

立法會
Legislative Council

LC Paper No. LS18/04-05

**Paper for the House Committee Meeting
on 26 November 2004**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 19 November 2004**

Date of Tabling in LegCo : 24 November 2004

Amendment to be made by : 15 December 2004 (or 12 January 2005 if extended by resolution)

PART I AGREEMENTS ON AVOIDANCE OF DOUBLE TAXATION

Inland Revenue Ordinance (Cap. 112)

**Specification of Arrangements (Government of the Federal Republic of Germany)
(Avoidance of Double Taxation on Shipping Income) Order (L.N. 182)**

**Specification of Arrangements (Government of the Kingdom of Norway)
(Avoidance of Double Taxation on Income from Shipping Operation) Order
(L.N. 183)**

**Specification of Arrangements (Government of the Republic of Singapore)
(Avoidance of Double Taxation on Income from Shipping or Aircraft Operations)
Order (L.N. 184)**

**Specification of Arrangements (Government of the Democratic Socialist Republic
of Sri Lanka) (Avoidance of Double Taxation on Income from Shipping and Air
Transport) Order (L.N. 185)**

Under section 49 of the Inland Revenue Ordinance (Cap. 112) (“the Ordinance”), the Chief Executive in Council may, by order, declare that arrangements have been made with the Government of any territory outside Hong Kong with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory.

2. In 2003 and 2004, the HKSAR Government signed Agreements with the Governments of the Federal Republic of Germany, the Kingdom of Norway, the Republic of Singapore and the Democratic Socialist Republic of Sri Lanka respectively for the avoidance of double taxation on income from shipping and/or air transport. The Chief Executive in Council made these four Orders under section 49 of the Ordinance on 16 November 2004 to give effect to the Agreements. The Agreements will enter into force on the dates as provided in the Agreements.
3. Members may refer to the respective LegCo Briefs (File Ref.: FIN CR3/10/2041/46, FIN CR24/10/2041/46, FIN CR6/10/2041/46 and FIN CR75/99) dated 19 November 2004 and issued by the Financial Services and the Treasury Bureau for background information.
4. The relevant trades such as the Hong Kong Shipowners Association, the Maritime Industry Council and Hong Kong airlines have been consulted and they welcome the Agreements.
5. The four Orders have not been referred to the Panel on Financial Affairs.

PART II TRADE DESCRIPTIONS

Trade Descriptions Ordinance (Cap. 362)

Trade Descriptions (Country of Manufacture) (Textile Made-up Articles) Order (L.N. 186)

Trade Descriptions (Place of Manufacture) (Textile Made-up Articles) Notice (L.N. 187)

6. The Order (L.N. 186) is made by the Commissioner of Customs and Excise under section 2(2)(b)(ii) of the Trade Descriptions Ordinance (Cap. 362) to specify that in relation to certain textile made-up articles, the country in which either the “fabric formation” or the “cutting and sewing” is done is the country in which the articles are regarded as having been the country of manufacture or production.
7. The textile made-up articles to which the Order applies are specified in a Schedule to the Order by reference to the item code in the Hong Kong Imports and Exports Classification List (Harmonized System). They include certain categories of shawls, scarves, ties, bow ties, bags, curtains, pillow covers, bed sheets, table linen but not the textile made-up articles to which the Trade Descriptions (Place of Manufacture) (Textile Made-up Articles) Notice (L. N. 187 of 2004) applies.
8. The Notice (L.N.187) specifies that certain textile made-up articles (including certain sub-categories of table linen, toilet linen, kitchen linen, curtain etc.)

should be regarded as having Hong Kong origin and may enjoy a zero tariff under the Mainland and Hong Kong Closer Economic Partnership Arrangement ("CEPA") when they are exported from Hong Kong to the Mainland under the Arrangement.

9. The Administration has consulted the Panel on Commerce and Industry at its meeting on 16 November 2004. Members may refer to LC Paper No. CB(1)206/04-05(03) submitted by the Administration to the Panel for background information. According to the Administration, the Hong Kong origin rule for textile made-up articles was revised from "cutting of fabric and sewing of cut pieces into products" to "either fabric forming or cutting of fabric and sewing of cut pieces into products" in 2001 because both processes can be considered as principal manufacturing processes. The Textiles Advisory Board and the Certification Co-ordination Committee were consulted in 2001 on the revision of the origin rules and raised no objection. The Administration now considers it appropriate to make an order under section 2(2)(b)(ii) of the Ordinance to achieve greater clarity and certainty regarding the application of the Ordinance to such articles. At the Panel meeting, members supported the proposed subsidiary legislation in principle.

10. The two pieces of subsidiary legislation shall come into operation on 1 January 2005. Should Members resolve to extend the negative vetting period until 12 January 2005, they would come into operation earlier than the expiry of the extended negative vetting period. According to the Administration, it has not been able to introduce the proposed subsidiary legislation earlier because the legal text on further trade liberalization under CEPA II was only signed with the Mainland on 27 October 2004.

11. On the Order, it is noted that while there is a proposal to amend the reference to "country" in section 2(2)(b)(ii) of the Ordinance to "place" in the Trade Descriptions (Amendment) Bill 2004, this Order which is made under that section still retains the reference to "country of manufacture". To ensure consistency, the Administration has agreed to amend the reference to "country of manufacture" to "place of manufacture" by adding appropriate consequential amendments to the Bill.

PART III COMMENCEMENT NOTICES

Deposit Protection Scheme Ordinance (Cap. 581)

Deposit Protection Scheme Ordinance (Cap. 581) (Commencement) (No. 2) Notice 2004 (L.N. 188)

12. The Secretary for Financial Services and the Treasury has appointed 14 January 2005 as the day on which sections 40 to 45, 52 and 55 (in so far as it relates to section 5 of Schedule 5 to the Ordinance) of, and Schedule 3 and section 5 of Schedule 5 to, the Deposit Protection Scheme Ordinance (Cap. 581) shall come into

operation. These are mainly provisions relating to the Deposit Protection Appeals Tribunal.

District Court Ordinance (Cap. 336)

Rules of the District Court (Amendment) Rules 2004 (Commencement) Notice 2004 (L.N. 189)

13. The Chief Justice has appointed 14 January 2005 as the day on which the Rules of the District Court (Amendment) Rules 2004 (L.N. 94 of 2004) shall come into operation. The object of these Rules is to apply the threshold of HK \$150,000 for determining whether costs can be allowed in respect of counsel appearing for a plaintiff in the District Court to cases in which counsel appears for a party to a counterclaim, third party proceedings or other similar proceedings.

14. The Rules were gazetted in May 2004. At the meeting of the House Committee on 21 May 2004, Members noted the amendment Rules and had not raised any queries on them. No subcommittee was formed to study the Amendment Rules.

15. No difficulties in relation to the legal and drafting aspects of any of the subsidiary legislation have been identified.

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23 November 2004