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**Paper for the House Committee Meeting
on 2 November 2007**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 26 October 2007**

Date of tabling in LegCo : 31 October 2007

Amendment to be made by : 28 November 2007 (or 19 December 2007 if extended by resolution)

PART I CARRIAGE OF DANGEROUS GOODS BY AIR

Civil Aviation Ordinance (Cap. 448)

Air Navigation (Hong Kong) Order 1995 (Amendment of Schedule 16) Order 2007 (L.N. 195)

Dangerous Goods (Consignment by Air) (Safety) Ordinance (Cap. 384)

Dangerous Goods (Consignment by Air) (Safety) (Amendment) Regulation 2007 (L.N. 193)

Dangerous Goods (Consignment by Air) (Safety) (Amendment) Regulation 2006 (Amendment) Regulation 2007 (L.N. 194)

Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384 sub. leg. A)
Dangerous Goods (Consignment by Air) (Safety) Regulations (Amendment of Schedule) Order 2006 (Amendment) Order 2007 (L.N. 197)

The International Civil Aviation Organization (“ICAO”) promulgates under the Convention on International Civil Aviation (“Chicago Convention”) safety requirements of the carriage of dangerous goods by air. These requirements are set out in the Technical Instructions for the Safe Transport of Dangerous Goods by Air (TIs), which are normally updated and published by ICAO biennially. A new edition, namely, the 2007-08 edition, of the TIs (“the New TIs”) was published in late 2006 to replace the 2005-06 edition. Since the Chicago Convention applies to Hong Kong, the New TIs also apply.

2. The Chicago Convention is implemented in Hong Kong through the Air Navigation (Dangerous Goods) Regulations (which is Schedule 16 to the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) (“the 1995 Order”)) and

the Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384 sub. leg. A) (“the Safety Regulations”). Members may wish to note that the 1995 Order does not have a Chinese version. The 1995 Order regulates the dangerous goods operations of airlines and airport authorities. The Safety Regulations regulate the shippers and freight forwarders in the proper handling of dangerous goods before taking the goods for air transport.

3. Under section 2A of the Civil Aviation Ordinance (Cap. 448), the Chief Executive in Council may by order make provisions necessary or expedient for carrying out the Chicago Convention. L.N. 195 is made under that section to amend Schedule 16 to the 1995 Order to give effect to the changes introduced by the New TIs. The relevant changes are:

- (a) to clarify and update the types of dangerous goods that may be carried on an aircraft and the conditions upon which such dangerous goods may be carried on an aircraft;
- (b) to provide that apart from the operator of an aerodrome and of an air passenger carrying aircraft, the handling agent of such operator is also required to provide passengers with information on the categories of dangerous goods that may not be taken on board an aircraft and to specify the means by which such information is to be provided to passengers;
- (c) to require the operator of an aircraft and his handling agent to seek confirmation from the passengers during the check-in process that they are not carrying dangerous goods that may not be taken on board the aircraft; and
- (d) to require the operator of an aircraft, his handling agent and security agent to establish and undertake certain training programmes on dangerous goods for their respective employees.

4. By the Dangerous Goods (Consignment by Air) (Safety) (Amendment) Regulation 2006 (L.N. 75 of 2006) (“the 2006 Amendment Regulation”) gazetted on 4 May 2006, two new regulations, namely, regulations 7A and 7B, are added to the Safety Regulations. Regulation 7A(1) requires a staff member of a freight forwarder who performs the function of processing air cargo containing declared dangerous goods to complete appropriate training programmes described in the provisions of the TIs specified in Part II of the Schedule to the Safety Regulations. Regulation 7B(1) imposes the same training requirement on staff members of freight forwarders who perform the function of processing air cargo without declared dangerous goods or of handling, loading or storing air cargo. Regulations 7A(2) and 7B(2) provide respectively that contravention of regulations 7A(1) and 7B(1) is an offence punishable by a fine of \$20,000 and imprisonment for 6 months. In the light of new regulations 7A and 7B, consequential amendments are made to the Schedule to the

Safety Regulations by the Dangerous Goods (Consignment by Air) (Safety) Regulations (Amendment of Schedule) Order 2006 (L.N. 76 of 2006) (“the 2006 Order”). Regulation 7B of the Safety Regulations and the consequential amendments relating to regulation 7B have not yet been brought into operation.

5. L.N. 193 amends the Safety Regulations to give effect to the changes introduced by the New TIs. The principal amendments are:

- (a) to add new definitions of “cargo”, “mail” and “stores” to the Safety Regulations to bring the meanings of these terms in line with the New TIs; and
- (b) to amend regulations 7 and 7A(1) of the Safety Regulations to require persons signing dangerous goods transport documents and staff members of freight forwarders processing cargo containing declared dangerous goods to complete training programmes on dangerous goods which have been approved by the Director-General of Civil Aviation and are delivered by instructors who satisfy the requirements set out in the provisions of the New TIs specified in Part II of the Schedule to the Regulations.

6. L.N. 194 amends the 2006 Amendment Regulation by replacing the existing regulation 7B(1) with a new one. The new regulation 7B(1) requires staff members of freight forwarders who perform the function of processing cargo, mail or stores not containing declared dangerous goods or the function of handling, loading or storing cargo, mail or stores to complete the appropriate training programmes before performing that function. It also provides that the training programmes must satisfy certain requirements, which are the same as those applicable to performing the function of processing cargo containing declared dangerous goods mentioned in paragraph 5(b) above. The purpose of these amendments is to bring the requirements in regulation 7B(1) in line with those under the New TIs.

7. L.N. 197 makes consequential amendments to the 2006 Order in the light of the amendments made by L.N. 194.

8. Members may refer to the LegCo Brief (Ref: EDB CR 1/15/951/49) issued by the Transport and Housing Bureau on 24 October 2007 for background information.

9. The Panel on Economic Services was consulted at its meeting on 25 June 2007 on the proposed amendments for the implementation of the new requirements of ICAO. The Panel supported the proposed amendments in principle. Some members suggested that the Administration should step up publicity and make available information on carriage of dangerous goods by air to passengers via travel agents.

10. L.N. 193 to L.N. 195 will come into operation on 1 January 2008. L.N. 197 will come into operation on a day to be appointed by the Director-General of Civil Aviation by notice published in the Gazette. The Legal Service Division has made enquiries with the Administration on the commencement timetable for regulation 7B of the Safety Regulations (as added by the 2006 Amendment Regulation and amended by L.N. 194) and the related consequential amendments introduced in the 2006 Order, as amended by L.N. 197. According to the Administration, they will be brought into operation when the preparation and detailed arrangements for the appropriate training programmes are completed.

PART II MISCELLANEOUS

Hong Kong Examinations and Assessment Authority Ordinance (Cap. 261) Hong Kong Examinations and Assessment Authority Ordinance (Amendment of Schedule 1) Order 2007 (L.N. 196)

11. Under section 7(1A) of the Hong Kong Examinations and Assessment Authority Ordinance (Cap. 261) (“the Ordinance”), the Hong Kong Examinations and Assessment Authority (“the Authority”) has the powers to conduct specified examinations listed in Schedule 1 to the Ordinance (“the Schedule”), approve the syllabuses for these examinations and determine the eligibility requirements for candidates sitting for them. At present, there are two specified examinations, namely, The Hong Kong Certificate of Education Examination (“HKCEE”) and The Hong Kong Advanced Level Examination (“HKALE”).

12. L.N. 196 adds the Hong Kong Diploma of Secondary Education Examination (“HKDSEE”) to the Schedule. The effect of this is to empower the Authority to perform its statutory functions under the Ordinance in respect of HKDSEE, which will be introduced in 2012 to replace HKCEE and HKALE.

13. Members may refer to the LegCo Brief (Ref: EDB (SCR) 9/578/07) issued by the Education Bureau dated 23 October 2007 for background information. According to paragraph 5 of the LegCo Brief, the purpose of the amendment is to allow the Authority to make the necessary preparatory arrangements for HKDSEE well before 2012. The references to HKCEE and HKALE will not be removed from the Schedule for the time being because the Authority plans to administer these two examinations until 2011 and 2013 respectively.

14. The Panel on Education has discussed over the past years matters relating to the implementation of the new structure for senior secondary and higher education. Members are aware that under the new structure, students will sit for HKDSEE after completing Form 6.

15. L.N. 196 will come into operation on 20 December 2007.

Securities and Future Ordinance (Cap. 571)
Securities and Futures (Contracts Limits and Reportable Positions) (Amendment)
(No. 2) Rules 2007 (L.N. 198)

16. Section 4 of the Securities and Futures (Contracts Limits and Reportable Positions) Rules (Cap. 571 sub. leg. Y) (“the principal Rules”) prohibits a person (except an authorized person) from holding or controlling a futures contract or stock options contract in excess of the prescribed limit set out in Schedule 1 to the principal Rules. Section 4(4)(a) empowers the Securities and Futures Commission (“SFC”) to authorize a person to hold or control the relevant contract exceeding the prescribed limit if such person is able to satisfy SFC that there are special circumstances which warrant the excess position.

17. L.N. 198 amends section 4 of the principal Rules to introduce a new category of authorization that may be granted by SFC to exchange participants and their affiliates to allow them to hold or control a specified contract in excess of the prescribed limit up to the specified percentage if SFC is satisfied that there is a business need for the excess. The specified contract and specified percentage are to be specified by SFC by notice published in the Gazette. Under section 4(11), such notice is not subsidiary legislation. The Legal Service Division is seeking clarification from SFC on why the notice concerned is not subsidiary legislation and on some drafting matters. A further report will be made after the Division has received SFC’s reply.

18. The proposed amendments have not been discussed by the Panel on Financial Affairs. Members may refer to the LegCo Brief issued by SFC in October 2007 for background information. According to paragraph 3 of the LegCo Brief, the amendments are introduced after considering comments and suggestions received in response to a consultation paper issued by SFC on 18 May 2007 inviting comments on proposed amendments to the principal Rules and the Guidance Note on Position Limits and Large Open Position Reporting Requirements.

19. L.N. 198 will come into operation on 21 December 2007.

PART III COMMENCEMENT NOTICES

Fugitive Offenders Ordinance (Cap. 503)
Fugitive Offenders (Corruption) Order (L.N. 100 of 2007)
Fugitive Offenders (Corruption) Order (Commencement) Notice (L.N. 199)

20. By L.N. 199, the Secretary for Security appoints 21 December 2007 as the day on which the Fugitive Offenders (Corruption) Order (L.N. 100 of 2007) (“the FO Order”) will come into operation.

21. The FO Order is made by the Chief Executive in Council under section 3 of the Fugitive Offenders Ordinance (Cap. 503) for the purpose of implementing the extradition requirement under Article 44 of the United Nations Convention Against Corruption. The Order has been studied by the Subcommittee on Subsidiary Legislation to Implement the Obligations under the United Nations Convention Against Corruption and the Subcommittee had made a report to the House Committee on the FO Order at its meeting on 5 October 2007 (LC Paper No. CB(2)2764/06-07).

Rail Merger Ordinance (11 of 2007)

Rail Merger Ordinance (Commencement) Notice (L.N. 200)

22. By L.N. 200, the Secretary for Transport and Housing appoints 2 December 2007 as the day on which the Rail Merger Ordinance (11 of 2007) will come into operation.

23. The Ordinance amends the Mass Transit Railway Ordinance (Cap. 556) and the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) to provide for the implementation of the merger of the Mass Transit Railway and Kowloon-Canton Railway systems.

24. Members may refer to the information paper (LC Paper No. CB(1)31/07-08(01)) issued by the Administration to the Panel on Transport on 10 October 2007 for background information.

25. The eight items of subsidiary legislation relating to the rail merger will also come into operation on 2 December 2007 as it is provided in the respective items of subsidiary legislation that they will come into operation on the day appointed for the commencement of the Rail Merger Ordinance. These eight items of subsidiary legislation are the Mass Transit Railway (Amendment) Regulation 2007 (L.N. 110), Kowloon-Canton Railway Corporation (Suspension) Regulation (L.N. 111), Mass Transit Railway (Transport Interchange) (Amendment) Regulation 2007 (L.N. 112), Kowloon-Canton Railway (Restricted Area) (No. 2) Notice 1997 (Amendment) Notice 2007 (L.N. 113), Mass Transit Railway (Amendment) Bylaw 2007 (L.N. 156), Mass Transit Railway (North-west Railway) Bylaw (L.N. 158), Mass Transit Railway (Transport Interchange) (Amendment) Bylaw 2007 (L.N. 160), and Kowloon-Canton Railway Corporation (Suspension of Bylaws) Bylaw 2007 (L.N. 162).

Unsolicited Electronic Messages Ordinance (9 of 2007)

Unsolicited Electronic Messages Ordinance (Commencement) Notice (L.N. 201)

Unsolicited Electronic Messages Regulation (L.N. 108 of 2007)

Unsolicited Electronic Messages Regulation (Commencement) Notice (L.N. 202)

26. By L.N. 201, the Secretary for Commerce and Economic Development appoints 22 December 2007 as the day on which the remaining provisions of the Unsolicited Electronic Messages Ordinance (9 of 2007) (“the UEM Ordinance”) that have not come into operation will come into operation. These provisions relate to the rules for the sending of commercial electronic messages under an opt-out regime and the establishment of do-not-call registers.

27. L.N. 202 appoints 22 December 2007 as the day on which the Unsolicited Electronic Messages Regulation (L.N. 108 of 2007) will come into operation. The Regulation supplements the rules for the sending of commercial electronic messages set out in the UEM Ordinance.

28. At the special meeting held on 16 October 2007, the Panel on Information Technology and Broadcasting was briefed on the proposal to implement the opt-out regime on 22 December 2007. Members of the Panel had no objection to the proposal.

Concluding remarks

29. Except for L.N. 198 reported in Part II, no difficulties relating to the legal and drafting aspects of the above items of subsidiary legislation have been identified.

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