

**立法會**  
**Legislative Council**

LC Paper No. LS74/03-04

**Paper for the House Committee Meeting  
on 7 May 2004**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 30 April 2004**

**Date of tabling in LegCo** : 5 May 2004

**Amendment to be made by** : 2 June 2004 (or 23 June 2004 if extended by resolution)

**PART I AMENDMENTS TO SUBSIDIARY LEGISLATION**

**Import and Export Ordinance (Cap. 60)  
Import and Export (Strategic Commodities) Regulations (Amendment of  
Schedule 1) Order 2004 (L.N. 65)**

This Order revises Schedule 1 to the Import and Export (Strategic Commodities) Regulations (Cap. 60 sub. leg. G) ("the Regulations") to reflect the latest changes in the control lists of strategic commodities adopted by various international non-proliferation regimes. These commodities include materials, equipment, software and technology capable of use for both industrial and military purposes.

2. The effect of the Order is that the import and export of articles specified in the revised Schedule 1 will be subject to the licensing control under the Import and Export Ordinance (Cap. 60) ("the Ordinance"). Section 6A of the Ordinance provides that a person who imports or exports an article specified in Schedule 1 to the Regulations without a licence commits an offence and is liable on summary conviction to a fine of \$500,000 and to imprisonment for 2 years, and on conviction on indictment to an unlimited fine and to imprisonment for 7 years. Members may wish to note that where an order is made by the Director-General of Trade and Industry to amend Schedule 1 to the Regulations, the Legislative Council's power to amend such an order is restricted by section 6B(3) of the Ordinance so that the Legislative Council may only repeal the whole order but not amend any part of it.

3. Members may refer to LegCo Brief (File Ref. TRA CR 1506/2) issued by the Trade and Industry Department on 28 April 2004 for background information.

4. This Order will come into operation on a day to be appointed by the Director-General of Trade and Industry by notice published in the Gazette.

**Securities and Futures Ordinance (Cap. 571)**  
**Securities and Futures (Contracts Limits and Reportable Positions) (Amendment)**  
**(No. 2) Rules 2004 (L.N. 66)**

5. The Securities and Futures Ordinance (Cap. 571) empowers the Securities and Futures Commission ("SFC") to prescribe limits on the number of futures contracts and options contracts that may be held or controlled by any person. The SFC may also prescribe the reportable positions in respect of such contracts.

6. The relevant limits and reportable positions are established and fixed for the futures contracts and stock options contracts specified respectively in Schedules 1 and 2 to the Securities and Futures (Contracts Limits and Reportable Positions) Rules (Cap. 571 sub. leg. Y). These Amendment Rules amend the Schedules to reflect the change of names of four existing futures contracts and four existing stock options contracts and to delete two existing futures contracts which have been delisted. The Amendment Rules also add 15 new futures contracts and 15 new stock options contracts to the Schedules and set their respective limits and positions.

7. Members may refer to the LegCo Brief issued by the SFC on 29 April 2004 for background information.

8. These Amendment Rules will come into operation on 25 June 2004.

**Import and Export (General) Regulations (Cap. 60 sub. leg. A)**  
**Import and Export (General) Regulations (Amendment of Seventh Schedule)**  
**(No. 2) Notice 2004 (L.N. 68)**

9. This Notice removes Lebanon from, and adds Singapore to, the list of specified countries or places in the Seventh Schedule to the Import and Export (General) Regulations (Cap. 60 sub. leg. A). Part VI of and the Seventh Schedule to those Regulations implement in Hong Kong an international certification scheme for rough diamonds known as the Kimberley Process Certification Scheme. The effect of this Notice is that trade in rough diamonds with Singapore is permitted, but trade in rough diamonds with Lebanon is prohibited, under the Kimberley Process Certification Scheme.

**Tax Reserve Certificates (Fourth Series) Rules (Cap. 289 sub. leg. A)**  
**Tax Reserve Certificates (Rate of Interest) (No. 3) Notice 2004 (L.N. 69)**

10. This Notice fixes the rate of interest payable on tax reserve certificates issued on or after 3 May 2004 at 0.0171% per annum.

## **PART II AMENDMENTS TO SCHEDULES TO ORDINANCES**

### **Hong Kong Examinations and Assessment Authority Ordinance (Cap. 261) Hong Kong Examinations and Assessment Authority Ordinance (Amendment of Schedule 2) Order 2004 (L.N. 64)**

11. This Order amends Schedule 2 to the Hong Kong Examinations and Assessment Authority Ordinance (Cap. 261) to add two new members to the Hong Kong Examinations and Assessment Authority ("HKEAA"), namely, a person who is a principal of a registered primary school and a person representing the interests of parents of pupils. The Order also reduces the overall size of the HKEAA from 27 to 17 by adjusting the number of members in the existing membership categories in the manner set out in paragraph 7 of the LegCo Brief (File Ref: EMBCR 1/29/2041/67) issued by the Education and Manpower Bureau in May 2004.

12. According to the LegCo Brief, the changes in the membership of the HKEAA were made following a Strategic Review conducted by the HKEAA and completed in May 2003 to improve the operation and management structure of the HKEAA. As a result of these changes, the HKEAA will have a wider membership spectrum with members from tertiary institutions, primary and secondary schools, teachers, parents, the business sectors, curriculum experts, professionals and Government officials.

13. The Panel on Education was consulted on the proposal to change the membership of the HKEAA on 15 December 2003. Members raised no objection to the proposed amendments. One member considered that members of the HKEAA should be appointed to represent their sectoral interests and asked why the Administration considered it appropriate to appoint them in their personal capacity. In response, the Administration explained that appointing members to represent sectoral interests might have the effect of prolonging the decision-making process of the HKEAA as members would have to consult their respective sectors before expressing their views at meetings.

14. According to the LegCo Brief, the current HKEAA has deliberated the proposed changes and expressed support. The Heads of Universities Committee was consulted in January 2004 and agreed to the proposed changes.

15. This Order will come into operation on 1 September 2004.

### **Employees Retraining Ordinance (Cap. 423) Employees Retraining Ordinance (Amendment of Schedule 2) (No. 2) Notice 2004 (L.N. 67)**

16. This Notice adds 2 organizations, namely, Hong Kong Federation of Handicapped Youth and The Society of Rehabilitation and Crime Prevention, Hong Kong, to the list of training bodies that may provide or conduct retraining courses for the purposes of the Employees Retraining Ordinance (Cap. 423).

### **PART III COMMENCEMENT NOTICES**

#### **Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 (94 of 1997)**

#### **Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 (94 of 1997) (Commencement) Notice 2004 (L.N. 70)**

17. This Notice appoints 1 July 2004 as the day on which section 13 of the Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 (94 of 1997) ("the 1997 Ordinance") will come into operation.

18. Section 13 of the 1997 Ordinance amends section 74 of the Legal Practitioners Ordinance (Cap. 159) to add 4 members to the Costs Committee which has the power to make rules regulating solicitors' costs in respect of non-contentious business. One of these new members is a member of the Law Society of Hong Kong nominated by the Society and approved by the Chief Justice, and the other three are persons appointed by the Chief Executive who, in the Chief Executive's opinion, can represent the interests of consumers of legal services. An explanation given by the Administration for not bringing the provision into operation at an earlier date is at **Annex** for Members' reference.

19. The remaining provisions of the 1997 Ordinance that have not been brought into operation are those relating to solicitor corporations and foreign lawyer corporations.

#### **Noise Control Ordinance (Cap. 400)**

#### **Noise Control (Amendment) Ordinance 2002 (19 of 2002) (Commencement) Notice 2004 (L.N. 71)**

20. This Notice appoints 8 October 2004 as the day on which the Noise Control (Amendment) Ordinance 2002 (19 of 2002) will come into operation.

21. The Amendment Ordinance provides that where an offence under the Noise Control Ordinance (Cap. 400) has been committed by a body corporate, certain directors and officers of the body corporate shall be guilty of the like offence where the body corporate commits a further like offence at the same site. It also empowers the Noise Control Authority to issue codes of practice to provide industries with practical guidance of good management practice.

#### **Law Amendment and Reform (Miscellaneous Provisions) Ordinance 2003 (14 of 2003)**

#### **Law Amendment and Reform (Miscellaneous Provisions) Ordinance 2003 (14 of 2003) (Commencement) Notice 2004 (L.N. 72)**

22. This Notice appoints 1 September 2004 as the day on which sections 7 and 8 of the Law Amendment and Reform (Miscellaneous Provisions) Ordinance 2003 (14 of 2003) ("the 2003 Ordinance") will come into operation.

23. The 2003 Ordinance amends various Ordinances including the Legal Practitioners Ordinance (Cap. 159), the Conveyancing and Property Ordinance (Cap. 219), the Costs in Criminal Cases Ordinance (Cap. 492), the Labour Tribunal Ordinance (Cap. 25) and the Small Claims Tribunal Ordinance (Cap. 338). Section 7 of the 2003 Ordinance amends the Legal Practitioners Ordinance to provide for the establishment of a Standing Committee on Legal Education and Training in place of the current Advisory Committee on Legal Education. The primary function of the Standing Committee on Legal Education and Training is to keep under review, evaluate and assess the system and provision of legal education and training in Hong Kong. Section 8 provides for the dissolution of the Advisory Committee on Legal Education at the commencement of section 7 of the 2003 Ordinance.

24. The remaining provisions of the 2003 Ordinance that have not been brought into operation are those which amend the Legal Practitioners Ordinance to -

- (a) provide for a new requirement for solicitors to complete a mandatory practice management course in order to apply for an unconditional practising certificate for the first time;
- (b) provide for matters relating to the appointment, and the issue of practising certificates, of notaries public; and
- (c) provide for the class of persons in a solicitor corporation or a foreign lawyer corporation that could be investigated for misconduct by the Law Society of Hong Kong.

25. Except for L.N. 64, the relevant LegCo Panels have not been consulted on the above subsidiary legislation. No difficulties relating to the legal and drafting aspects of all of the above items of subsidiary legislation have been identified.

Encl.

Prepared by

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4 May 2004

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4 May 2004

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(Fax No: 2868 2813)

Dear Mr Ma,

**Commencement of section 13 of the Legal Services Legislation  
(Miscellaneous Amendments) Ordinance 1997**

A commencement notice was gazetted on Friday, 30 April 2004, to bring the above section into operation on 1 July 2004. The section amends the composition of the Costs Committee established under the Legal Practitioners Ordinance.

I am writing to explain why the section was not brought into operation at an earlier date.

**The 1997 Ordinance**

As you may recall, the Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 (“the 1997 Ordinance”) contained a number of reforms relating to the legal profession that had been promoted by the last Attorney General. The original Bill contained a proposal to abolish scale fees for conveyancing, but that proposal was not enacted into law. However, a related proposal, to amend the constitution of the Costs Committee, was (after

amendment) enacted. The resulting section is the one that is now being brought into operation.

### **The Costs Committee**

The Costs Committee is established under section 74 of the Legal Practitioners Ordinance (Cap 159). It has the power to make rules in respect of fees for solicitors' non-contentious work. At present, the following rules are in force.

(1) *Solicitors (General) Costs Rules*

These provide for conveyancing scale fees; the fees for copying, certifying and producing certain documents, for administering oaths, affidavits and affirmation, and for marking exhibits; and the "fair and reasonable" principle for fees for other non-contentious business.

(2) *Solicitors (Trade Marks and Patents) Costs Rules*

These prescribe the costs for specified non-contentious trade mark and patent business (e.g. application for registration of a trade mark); and the "fair and reasonable" principle for other non-contentious business.

### **Membership of the Costs Committee**

Before the commencement of section 13 of the 1997 Ordinance, the Costs Committee consisted of –

- (a) a judge of the Court of First Instance appointed by the Chief Justice as Chairman;
- (b) the Registrar or a deputy registrar of the High Court;
- (c) for the purposes of the Solicitors (General) Costs Rules, the Director of Lands, or his representative approved by the Chief Justice;
- (ca) for the purposes of the Solicitors (Trade Marks and Patents) Costs Rules, the Director of Intellectual Property, or his representative approved by the Chief Justice; and

- (d) the President and one of the Vice-Presidents of the [Law] Society and one member of the Society nominated by the Society and approved by the Chief Justice.

Its quorum was the Chairman and two members under category (d) above.

After section 13 comes into force, category (d) above will read –

- “(d) the President and one of the Vice-Presidents of the [Law] Society and two members of the Society nominated by the Society and approved by the Chief Justice.”

In addition, the following new category of members will be added –

- “(e) 3 persons appointed by the [Chief Executive] who, in the [Chief Executive’s] opinion, can represent the interests of consumers of legal services.”

None of the persons appointed under category (e) may be a legal practitioner or a public officer. The quorum for a meeting will be the Chairman and 5 members.

### **Deferred commencement**

Section 1(2) of the 1997 Ordinance provides that section 13 shall come into operation on a day to be appointed by the Secretary for Justice by notice in the Gazette.

The commencement of section 13 has been periodically reviewed since its enactment. The main reasons for not bringing the section into operation until now are as follows.

### **1997-2000 :**

#### **Scale fees for conveyancing**

When the 1997 Ordinance was passed, the Costs Committee was in the process of considering revision of scale fees for conveyancing work that had been proposed by the Law Society.

Although the proposed legislative abolition of scale fees for conveyancing was not enacted, in September 1997 the Law Society announced that it accepted that solicitors could, under the unamended law, agree to conveyancing fees that were lower than the scale fees. It then proposed that the scales set out in the Solicitors' (General) Costs Rules should be amended and should apply in default of any agreement made by a solicitor and his client to disapply the scales.

In April and May 1998, the Law Society asked the Department of Justice to defer the commencement of section 13 of the 1997 Ordinance. It proposed that the Costs Committee should be allowed more time in which to conclude its detailed analysis of the proposals before introducing new members who would not be conversant with any of the background or detailed calculations involved. After monitoring developments, and after receiving another request from the Law Society in June 1998 for further time, the Department of Justice decided in January 1999 to allow further time for the Costs Committee to finish its work.

### **1998-2003 :**

#### **Solicitors (Trade Marks and Patents) Costs Rules**

Following the enactment in June 1997 of the Registered Designs Ordinance (Cap 522) and the Patents Ordinance (Cap 514), proposed amendments to the Solicitors (Trade Marks and Patents) Costs Rules were approved in principle by the Costs Committee in February 1998.

Drafting instructions were issued in September 1998 to prepare the necessary amendments to those Rules. A series of draft amendments were prepared the following year. In view of the apparent plan by the Costs Committee to finalize and formally promulgate the amendments, the Department of Justice decided to further defer the commencement of section 13 of the 1997 Ordinance.

Although correspondence continued on this subject, it was not until September 2003 that the Department of Justice became aware that the draft amendments might not be proceeded with. One reason for this was that the new Trade Marks Ordinance (Cap 559), which came into effect in April 2003, necessitates a further review of the Costs Rules in respect of trade marks.

### **Recommending additional members**

When it emerged, in the autumn of 2003, that section 13 could be brought into operation without prejudicing the ongoing work of the Costs Committee, the Department of Justice took steps to identify possible additional members of the committee. The intention was that the Chief Executive should be in a position to make appointments when the section is brought into operation.

The Secretary for Justice now considers that the section should be brought into operation.

### **No Rules made in the interim**

Although the deferment in commencement was to prevent any interference with ongoing work of the Costs Committee, the committee has not, in fact, made any amendments to the Costs Rules since section 13 was enacted.

### **Comments**

I hope this letter clarifies the decision to bring section 13 into effect at this time.

Yours sincerely,

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