

立法會
Legislative Council

LC Paper No. LS90/04-05

**Paper for the House Committee Meeting
on 8 July 2005**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 30 June 2005**

Date of tabling in LegCo : 6 July 2005

Amendment to be made by : 2nd meeting of LegCo in the next session (or the 1st meeting held not earlier than 21 days thereafter if extended by resolution)

PART I MISCELLANEOUS AMENDMENTS

Securities and Futures Ordinance (Cap. 571)

Securities and Futures (Investor Compensation–Levy) (Amendment) Rules 2005 (L.N. 108)

Securities and Futures (Investor Compensation–Levy) (Amendment) Rules 2005 (“the Amendment Rules”) are made by the Chief Executive in Council under section 244(1) of the Securities and Futures Ordinance (Cap. 571) to amend the Securities and Futures (Investor Compensation–Levy) Rules (Cap. 571 sub. leg. AB) (“the Principal Rules”) to:

- (a) introduce an automatic levy triggering and suspension mechanism (“the Mechanism”) for the Investor Compensation Fund (“ICF”) by adding a new Part 5 to the Principal Rules under which:
 - (i) the investor compensation levies (“the Levies”), currently set at 0.002% of the consideration for a sale and purchase of securities and \$0.5 (\$0.1 for smaller size contracts) for a sale and purchase of a futures contract, will be imposed if the net asset value of the ICF falls below \$1 billion;
 - (ii) the Levies will be suspended if the net asset value of the ICF exceeds \$1.4 billion;

- (iii) the Securities and Futures Commission (“SFC”) is required to appoint an auditor to audit the accounts of the ICF if the net asset value of the ICF exceeds \$1.4 billion or is below \$1 billion, subject to certain exceptions;
 - (iv) the SFC will inform the public and the market by way of an exemption notice or a termination of exemption notice published in the Gazette of any changes to the prevailing levy arrangements including the date for implementation of such changes;
 - (v) the implementation dates for the imposition and suspension of the Levies will be set at least two months and one month respectively after the date of the publication of the termination of exemption notice and the exemption notice (collectively called “the Notices”);
 - (vi) the Commission may refrain from publishing the Notices after consultation with the Financial Secretary; and
 - (vii) the Notices are not subsidiary legislation.
- (b) provide that the Stock Exchange Company and the Futures Exchange Company are not required to furnish a report under section 20(1) of the Principal Rules in respect of any 12 month period ending on 31 March in a year if there is no transaction concerning the Levies during that period.

2. Members may refer to the LegCo Brief issued by the Financial Services Branch, Financial Services and the Treasury Bureau on 29 June 2005 (Ref: SUB14/2 (2005) Pt. 7) and the Paper for the Panel on Financial Affairs (“the Panel”) on Review of the Level and Funding of the Investor Compensation Fund, Broker Defaults since 1998 and the Operation of the Investor Compensation Arrangements issued by the SFC on 10 December 2004 (Ref: LC Paper No. CB(1)458/04-05(04)) for background information.

3. At its meeting on 17 December 2004, the Panel was consulted on the Mechanism. Members indicated support in general for the Mechanism and also noted that the SFC would consult the public on the proposal. Members may refer to the minutes of the Panel meeting on 17 December 2004 (Ref: LC Paper No. CB(1)1017/04-05) for details.

4. According to the LegCo Brief, the SFC conducted a six-week public consultation after the Panel meeting and the majority of the respondents were supportive of the proposal.

5. The Amendment Rules shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

6. No difficulties relating to the legal and drafting aspects of the Amendment Rules have been identified.

Buildings Ordinance (Cap. 123)

Building (Planning) (Amendment) Regulation 2005 (L.N. 110)

7. Building (Planning) (Amendment) Regulation 2005 (“the Amendment Regulation”) is made by the Secretary for Housing, Planning and Lands under section 38 of the Buildings Ordinance (Cap. 123) to amend the Building (Planning) Regulations (Cap. 123 sub. leg. F) (“the Principal Regulations”) to:

- (a) clarify the site classification by stating clearly the circumstances that must be present with respect to a street if a site is to be regarded as abutting on that street for the purpose of site classification. The definitions of “class A site”, “class B site” and “class C site” are modified in the light of the new criteria and, together with regulation 2(2), moved to form a new regulation in Part III of the Principal Regulations; and
- (b) amend regulation 19 to clarify that the maximum site coverage and maximum plot ratio permitted in respect of a building or buildings on a “class A site”, “class B site” or “class C site” are to be determined in accordance with regulations 20 and 21 respectively, and that the height of a building or buildings and the maximum site coverage and maximum plot ratio permitted in respect of a building or buildings on any other site are to be determined by the Building Authority.

8. Members may refer to the LegCo Brief issued by the Housing, Planning and Lands Bureau (“the Bureau”) on 30 June 2005 (Ref: HPLB(B) 30/30/112) and the Information Paper for the Panel on Planning, Lands and Works (“the Panel”) on Proposed Amendments to the Building (Planning) Regulations - Clarification on the Criteria of Street for Site Classification Purpose issued by the Bureau in May 2005 (Ref: CB(1)1559/04-05(01)) (“the Information Paper”) for background information.

9. The Director of Audit recommended in the Report of the Director of Audit No. 37 (Chapter 7) published in October 2001 that the Director of Buildings should take actions to remove the uncertainties in the Principal Regulations concerning the definition of street for site classification. In response, the Government agreed to take forward the recommendations in the Audit Report and

amend the Principal Regulations as appropriate. In the Report of the Public Accounts Committee (“PAC”) published in February 2002, the PAC acknowledged that the Director of Buildings had undertaken to submit to the Legislative Council the proposed amendment of the Principal Regulations to refine the definition of street in June 2002 and wished to be kept informed of the progress made in amending the Principal Regulations to refine the definition of street.

10. According to the LegCo Brief, the Administration has consulted the Building Sub-Committee of the Lands and Building Advisory Committee. Members of the sub-committee generally supported the proposal set out in the Amendment Regulation. The Administration has also circulated the Information Paper to the Panel in May 2005. No query was raised.

11. The Amendment Regulation shall come into operation on 31 December 2005.

12. No difficulties relating to the legal and drafting aspects of the Amendment Regulation have been identified.

Pilotage Ordinance (Cap. 84)

Pilotage (Dues) (Amendment) Order 2005 (L.N. 111)

13. The Order was made by the Pilotage Authority under section 22 of the Pilotage Ordinance (Cap. 84) after consultation with the Pilotage Advisory Committee to amend the Pilotage (Dues) Order (Cap. 84 sub. leg. D) to:

- (a) increase the standard pilotage dues and some additional pilotage dues;
- (b) provide for an additional pilotage due payable for pilotage service that requires a pilot to board or disembark from a ship north of a straight line drawn from Black Point to Lung Kwu Chau Light;
- (c) increase the pilotage dues payable on cancellation of the engagement of a pilot later than a specified time; and
- (d) update a reference to tropical cyclone warning signal.

14. Members may refer to the LegCo Brief issued by the Economic Development and Labour Bureau (“the Bureau”) on 29 June 2005 (Ref: MA 50/1) and the Paper for the Panel on Economic Services (“the Panel”) on Pilotage (Dues) (Amendment) Order 2005 issued by the Bureau on 17 June 2005 (Ref: LC Paper No. CB(1)1809/04-05(01)) for background information.

15. According to the LegCo Brief, the proposed amendments as set out in

the Order were endorsed by the Pilotage Advisory Committee in April 2005. The Administration also consulted and obtained support from the Panel on 27 June 2005.

16. The Order shall come into operation on 18 November 2005.

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

PART II AMENDMENT TO PRIVATE ORDINANCE

St. John's College Ordinance (Cap. 1089)

Resolution of the Members of the Council of the College of St. John the Evangelist (L.N. 109)

18. The Resolution was passed by the members of the council of the College of St. John the Evangelist ("the Council") on 6 June 2002 in accordance with section 11 of the St. John's College Ordinance (Cap. 1089) ("the Ordinance") to amend certain provisions of the constitution of the Council ("the Constitution") as set out in the Schedule to the Ordinance to:

- (a) alter the appointed members of the Council by:
 - (i) replacing the four principals of Anglican secondary schools in the Diocese of Victoria, Hong Kong appointed by the Bishop of Victoria, Hong Kong by four principals of Hong Kong Sheng Kung Hui Secondary Schools appointed by the Standing Committee of the General Synod of the Province of Hong Kong Sheng Kung Hui; and
 - (ii) adding two representatives appointed by the Standing Committee of the General Synod of the Province of Hong Kong Sheng Kung Hui.
- (b) change the President of the Council from the Bishop of Victoria to a person appointed by the Council.

19. The amendments to the Constitution were approved by the Chief Executive in Council on 12 April 2005 and, in accordance with section 11 of the Ordinance, became effective when they were published in the Gazette on 30 June 2005.

20. The Panel on Education has not discussed the Resolution.

21. In view of the length of time that had elapsed before the amendments

came into operation, we asked the Administration to clarify if any de facto changes to the operation of the Constitution were made during that time. The Administration has confirmed in writing that no such change has been made.

22. No difficulties relating to the legal and drafting aspects of the Resolution have been identified.

Prepared by

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