

立法會

Legislative Council

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**Paper for the House Committee Meeting
on 23 February 2007**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 16 February 2007**

Date of tabling in LegCo : 28 February 2007

Amendment to be made by : 28 March 2007 (or 18 April 2007 if
extended by resolution)

PART I NEW AND AMENDMENT REGULATIONS

Companies Ordinance (Cap. 32)

Companies (Revision of Accounts and Reports) Regulation (L.N. 24)

The Companies (Revision of Accounts and Reports) Regulation (the Regulation) is made under section 359A(3) of the Companies Ordinance (Cap. 32) (the Ordinance). The principal object of the Regulation is to provide for the application of the Ordinance in relation to-

- (a) accounts, directors' reports and summary financial reports that have been revised under section 141E of the Ordinance; and
- (b) accounts and directors' reports that have been revised by "oversea companies" or "non-Hong Kong companies" under section 336A of the Ordinance.

2. Sections 141E and 336A of the Ordinance are introduced into the Ordinance by sections 62 and 63 of the Financial Reporting Council Ordinance

(Cap. 588) (FRCO) (sections 62 and 63 to come into operation on 20 April 2007 by L.N. 27 of 2007, paragraphs 14 to 16 below) respectively to empower directors of Hong Kong companies (private or non-private), "oversea companies" (or "non-Hong Kong companies" in the future) to revise accounts (and consequentially the relevant summary financial report and directors' report) where it appears to the directors that the original accounts did not comply with the Ordinance.

3. The Regulation is divided into five parts-
 - (a) Part 1 contains the preliminary provisions and definitions;
 - (b) Part 2 deals with accounts, directors' reports and summary financial reports regarding Hong Kong companies (private or listed) that have been revised under section 141E of the Ordinance. In particular, it-
 - (i) provides for matters and information to be included in the accounts, directors' reports and summary financial reports so revised and the procedures for their approval;
 - (ii) requires a company to distribute any accounts or directors' report so revised and requires the directors of a company to lay before a general meeting of the company any accounts or directors' report so revised;
 - (iii) creates the offences of non-compliance with the Ordinance in the revision of the accounts, directors' reports and summary financial reports;
 - (c) Parts 3 and 4 contain similar provisions to deal with accounts that have been revised under section 336A of the Ordinance applying to "oversea companies" (or non-Hong Kong companies" in the future). They require an "oversea company" (or "non-Hong Kong company") to include in any accounts so revised certain information on the revision and to deliver to the Registrar of Companies for registration a copy of the revised accounts, auditors' report on the revised accounts and the revised directors' report;

- (d) Part 5 contains miscellaneous provisions, including defence for certain charges under the Regulation.

4. According to the LegCo Brief issued by the Financial Services and the Treasury Bureau dated 14 February 2007 (File Ref. FSB/C15/3/2), section 359A(3) of the Ordinance (introduced by section 65 of FRCO) was part and parcel of FRCO that had undergone public consultation twice in September 2003 and February 2005. In November 2006, the stakeholders in the accounting and legal professions, market regulators and operators, chambers of commerce, academic institutions and other professional bodies were consulted on the draft provisions of the Regulation. The respondents generally affirmed their support of the intent of the Regulation. Members may refer to the said LegCo Brief for further information. The Panel on Financial Affairs has not been consulted on the Regulation.

5. The Regulation shall come into operation on 20 April 2007, except Part 4, which shall come into operation on the day on which section 64 of FRCO comes into operation.

6. The Legal Service Division is continuing the scrutiny of the Regulations and will seek clarification from the Administration on certain drafting points. A further report will be made, if necessary.

Import and Export Ordinance (Cap. 60)

Import and Export (Fees) (Amendment) Regulation 2007 (L.N. 25)

7. The Import and Export (Fees) (Amendment) Regulation (the Amendment Regulation) is made under section 31 of the Import and Export Ordinance (Cap. 60) to amend Regulation 2 of and the Schedule to the Import and Export (Fees) Regulations (Cap. 60 sub. leg. B). Textiles traders registered under the Textiles Trader Registration Scheme (TTRS) are required to pay an annual registration fee. They may then lodge textile notifications either in paper or electronic mode at the same costs (\$0.5) regarding import and export of textiles, which are regulated by the Import and Export (General) Regulations (Cap. 60 sub. leg. A) (the Regulations).

8. The Amendment Regulation seeks to reduce the annual fee payable on or after the commencement date of the Amendment Regulation by a person

who is registered as a textiles trader under TTRS under the Regulations from \$2,825 to \$718 and to impose a new fee of \$3.8 for each paper notification lodged on top of the existing charge of \$0.5 for each paper form. However, the cost of lodging an electronic notification in the form of a message fee of \$0.5 remains unaffected. The purpose is to provide financial incentive for textiles traders to switch to the use of the electronic service. The Amendment Regulation will come into operation on a day to be appointed by the Director-General of Trade and Industry by notice published in the Gazette.

9. The Textiles Advisory Board and the Textile Council have indicated their support of the proposed amendments. The Panel on Commerce and Industry was consulted at its meeting on 21 November 2006 regarding the proposed amendments and the Panel was in principle supportive of the proposal. According to the LegCo Brief issued by the Commerce, Industry and Technology Bureau dated 14 February 2007 (File Ref. CIB 89/62/4 (06) VII), there was a survey of over 6,000 small and medium enterprises which indicated that those surveyed expressed no objection to the proposal. Members may refer to the said LegCo Brief for further information.

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

PART II COMMENCEMENT NOTICES

Companies Ordinance (Cap. 32)

Companies (Amendment) Ordinance 2004 (Commencement) Notice 2007 (L.N. 26)

11. The Companies (Amendment) Ordinance (Ordinance 30 of 2004) (the Ordinance) was enacted on 9 July 2004. Parts of the Ordinance have been brought into operation by L.N. 154 of 2004 and L.N. 82 of 2005. By this Notice, the Secretary for Financial Services and the Treasury has appointed 20 April 2007 as the day on which the following provisions of the Ordinance shall come into operation-

- (a) section 3 (insofar as it relates to sections 2, 3 (insofar as it relates to the repeal of paragraph 5A of the Companies (Forms) Regulations (Cap. 32 sub. leg. B)) and 4 of Part 2 of Schedule 4);

- (b) sections 2, 3 (insofar as it relates to the repeal of paragraph 5A of the Companies (Forms) Regulations (Cap. 32 sub. leg. B)) and 4 of Part 2 of Schedule 4.

12. The remaining parts of the Ordinance (concerning non-Hong Kong companies) have not yet been brought into operation. The Administration intends to bring them into operation later this year.

13. Members may find further information from the Report of the Bills Committee on Companies (Amendment) Bill 2003 (LC Paper No. CB(1) 2264/03-04).

Financial Reporting Council Ordinance (Cap. 588)

Financial Reporting Council Ordinance (Commencement) Notice 2007 (L.N. 27)

14. The Financial Reporting Council Ordinance (Cap. 588) (FRCO) was enacted on 13 July 2006. By L.N. 204 of 2006, parts of FRCO have already been brought into operation.

15. By this Notice, the Secretary for Financial Services and the Treasury has appointed 20 April 2007 as the day on which sections 62, 63 and 66 of FRCO shall come into operation. Sections 62 and 63 introduce sections 141E and 336A to the Companies Ordinance (Cap. 32). Section 66 amends the Twelfth Schedule to the Companies Ordinance regarding punishment of offences under the new section 141E(4). The Administration intends to bring the remaining provisions of FRCO into operation when the Financial Reporting Council is ready to come into operation.

16. Members may find further information from the Report of the Bills Committee on Financial Reporting Council Bill (LC Paper No. CB(1) 1944/05-06).

**Legal Practitioners Ordinance (Cap. 159)
Legal Practitioners (Risk Management Education) (Amendment) Rules
2006 (Commencement) Notice (L.N. 28)**

17. The Legal Practitioners (Risk Management Education) (Amendment) Rules (L.N. 261 of 2006) were gazetted on 1 December 2006 to amend the Legal Practitioners (Risk Management Education) Rules (Cap. 159 sub. leg. Z). The Amendment Rules empower The Law Society of Hong Kong to grant exemption to persons to attend risk management education courses, which solicitors, trainee solicitors and foreign lawyers are required to attend. By this Notice, the President of The Law Society of Hong Kong has appointed 1 March 2007 as the day on which the Amendment Rules shall come into operation.

**Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525)
Mutual Legal Assistance in Criminal Matters (Poland) Order
(Commencement) Notice (L.N. 29)**

18. The Mutual Legal Assistance in Criminal Matters (Poland) Order (Cap. 525 sub. leg. T) (the Poland Order) was moved by the Secretary for Security on 8 March 2006. The Poland Order sets out the scope and procedures in relation to the provision of mutual legal assistance in criminal matters applicable between Hong Kong and Poland, the modifications to the Mutual Legal Assistance in Criminal Ordinance (Cap. 525) and safeguards of the rights of persons involved in criminal proceedings. A subcommittee set up to examine the provisions of the Poland Order supported the moving of the Poland Order. Members may refer to the report of the subcommittee dated 11 May 2006 for further information (LC Paper No. CB(2) 1947/05-06).

19. By this Notice, the Secretary for Security has appointed 28 February 2007 as the day on which the Poland Order shall come into operation.

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