 2002

Ms Bernice Wong
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms Wong,

**Nurses (Registration and Disciplinary Procedure)
(Amendment) Regulation 2002
Enrolled Nurses (Enrolment and Disciplinary Procedure)
(Amendment) Regulation 2002**

Thank you for your letter of 6 December 2002 to Miss Noel Tsang regarding the captioned subsidiary legislation.

2. It has been an established practice of the Nursing Council of Hong Kong (the Council) to review cases of appeals against examination result but in the past charges was not required. With the commencement of the Medical and Health Care (Miscellaneous Amendments) Ordinance 2002 on 12 July 2002, sections 8A and 14A were added to the Nurses Registration Ordinance (the Ordinance) to provide for the procedures for review of examination results. Specifically, sections 8A(3) and 14A(3) of the Ordinance provide that the Council shall review the relevant examination result on receipt of a request accompanied by a prescribed fee. It is therefore necessary to prescribe the fees payable for requests for review of examination results.

3. As regards points raised at your letter, we would like to respond as follows: -

(a) From 12 July 2002 to 6 December 2002, seven requests for review of results of examinations conducted by the Council under sections 8 and 14 of the Ordinance were received by the Council. The Council has processed these applications without charging a fee according to the following procedures -

- (i) The secretary will pass any written request for review of examination results to the chairman of the relevant examination subcommittee for review.
- (ii) The chairman of the examination subcommittee will appoint two members on each occasion to review the results.
- (iii) The findings will be submitted to the chairman of the examination subcommittee for endorsement.
- (iv) The findings endorsed by the chairman of the examination subcommittee will be forwarded to the Council for approval by circulation of paper.
- (v) The secretary will inform the candidate of the review result approved by the Council within one month by registered post.

(b) The Council will adopt the same procedures as set out in (a) above to deal with any requests for review of examination results between 7 December 2002 and 13 February 2003.

Yours sincerely,

(Peter Kwok)
for Secretary for Health, Welfare and Food

c.c. Secretary, Nursing Council (Attn.: Ms Elaine Chan)

Annex B

Our Ref : HWF(F) (CR) 10/8/7/1 III
Tel No. : 2136 3333
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11 December 2002

Legislative Council Secretariat
Legal Service Division
Legislative Council Building
8 Jackson Road
Central, Hong Kong

(Attn: Ms Bernice Wong,
Assistant Legal Adviser)

Dear Ms Wong,

Appeal Board on Closure Orders (Immediate Health Hazard) [ABCO(IHH)] Rules

I refer to your letter of 9 December seeking a number of clarifications on the above Rules. I set out below the additional information you requested in seriatim.

- (a) **Section 3 requires a person to serve on the Chairman a notice of appeal. Section 14 provides that service shall be effected by delivery to the Chairman by hand or by leaving the notice at the office of the secretary. Are there any administrative arrangements to facilitate the appellant to deliver the notice to the Chairman in person? Should Form 1 be addressed to the Chairman instead of the secretary?**

Our experience as the Secretariat of the Licensing Appeals Board (LIAB) is that an overwhelming majority of the appellants have delivered their notices of appeal to the office of the secretary rather than the Chairman in person. The rationale is two-fold. First, it is more convenient for an appellant to lodge his appeal with the LIAB Secretariat which is manned by at least a public officer during office hours. Second, it could be difficult for an appellant to lodge his appeal direct with the Chairman who very often is pre-occupied with other public or private commitments. As far as the ABCO(IHH) is concerned, while the lately gazetted Rules do not rule out the possibility of delivery of notices of appeal to the Chairman in person, we believe that in practice, most appellants will submit such notices to the office of the secretary pursuant to S.14(a) (ii) of the Rules. We see this as the most reliable and convenient means for lodging an appeal and will promote it among prospective appellants through the following administrative means.

- When issuing a closure order or a notice of refusal to rescind a closure order, the Authority will categorically remind the recipient of his rights to appeal to the ABCO(IHH) within 7 days if he is dissatisfied with the Authority's decision. We will request the Authority to attach the Form at Annex I to its closure or refusal letter. This Form was designed in such a manner as to facilitate the appellants in delivering the completed notices of appeal to the office of the secretary. For example, the secretary has been designated as the default recipient of this Form with his address, telephone number and fax number included in the footnotes. Similar arrangements are being adopted by the Licensing Appeals Board and the Municipal Services Appeals Board (see Annexes II & III).
- Before commencement of the operation of the ABCO(IHH) next February, we will upload the details of its Secretariat onto the website of the Health, Welfare and Food Bureau. The corresponding web-page of the LIAB can be found at <http://www.hwfb.gov.hk/feh/board>.
- We will issue a press release to remind food business premises licensees of the commencement of operation of the ABCO(IHH) nearer the time. The steps and procedures for lodging appeals with the ABCO(IHH) Secretariat will be highlighted in this press release.

- (b) Who would be the persons other than the appellant referred to in section 4(b) that are bound by the Authority's decision or order ("relevant persons")? Would they be allowed to participate in the appeal?**

"Relevant persons" refer to those persons entered by an appellant in paragraph 6 of the notice of appeal together with proper addresses and contact telephone numbers, excluding those entries which the secretary has good reason to believe have been frivolously or erroneously included. The "relevant persons" may take part in the proceedings of an appeal as follows.

Section 6(2): The person who is to preside at the hearing of the appeal may by order require the "relevant persons" to produce any document or material in their possession or under their respective control.

Section 8: The "relevant persons" may be invited by the person who is to preside at the hearing of the appeal to make representations at the hearing.

- (c) Why is it not necessary for the Authority to serve on the relevant persons the documents specified in section 5? Please also explain why section 5(a)(iv) imposes the time limit of one month before the making of the decision or order during which representations have been made.**

There is nothing in the ABCO(IHH) Rules to prevent an appellant from copying to the "relevant persons" the statement/documents received from the Authority. In the interest of administrative efficiency, we do not see fit to over-burden the Authority with a requirement to copy indiscriminately the bulky statement/documents it prepared to each and every "relevant person". A more flexible and administratively viable option is for the secretary to serve such statement/documents on those "relevant persons" who will take part in the proceedings of the appeal, consulting the person who is to preside at the hearing as appropriate.

The one-month time limit was imposed to enable the Authority to focus its research on the most relevant correspondence when identifying third persons who have made representations relevant to the subject matter of the appeal. Given that the Authority has to work under a very tight schedule, we believe a time limit should be

set to facilitate the Authority in identifying only those third persons who are materially associated with the appeal.

(d) Please explain the policy intent of making reference to Article 10 of the Hong Kong Bill of Rights in section 9(2).

It is our policy intention to ensure that the appeal proceedings comply with Article 10 of the Hong Kong Bill of Rights (BOR) which provides, inter alia, that every person shall be entitled to a public hearing in the determination of his rights and obligations in a suit at law. Section 9(2) of the ABCO(IHH) Rules provides for two scenarios where the Appeal Board may deviate from this general rule. To ensure that the deviation is still in compliance with Article 10 of the BOR, sections 9(2)(a) & (b) make reference to Article 10 and provide that the Appeal Board may hear the whole or part of the hearing in private where the parties have mutually agreed to waive their rights under that Article or any party applies on any ground provided in that Article to hear the appeal in private.

(e) Why is it not required under section 11 for the appellant to serve on the relevant persons the notice to abandon the appeal?

It is our intention to cover this service requirement administratively rather than legislatively. We do not wish to over-burden the appellant with a requirement to serve a notice on the “relevant persons”, particularly those who have no role to play in the proceedings of the appeal. We consider it more cost-effective for the secretary, upon receipt of a notice of abandonment from the appellant, to distribute it to those “relevant persons” who have been taking part in the proceedings.

(f) Why is it not required under section 15 for the secretary to serve on the relevant persons the notice of date, time or place changed for hearing of the appeal?

As with item (e), we consider it more appropriate to provide for this service requirement administratively rather than legislatively, given that not all “relevant persons” may take part in the proceedings of an appeal. From the administrative efficiency perspective, it may be a waste of time and resources to obligate the secretary to inform each and every “relevant person” of the change in date, time or place of the hearing.

Please feel free to contact me if you need clarification or additional information about the ABCO(IHH) Rules or this letter.

(Edward Law)
for Secretary for Health, Welfare and Food

c.c. Ms Lily YEW, Chairman of ABCO(IHH)	Fax: 2845 2668
(with LegCo's letter dated 9.12.2002)	
D of J (Attn: Ms Marie SIU)	Fax: 2845 2215
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Internal

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