

立法會
Legislative Council

LC Paper No. LS76/07-08

**Paper for the House Committee Meeting
on 25 April 2008**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 18 April 2008**

Date of tabling in LegCo : 23 April 2008

Amendment to be made by : 21 May 2008 (or 11 June 2008 if extended by resolution)

PART I CIVIL AVIATION ORDINANCE

Civil Aviation Ordinance (Cap. 448)

Air Navigation (Hong Kong) Order 1995 (Amendment) Order 2008 (L.N. 77)

L.N. 77 amends the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) (1995 Order) to implement the latest requirements and recommended practices of the International Civil Aviation Organization (ICAO) and the applicable international practices in relation to airworthiness, aircraft equipment, safety management, data preservation and personnel licensing.

2. L.N. 77 also provides for the necessary provisions to deal with the case where there is a transfer of the functions and duties under Article 83 bis of the Convention on International Civil Aviation (the Chicago Convention). The international standards and recommended practices adopted by the ICAO are contained in the Annexes to the Chicago Convention.

3. L.N. 77 also removes certain obsolete references and provisions and rectifies certain textual errors in the 1995 Order.

4. Members may refer to the LegCo Brief (ref: THB(T)CR 15/951/49) issued by the Transport and Housing Bureau on 16 April 2008 for the background about L.N. 77. The Panel on Economic Services (now renamed as Panel on Economic Development) was consulted on the proposals to implement the latest requirements and recommended practices of ICAO and other related provisions at its meeting held on 18 July 2007. Members supported the legislative proposals in general.

5. L.N. 77 shall come into operation on a day to be appointed by the Director-General of Civil Aviation by notice published in the Gazette.

PART II FUGITIVE OFFENDERS

Fugitive Offenders Ordinance (Cap. 503)

Fugitive Offenders (Transnational Organized Crime) Order (L.N. 78)

6. The Fugitive Offenders (Transnational Organized Crime) Order (the Order) is made by the Chief Executive in Council under section 3 of the Fugitive Offenders Ordinance (Cap. 503) (the Ordinance). The Ordinance provides for the surrender to certain places outside Hong Kong of persons who are wanted for prosecution, or for the imposition or enforcement of a sentence, in respect of certain offences against the laws of those places. It also provides for the treatment of persons wanted for prosecution, or for the imposition or enforcement of a sentence, in respect of certain offences against the law of Hong Kong who are surrendered from certain places outside Hong Kong.

7. The Central People's Government of the People's Republic of China has ratified the United Nations Convention against Transnational Organized Crime (the Convention). The Convention entered into force for Hong Kong on 27 September 2006.

8. The objective of the Order is to apply as between Hong Kong and the places outside Hong Kong to which the Convention relates the procedures for the surrender of fugitive offenders set out in the Ordinance. Those procedures are subject to the limitations, restrictions, exceptions and qualifications contained in the terms of the Convention as recited in the Schedule to the Order.

9. Under section 3(9) of the Ordinance, the Chief Executive in Council shall not make the Order unless the arrangements for the surrender of fugitive offenders to which the Order relates are substantially in conformity with the provisions of the Ordinance. According to paragraph 9 of the LegCo Brief, the extradition arrangements under the Convention do so conform.

10. The Order is subject to a mechanism of scrutiny by the Legislative Council provided in sections 3(2) to (6) of the Ordinance. The mechanism is similar to that provided in section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), except that section 3(3) of the Ordinance restricts the power of the Legislative Council to only repeal the Order.

11. Members may refer to the LegCo Brief (File Ref.: SBCR 20/15/5691/74) issued by the Security Bureau in April 2008 for background information.

12. The Order will come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

13. At its meeting on 5 December 2006, the Panel on Security was briefed on the Administration's proposal to implement the extradition requirement under the Convention in Hong Kong. A member enquired why the Ordinance had not dealt with the requirements in Article 16 (in relation to extradition) of the Convention. The member also enquired whether Hong Kong would be forced, after enactment of the proposed subsidiary legislation, to surrender fugitive offenders to countries which had not entered into bilateral agreements with Hong Kong and where their legal systems or values might be different from those of Hong Kong, even though Hong Kong considered it inappropriate to do so. The Administration's replies are in the minutes of the Panel meeting (LC Paper No. CB(2)880/06-07 refers). The Administration responded that the requests should be dealt with in accordance with the domestic legislation of the requested party. The existing safeguards provided under the Ordinance would be unaffected by the proposed legislative amendments.

14. The Legal Service Division is seeking clarification from the Administration on a drafting matter. A further report will be submitted, if necessary.

15. According to the LegCo Brief, apart from the Order, a related item of subsidiary legislation, namely the Mutual Legal Assistance in Criminal Matters (Transnational Organized Crime) Order, will be made to implement the relevant articles of the Convention, subject to the approval of the Legislative Council. Notice to move the motion to approve the Order at the Legislative Council meeting on 7 May 2008 has been given by the Administration. A separate report on that Order (LC Paper No. LS75/07-08 refers) will be made to the House Committee meeting on 25 April 2008.

PART III TRADE DESCRIPTIONS

Trade Descriptions Ordinance (Cap. 362)

Trade Descriptions (Provision of Information on Natural Fei Cui) Order (L.N. 79)

Trade Descriptions (Provision of Information on Diamond) Order (L.N. 80)

Trade Descriptions (Provision of Information on Regulated Electronic Products) Order (L.N. 81)

Trade Descriptions (Marking) (Gold and Gold Alloy) (Amendment) Order 2008 (L.N. 82)

Trade Descriptions (Marking) (Platinum) (Amendment) Order 2008 (L.N. 83)

Trade Descriptions (Definition of Platinum) (Amendment) Regulation 2008 (L.N. 84)

Background

16. The above six items of subsidiary legislation are made to give effect to some of the Administration's proposals to strengthen the existing regulatory regime for the protection of consumers against malpractices in retail business. The other proposals have been introduced through the Trade Descriptions (Amendment) Bill

2007 which is currently scrutinized by the relevant Bills Committee and two items of subsidiary legislation made under the Trade Descriptions Ordinance (Cap. 362) (TDO), namely, the Trade Descriptions (Definition of Fei Cui and Natural Fei Cui) Regulation (L.N. 42 of 2008) and Trade Descriptions (Definition of Diamond) Regulation (L.N. 43 of 2008), both gazetted on 29 February 2008.

L.N. 79 to L.N. 83

17. Under section 4(1) of TDO, the Chief Executive in Council may by order require that any goods specified in the order shall be marked with or accompanied by any information or instruction relating to the goods, and subject to the provisions of the Ordinance, impose requirements for securing that the goods are so marked or accompanied, and regulate or prohibit the supply of goods with respect to which the requirements are not complied with.

18. L.N. 79 to L.N. 83 are made under section 4(1) of TDO to impose certain requirements on retailers of natural fei cui, diamond, gold, platinum and five types of electronic products with a view to providing greater protection to consumers.

19. L.N. 79 and 80 impose the following requirements on retailers of natural fei cui and diamond respectively:

- (a) to require retailers to issue to purchasers an invoice or receipt containing specified particulars, including the full name and address of the supplier, the price at which the article is supplied, the date of supply and a description of the article concerned;
- (b) to require retailers to retain a copy of the invoice or receipt for at least three years after the date of issue; and
- (c) to require retailers to display prominently a notice in the prescribed form setting out the meaning of the terms "natural fei cui" and "diamond" at the point of supply.

20. L.N. 81 requires any person who supplies any regulated electronic product in the course of trade or business at retail level to issue to purchasers an invoice or receipt containing specified particulars at the time of supply. "Regulated electronic product" is defined in section 2 of the Order to mean digital audio player, digital camcorder, digital camera, mobile phone or portable multimedia player. The particulars required to be included in the invoice or receipt include a description of the relevant electronic product, its core features, availability or otherwise of after-sale services and information relating to those after-sale services if such services are available. Similar to L.N. 79 and L.N. 80, L.N. 81 also requires retailers to retain a copy of the invoice or receipt so issued for at least three years.

21. At present, a person who supplies articles of gold or gold alloy and platinum in the course of trade or business is required under the Trade Descriptions

(Marking) (Gold and Gold Alloy) Order (Cap. 362 sub. leg. A) (the Gold Marking Order) and the Trade Descriptions (Marking) (Platinum) Order (Cap. 362 sub. leg. C) (the Platinum Marking Order) respectively to deliver to purchasers an invoice or receipt containing certain specified information. The supplier is also required to retain a copy of the invoice or receipt for a period of not less than three years after the date of issue.

22. L.N. 82 and L.N. 83 amend the Gold Marking Order and the Platinum Marking Order to enhance the protection to purchasers of articles of gold or gold alloy and platinum. The amendments include revising the Chinese equivalents of certain terms describing gold and platinum to avoid misunderstanding and requiring retailers to provide to purchasers further particulars regarding the articles of gold or gold alloy or platinum in the invoices or receipts.

23. Retailers who fail to comply with any of the requirements under the above subsidiary legislation commit an offence. The maximum penalty for the offence (other than the offence for failing to comply with the requirement to retain invoices and receipts) is a fine of \$500,000 and imprisonment for five years on conviction on indictment, and a fine of \$100,000 and imprisonment for two years on summary conviction. The maximum penalty for failing to comply with the requirement to retain the invoice or receipt for three years is a fine at level 2 (\$5,000) and imprisonment for one month.

L.N. 84

24. Section 33 of TDO empowers the Chief Executive in Council to make regulations to assign a definite meaning to any expression used in relation to any goods when the expression is used in the course of a trade or business as, or as part of, a trade description applied to the goods, or when the expression is used in the circumstances specified in the regulations. Once such a meaning is assigned to an expression, it shall be deemed for the purposes of the Ordinance to have the assigned meaning when it is so used.

25. L.N. 84, which is made under section 33 of TDO, amends various provisions of the Trade Descriptions (Definition of Platinum) Regulations (Cap. 362 sub. leg. B). These amendments include changing the Chinese translation of "platinum" to "白金" or "鉑金" and defining the fineness of platinum when "足白金" or "足鉑金" is used.

26. Members may refer to the LegCo Brief (File Ref.: CITB CR14/18/2) issued by the Commerce and Economic Development Bureau on 16 April 2008 for background information. According to paragraph 12 of the LegCo Brief, the Administration consulted 132 trade associations between August and September 2007 and 17 of them provided written comments, mostly in favour of the amendments proposed in the Trade Descriptions (Amendment) Bill 2007 and its subsidiary legislation.

27. The Panel on Economic Development was briefed at its meeting on 22 October 2007 on the outcome of the trade consultation and the Administration's legislative proposals (which included the proposals contained in the above subsidiary legislation) for strengthening consumer protection. While members supported the legislative proposals in general, some members expressed the view that the proposals should target at combating unscrupulous malpractices of a handful of retailers and should not affect the operation of honest traders.

28. In the course of scrutinizing the Trade Descriptions (Amendment) Bill 2007, the Bills Committee has raised queries on the provision relating to providing information on the availability or otherwise of after-sale services for goods. The Bills Committee was concerned whether retailers would also be required to state whether the services were subject to charges or otherwise. In reply, the Administration explained that such a requirement would be provided in the subsidiary legislation to be made under TDO. Members may wish to note that a similar requirement is imposed by L.N. 81 on retailers of five regulated electronic products.

29. L.N. 79 to L.N. 84 will come into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette.

30. The Legal Service Division is seeking clarification from the Administration on some technical issues relating to the above subsidiary legislation and on operational matters relating to L.N. 81, including whether there would be compliance difficulties for certain retailers of the electronic products concerned. A further report will be made upon receiving the Administration's reply.

PART IV PRESERVATIVES IN FOOD

Public Health and Municipal Services Ordinance (Cap 132)

Preservatives in Food (Amendment) Regulation 2008 (L.N. 85)

31. The use of preservatives and antioxidants is currently governed by the Preservatives in Food Regulations (Cap. 132 (sub. leg. BD)) (Cap. 132BD). L.N. 85 is made by the Director of Food and Environment Hygiene to amend Cap. 132BD with the aim to bringing the use of food additives (preservatives and antioxidants) in line with the current standards prescribed by the Codex Alimentarius Commission (Codex) established by the United Nations Food and Agriculture Organization and World Health Organization. The main provisions include –

- (a) amending the definitions of "preservative" and "antioxidant" with reference to the corresponding definitions adopted by Codex;
- (b) incorporating those preservatives and antioxidants and their respective permitted levels (as listed in Codex General Standard for Food Additives (GSFA) of Codex);

- (c) amending certain provisions to give recognition to the multi-functional property of the permitted preservatives and antioxidants; and
- (d) introducing a Food Category System based on that adopted by GSFA.

32. Members may refer to the LegCo Brief (ref: FH CR 3/3231/05) issued by the Food and Health Bureau in April 2008 for the background about L.N. 85.

33. The Panel on Food Safety and Environmental Hygiene was consulted on the relevant legislative proposals at its meetings held on 14 November 2006, 10 April 2007 and 13 November 2007. At the meeting held on 13 November 2007, a member expressed concerns about the unscrupulous practice of applying carbon monoxide to food to conceal its staleness. The Administration explained that carbon monoxide, which did not meet the definition of preservative and antioxidant under Cap. 132BD, would not be governed by the present legislative proposals. However, it was an offence under the Public Health and Municipal Services Ordinance (Cap. 132) for any person to provide food that was unfit for human consumption. Members raised no further queries about the proposed subsidiary legislation.

34. L.N. 85 shall come into operation on 1 July 2008. A 2-year transitional arrangement is provided under section 20 of L.N. 85 to the effect that it is legally in order for any single food item to comply with the standards set out in L.N. 85 or the existing Cap. 132BD.

PART V COMMENCEMENT NOTICES

The English Schools Foundation (Amendment) Ordinance (5 of 2008) The English Schools Foundation (Amendment) Ordinance 2008 (Commencement) Notice (L.N. 86)

35. L.N. 86 appoints 18 April 2008 as the day on which The English Schools Foundation (Amendment) Ordinance (5 of 2008) will come into operation.

36. The Ordinance amends the English Schools Foundation Ordinance (Cap. 1117) (the principal Ordinance) to make changes to the governance structure of The English Schools Foundation (the Foundation) established under the principal Ordinance and to the administration of the schools of the Foundation.

Fugitive Offenders (Terrorist Bombings) Order (L.N. 44 of 2008) Fugitive Offenders (Terrorist Bombings) Order (Commencement) Notice (L.N. 87) Fugitive Offenders (Maritime Safety) Order (L.N. 45 of 2008) Fugitive Offenders (Maritime Safety) Order (Commencement) Notice (L.N. 88)

37. By L.N. 87 and L.N. 88, the Secretary for Security appoints 13 June

2008 as the day on which the Fugitive Offenders (Terrorist Bombings) Order (L.N. 44 of 2008) (the Terrorist Bombings Order) and Fugitive Offenders (Maritime Safety) Order (L.N. 45 of 2008) (the Maritime Safety Order) will come into operation.

38. The Terrorist Bombings Order and the Maritime Safety Order were made by the Chief Executive in Council under section 3 the Fugitive Offenders Ordinance (Cap. 503) (FOO). The Terrorist Bombings Order implements the extradition arrangements under the International Convention for the Suppression of Terrorist Bombings (the Bombings Convention), which entered into force for Hong Kong on 13 December 2001. The objective of the Order is to apply between Hong Kong and the places outside Hong Kong to which the Bombings Convention relates the procedures for the surrender of fugitive offenders set out in FOO.

39. The Maritime Safety Order implements the extradition arrangements under the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (the Maritime Safety Convention) and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (the Protocol), which entered into force for Hong Kong on 20 February 2006. The objective of the Order is to apply as between Hong Kong and the places outside Hong Kong to which the Maritime Safety Convention and the Protocol respectively relate the procedures for the surrender of fugitive offenders set out in FOO.

PART VI AVOIDANCE OF DOUBLE TAXATION

Inland Revenue Ordinance (Cap. 112)

Specification of Arrangements (The Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income) (Second Protocol) Order (L.N. 89)

Specification of Arrangements (The Mainland of China) (Avoidance of Double Taxation on Income) (Revocation) Order (L.N. 90)

40. On 21 August 2006, the Mainland of China and the Hong Kong Special Administrative Region (the Parties) entered into an arrangement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (the Arrangement) together with a protocol to the Arrangement (the First Protocol). By the Specification of Arrangements (The Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income) Order (Cap. 112 sub. leg. AY) made in October 2006, the arrangements in Articles 1 to 27 of the Arrangement and Paragraphs 1 to 3 of the First Protocol are specified as double taxation relief arrangements under section 49 of the Inland Revenue Ordinance (Cap. 112) (IRO).

41. Subsequent to the making of the Arrangement on 21 August 2006, the Parties signed a further protocol to the Arrangement (the Second Protocol) in Beijing on 30 January 2008. According to paragraphs 2 and 3 of the LegCo Brief (File Ref:

FIN CR 17/10/2041/46) issued by the Financial Services and the Treasury Bureau on 16 April 2008, the Second Protocol was signed to clarify some post-implementation issues of the Arrangement in order to provide greater certainty in the interpretation of certain provisions of the Arrangement. The major clarifications are set out in paragraph 3 of the LegCo Brief.

42. L.N. 89 specifies the arrangements in Articles 1 to 6 of the Second Protocol as double taxation relief arrangements under section 49 of IRO and declares that it is expedient that those arrangements should have effect. The effect of such a declaration is that the arrangements have effect in relation to tax under IRO notwithstanding anything in any enactment.

43. L.N. 90 is made under section 49(4) of IRO to revoke two orders made under section 49(1) of IRO in 1998 and 2000 respectively pertaining to the limited avoidance of double taxation arrangements with the Mainland of China, namely, the Specification of Arrangements (Arrangements with the Mainland of China for the Avoidance of Double Taxation on Income) Order (Cap. 112 sub. leg. S) and Specification of Arrangements (The Mainland of China Concerning Air Services) (Double Taxation) Order (Cap. 112 sub. leg. Z). According to paragraph 4 of the LegCo Brief, the revocation is necessary as the above two Orders ceased to have effect for subsequent years of assessment when the Arrangement entered into force on 8 December 2006.

44. The Financial Affairs Panel has not discussed the proposals contained in L.N. 89 and L.N. 90.

45. Both L.N. 89 and L.N. 90 will come into operation on 22 May 2008.

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