

立法會

Legislative Council

LC Paper No. LS98/09-10

Paper for the House Committee Meeting on 8 October 2010

Legal Service Division's Report on Subsidiary Legislation gazetted between 9 July and 24 September 2010

This paper annexes five Legal Service Division's reports covering the two groups of subsidiary legislation as follows:-

- (a) the items gazetted on 9 July 2010 and tabled before the Council on 14 July 2010 (**Annex A**); and
- (b) the items gazetted between 30 July and 24 September 2010 and to be tabled on 13 October 2010(**Annex B**).

2. In accordance with section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), the Legislative Council may amend the items of subsidiary legislation tabled on 14 July 2010 by **20 October 2010** (or by 10 November 2010 if extended by resolution), and the other items to be tabled on 13 October 2010 by **10 November 2010** (or by 1 December 2010 if extended by resolution) respectively.

3. All the five reports have been separately submitted to Members during the summer recess to enable Members to consider the relevant subsidiary legislation as soon as possible. They are submitted again in this bundle to facilitate consideration by the House Committee.

4. Members will note, as is the usual practice, that the reports include items of subsidiary legislation that are not required to be tabled and not subject to amendment by the Legislative Council. There are 4 such items, namely, Volunteer and Naval Volunteer Pensions Ordinance (Amendment of Schedules) Order 2010 (L.N. 106), Western Harbour Crossing Ordinance (Amendment of Schedule 1) Notice 2010 (L.N. 107), Tai Lam and Yuen Long Approach Road Ordinance (Amendment of Schedule 1) Notice 2010 (L.N. 109) and United Nations Sanctions (Eritrea) Regulation (L.N. 111).

5. Members may wish to note that by the Smoking (Public Health)(Designation of No Smoking Areas)(Amendment) Notice 2010 (L.N. 100), the Director of Health has designated public transport facilities (including bus termini and interchange areas between public transport termini) as more particularly described in

the Notice to be no smoking areas. The report on the item is at paragraphs 23 to 28 of the report dated 6 August 2010 (LC Paper No. LS86/09-10(01)) (the Report).

6. Another item that Members may wish to note is the Genetically Modified Organisms (Documentation for Import and Export) Regulation (L.N. 96). The Regulation provides for detailed documentation requirements in relation to the import and export of genetically modified organisms (GMO) intended to be used for direct consumption as food or feed or for processing, for contained use or for release into environment. The report on the item is at paragraphs 1 to 7 of the Report.

7. Members may have noted that by the Mutual Legal Assistance in Criminal Matters (Italy) Order (Commencement) Notice (L.N. 108) the Secretary for Security appointed 14 August 2010 as the day on which the Mutual Legal Assistance in Criminal Matters (Italy) Order (Cap. 525 sub. leg. G) (the Italy Order) was to come into operation. The Italy Order was approved by the Legislative Council (LegCo) on 19 January 2000.

8. Members may recall that on 2 June 2010, the Director of Administration wrote to the Clerk to the House Committee agreeing to issue LegCo briefs on all subsidiary legislation with the exception of commencement notices, in respect of which the bureaux concerned would consider issuing LegCo briefs on a need basis. The Security Bureau has not issued LegCo brief on this Commencement Notice. Since there is a lapse of 10 years between the date of approval of the Italy Order and the date of its coming into operation, the Legal Service Division has written to the Security Bureau seeking an explanation. The Security Bureau, in response, has explained that Italy took time to ratify the bilateral arrangements (the Agreement) for mutual legal assistance in criminal matters between Hong Kong and Italy to which the Italy Order relates. The time required for ratification may vary from one jurisdiction to another and that the Italy Order and the Agreement have been thoroughly examined by LegCo. The Security Bureau further explained that it is their established practice not to issue a LegCo brief on a commencement notice.

9. The Secretariat has circulated to Members the issues of the Gazette which contain the subsidiary legislation covered by the reports in the usual manner. Members may also view the relevant issues of the Gazette at <http://www.gld.gov.hk/egazette/>.

10. No difficulties relating to the legal and drafting aspects of the items covered by the reports have been identified.

Encl

Prepared by
Legal Service Division
Legislative Council Secretariat
4 October 2010

**Legal Service Division's Report on
Subsidiary Legislation gazetted on 9 July 2010 and
tabled in the Legislative Council on 14 July 2010**

<u>L.N. No</u>	<u>Items</u>
96	Genetically Modified Organisms (Documentation for Import and Export) Regulation
97	Intercountry Adoption (Contracting States) Order 2010
98	Port Control (Public Cargo Working Area) Order 2010
99	Employees Retraining Ordinance (Amendment of Schedule 2) (No. 3) Notice 2010
100	Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2010

**Legal Service Division's Reports on
Subsidiary Legislation gazetted between 30 July 2010 and 24 September 2010
and to be tabled in the Legislative Council on 13 October 2010**

<u>L.N. No</u>	<u>Items</u>
*106	Volunteer and Naval Volunteer Pensions Ordinance (Amendment of Schedules) Order 2010
*107	Western Harbour Crossing Ordinance (Replacement of Schedule 1) Notice 2010
108	Mutual Legal Assistance in Criminal Matters (Italy) Order (Commencement) Notice
*109	Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Amendment of Schedule 1) Notice 2010
110	Toys and Children's Products Safety Ordinance (Amendment of Schedule 2) Notice 2010
*111	United Nations Sanctions (Eritrea) Regulation

*Legal Notices not required to be tabled and not subject to amendment

立法會

Legislative Council

LC Paper No. LS86/09-10(01)

Legal Service Division Report on Subsidiary Legislation Gazetted on 9 July 2010

Date of tabling in LegCo : 14 July 2010

Amendment to be made by : 20 October 2010 (or 10 November 2010 if extended by resolution)

Genetically Modified Organisms (Control of Release) Ordinance (7 of 2010) Genetically Modified Organisms (Documentation for Import and Export) Regulation (L.N. 96)

The Genetically Modified Organisms (Control of Release) Ordinance (7 of 2010) (the Ordinance) was enacted in March 2010 to give effect to the Cartagena Protocol on Biosafety (the Protocol) to the Convention on Biological Diversity done at Montreal on 29 January 2000 (the Convention). The Protocol aims to ensure the safe transfer, handling, storage and use of genetically modified organisms (GMOs).

2. Section 26(1) of the Ordinance provides that GMOs intended for direct consumption as food or feed or for processing (GMOs-FFP), GMOs intended for contained use¹ and GMOs intended for release into the environment must be accompanied by certain documents when being imported into or exported from Hong Kong. A person who imports or exports the GMOs without complying with the documentation requirements (which are to be prescribed by regulations made under section 50(1)(a) of the Ordinance) commits an offence and is liable to a fine at level 3 (i.e. \$10,000). However, such requirements do not apply if the GMOs-FFP or GMOs intended for contained use are imported or exported in a lot together with other living organisms and are unintentionally mixed with those other living organisms, and the percentage of the quantity of the GMOs to the total quantity of living organisms in the lot does not exceed the prescribed percentage. "Prescribed percentage" means the percentage prescribed by regulations made under section 50(1)(b) of the Ordinance, or 0% if no percentage is prescribed.

¹ Under section 3(2) of the Ordinance, a GMO is in contained use if it is involved in an operation that is undertaken within a facility, installation or other physical barrier, and it is controlled by specific measures that effectively limit its contact with, and its impact on, the environment.

3. L.N. 96 is made by the Secretary for the Environment under section 50(1) of the Ordinance to provide for the detailed documentation requirements in relation to the import and export of GMOs intended to be used for the purposes set out in section 26(1) of the Ordinance. The documentation requirements are summarized below:

- (a) section 3 enumerates the documentation requirements in relation to the import and export of GMOs-FFP;
- (b) section 4 describes the documents required for the import and export of GMOs intended for contained use; and
- (c) section 5 identifies the documents required for the import and export of GMOs intended for release into the environment.

According to paragraph 6 of the LegCo Brief (File Ref: EPD CR 9/15/26 Pt. 5) issued by the Environmental Protection Department and Agriculture, Fisheries and Conservation Department in July 2010, these documentation requirements follow closely those set out in Article 18.2 of the Protocol and two decisions made by the Parties in their conferences (BS-I/6 and BS-III/10). The Administration has clarified that sections 3 to 5 impose different documentation requirements for the three categories of GMOs because the detailed documentation requirements set out in BS-III/10 in respect of GMOs-FFP are slightly different from those under BS-I/6 relating to GMOs intended for contained use and for release into the environment. Administrative guidelines will be prepared for the documentation requirements and uploaded to the online GMO Register for public viewing.

4. Under section 6 of L.N. 96, the prescribed percentage in relation to GMOs-FFP is 5%. In other words, if the percentage of GMOs-FFP in a shipment of living organisms does not exceed 5%, the shipment is not required to be accompanied by the documents set out in section 3. According to paragraph 8 of the LegCo Brief, this is in line with the thresholds adopted by other Parties to the Protocol, such as Japan, Indonesia, Philippines and Thailand, under their regulatory framework for the adventitious presence of GMOs for triggering the documentation requirements.

5. No percentage is prescribed in relation to GMOs intended for contained use, which means that the prescribed percentage is 0%. According to paragraph 9 of the LegCo Brief, GMOs intended for contained use are unlikely to be mixed with other organisms unintentionally because they are generally for scientific research purposes, and for this reason, no adventitious presence of GMOs intended for contained use is proposed. The Administration also recommends a zero tolerance for the adventitious presence of GMOs intended to be released to the environment, which has also been adopted by many Parties to the Protocol, such as the Mainland, the European Union and South Korea. Members may refer to the LegCo Brief for further information.

6. The proposed extension of the Protocol to Hong Kong was discussed at the meeting of the Panel on Environmental Affairs held on 30 March 2009. The Panel generally supported more control on the release of GMOs into the environment. In the course of deliberations, members questioned whether the Administration had consulted parties likely to be affected by the proposed extension and whether the Administration had conducted studies on the growing and breeding of GMOs in local vegetable and fish farms. According to paragraph 15 of the LegCo Brief, two consultation meetings were held on 26 February 2010 and 5 March 2010 to brief relevant stakeholders (including traders, food and beverage producers, medicine manufacturers, academics and green groups) on the proposed documentation requirements and to collect their views. According to paragraph 16 of the LegCo Brief, comments and concerns received during consultation had been taken into account in finalising L.N. 96.

7. As the Administration is still seeking the agreement of the Central People's Government to initiate the required procedures to extend the Convention and the Protocol to Hong Kong, the Ordinance, as well as L.N. 96, will come into operation on a day to be appointed by the Secretary for the Environment by notice published in the Gazette.

Adoption Ordinance (Cap. 290)

Intercountry Adoption (Contracting States) Order (Cap. 290 sub. leg. C)

Intercountry Adoption (Contracting States) Order 2010 (L.N. 97)

8. The Convention on Protection of Children and Co-operation in respect of Intercountry Adoption done at the Hague on 29 May 1993 (the Convention) sets out a framework for international cooperation in intercountry adoptions to protect the best interests of the children involved. The Convention entered into force for China on 1 January 2006. In Hong Kong, the Convention is given effect by Part 5 (sections 20A to 20J) of the Adoption Ordinance (Cap. 290). Under section 20D of the Ordinance, the Secretary for Labour and Welfare (SLW) may, by order published in the Gazette, declare that a State is a Contracting State to the Convention and specify the date of the coming into effect of the Convention between Hong Kong and the State.

9. The Republic of Cape Verde (Cape Verde) and the Togolese Republic (Togo) acceded to the Convention on 4 September and 12 October 2009 respectively. Under Article 46(2) of the Convention, the Convention enters into force for an acceding State on the first day of the month following the expiration of three months after the deposit of its instrument of accession. In accordance with that Article, the Convention came into force for Cape Verde and Togo on 1 January 2010 and 1 February 2010 respectively.

10. By L.N. 97 made under section 20D of the Adoption Ordinance, SLW declares Cape Verde and Togo to be Contracting States, and that the Convention came into effect:

- (a) between Hong Kong and Cape Verde on 1 January 2010; and
- (b) between Hong Kong and Togo on 1 February 2010.

11. Consequential amendments are also made to Part 1 of the Schedule to the Intercountry Adoption (Contracting States) Order (Cap. 290 sub. leg. C) to add Cape Verde and Togo to the list of Contracting States so that the Convention applies to an adoption between Hong Kong and either of those two states in relation to an application made pursuant to the Convention.

12. The Panel on Welfare Services has not been consulted on L.N. 97.

13. Members may refer to the LegCo Brief (File Ref: LWB CR 1/5691/00) issued by the Labour and Welfare Bureau on 7 July 2010 for further information.

Port Control (Cargo Working Areas) Ordinance (Cap. 81)

Port Control (Public Cargo Working Area) (Consolidation) Order (Cap. 81 sub. leg. B)

Port Control (Public Cargo Working Area) Order 2010 (L.N. 98)

14. Section 3(1) of the Port Control (Cargo Working Areas) Ordinance (Cap. 81) empowers the Secretary for Transport and Housing (STH) to declare any area of unleased Government land and any adjoining area of water to be a public cargo working area (PCWA). The Western District PCWA was established in 1981. Its present boundaries covering an area of approximately 40,200 square metres were declared under the Port Control (Public Cargo Working Area) (No. 5) Order 1998 (L.N. 58 of 1998) (the 1998 Order) and are re-stated in section 7 of the Port Control (Public Cargo Working Area) (Consolidation) Order (Cap. 81 sub. leg. B) (the Consolidation Order).

15. According to paragraph 3 of the LegCo Brief (File Ref: MA 40/4) issued by the Transport and Housing Bureau on 7 July 2010, a small area (7,500 square metres) (the Area) of the Western District PCWA is needed as a barging point for transporting excavated materials to Government reception facilities to facilitate the construction of the Western Island Line (WIL). The Area is expected to be reverted as being part of the Western District PCWA in August 2014.

16. L.N. 98 is made by STH under section 3(1) of Cap. 81 to declare the new boundaries of the Western District PCWA and to repeal the 1998 Order and section 7 of the Consolidation Order. With the revised boundaries, the size of the Western District PCWA will be reduced to approximately 32,700 square metres with a usable sea frontage of 880 metres. According to paragraph 6 the LegCo Brief, the new boundaries of the Western District PCWA should have little impact on the daily operation of the existing cargo operators.

17. The Subcommittee on Matters Relating to Railways under the LegCo Panel on Transport discussed the WIL project on 30 March and 9 November 2007. According to paragraph 8 of the LegCo Brief, when the Subcommittee was briefed on the WIL project in 2007, members were informed of the proposed temporary release of the Area from the Western District PWCA. Cargo operators including those operating at the Western District PCWA were consulted in 2007. The Central & Western District Council also received regular reports from the Government and the MTR Corporation Limited on the construction of the WIL. They all raised no objection to the proposal. Members may refer to the LegCo Brief for further details.

18. L.N. 98 will come into operation on 13 November 2010.

Employees Retraining Ordinance (Cap. 423)

Employees Retraining Ordinance (Amendment of Schedule 2) (No. 3) Notice 2010 (L.N. 99)

19. Schedule 2 to the Employees Retraining Ordinance (Cap. 423) (ERO) contains a list of training bodies that may provide or conduct retraining courses for the purposes of the ERO.

20. By L.N. 99 made by the Employees Retraining Board (the Board) under section 31(2) of the ERO, Schedule 2 to the ERO is amended to add the following six bodies to the list:

- (a) YMCA College of Careers;
- (b) The Cantonese Opera Academy of Hong Kong Limited;
- (c) Hong Kong Massage & Physiotherapy Professional General Union;
- (d) Social Resources Development Institute;
- (e) Kwun Tong Vocational Training Centre; and
- (f) Travel Industry Council of Hong Kong.

21. According to paragraphs 9 and 10 of the LegCo Brief (File Ref: ERB/D/LEGAL/001(3)) issued by the Employees Retraining Board Executive Office on 6 July 2010, the Board is of the view that the six bodies all possess extensive experience in providing education and vocational training in their respective service areas. While YMCA College of Careers is appointed as a "Training Body of General Service Areas" to offer placement-tied and non-placement-tied training courses under the "Manpower Development Scheme" launched in mid-2008, the other five training providers are appointed as "Training Bodies of Specific Service Areas" to offer non-placement-tied training courses under the "Skills Upgrading Scheme Plus" introduced in July 2009. Members may refer to the LegCo Brief for further details.

22. L.N. 99 came into operation upon gazettal on 9 July 2010.

Smoking (Public Health) Ordinance (Cap. 371)

Smoking (Public Health) (Designation of No Smoking Areas) Notice (Cap. 371 sub. leg. D)

Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2010 (L.N. 100)

23. Section 3(1AB) of the Smoking (Public Health) Ordinance (Cap. 371) (SPHO) empowers the Director of Health (DH) to designate as a no smoking area (NSA) the whole or a part of:

- (a) any area that consists of the termini of two or more modes of public transport and is used for effecting and facilitating interchange between them; or
- (b) any bus terminus of more than one specified route as defined in section 2 of the Public Bus Services Ordinance (Cap. 230).

Each of these public transport interchanges and bus termini is referred to as a "public transport facility" in the Smoking (Public Health) (Designation of No Smoking Areas) Notice (Cap. 371 sub. leg. D) (the Designation Notice).

24. Under section 7(1) of the SPHO, any person who smokes or carries a lighted cigarette, cigar or pipe in an NSA commits an offence and is liable on summary conviction to a fine of \$5,000. Smoking in an NSA is also a scheduled offence in respect of which a public officer may give the offender a notice under section 3 of the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) offering him an opportunity to discharge his liability to conviction by payment of a fixed penalty (currently fixed at \$1,500) within 21 days from the date of the notice.

25. According to paragraph 5 of the LegCo Brief (no file reference provided) issued by the Food and Health Bureau in July 2010, a total of 91 public transport facilities (48 with superstructures and 43 indoor ones) were designated as NSAs on 1 September 2009 and compliance with the smoking ban at these NSAs has been satisfactory.

26. In a further effort to ban smoking in public places, L.N. 100 amends the Schedule to the Designation Notice to add a total of 131 public transport facilities (including 129 which are open-air) as designated NSAs under section 3(1AB) of the SPHO. The actual boundaries of the NSAs in these public transport facilities are delineated on respective plans signed by DH on 30 June 2010 and deposited in the Land Registry. Geographically, these 131 public transport facilities are distributed as follows: 28 on Hong Kong Island, 32 in Kowloon and 71 in the New Territories.

27. According to paragraph 13 of the LegCo Brief, the District Councils have been consulted on the proposal to designate NSAs in open-air public transport facilities and they support the proposal. The LegCo Panel on Health Services was consulted at its meeting held on 12 April 2010. While some members urged the Administration to clearly delineate the NSAs to avoid disputes, others questioned the feasibility of clearly demarcating NSAs in an open-air environment. Members may refer to the minutes of the meeting (LC Paper No. CB(2)1466/09-10) for further details.

28. L.N. 100 will come into operation on 1 December 2010.

29. No difficulties have been observed in the legal and drafting aspects of the above items of subsidiary legislation.

Prepared by

LOO Chi-pong, Bonny
Assistant Legal Adviser
Legislative Council Secretariat
6 August 2010

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Legislative Council

LC Paper No. LS87/09-10(01)

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 30 July 2010**

**LEGAL NOTICES NOT REQUIRED TO BE TABLED AND NOT SUBJECT
TO AMENDMENT**

**Volunteer and Naval Volunteer Pensions Ordinance (Cap. 202)
Volunteer and Naval Volunteer Pensions Ordinance (Amendment of Schedules)
Order 2010 (L.N. 106)**

The Order is made by the Secretary for Labour and Welfare under section 35(2) of the Volunteer and Naval Volunteer Pensions Ordinance (Cap. 202) (the Ordinance). The Order amends Schedules 3 to 8 to the Ordinance to adjust the amounts for the payment of pensions, gratuities and other allowances under the Ordinance to the officers and volunteers of the Hong Kong Volunteer Defence Corps and members of the Hong Kong Naval Volunteer Force who fought in Hong Kong during the Second World War and their surviving spouses. Under section 35(2) of the Ordinance, the amounts are adjusted in accordance with the percentage of increase declared in a notice made under section 4(1C) of the Pensions (Increase) Ordinance (Cap. 305) (PIO).

2. Section 35(5) provides that section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) does not apply to an order made under section 35(2) of the Ordinance. Accordingly, the Order is not required to be tabled in the Legislative Council and is not subject to amendment.

3. By the Declaration of Increase in Pensions Notice 2010 (L.N. 73 of 2010) (the DIP Notice) gazetted on 4 June 2010 made under PIO, an increase of 0.8% is declared in respect of a basic pension with effect from 1 April 2010 in accordance with the percentage of increase in the average monthly Consumer Price Index (A) (the Average Index) of the 12 months ending on 31 March 2010 over the Average Index of the immediately preceding 12 months. Accordingly, pursuant to the Order, the amounts set out in Schedules 3 to 8 to the Ordinance are adjusted in accordance with the percentage of increase (0.8%) in respect of a basic pension declared in the DIP Notice. The relevant amounts were last revised in 2009 (L.N. 175 of 2009).

4. Section 35(4) of the Ordinance provides that an order made under section 35(2) shall take effect on the same date as specified in the relevant notice made under PIO. As mentioned in paragraph 3 above, the DIP Notice comes into effect from 1 April 2010. Accordingly, the Order is deemed to have come into operation on 1 April 2010.

5. The Panel on Welfare Services has not been consulted on the Order.

Western Harbour Crossing Ordinance (Cap. 436)

Western Harbour Crossing Ordinance (Amendment of Schedule 1) Notice 2010 (L.N. 107)

6. The Notice is made by the Commissioner for Transport under section 52(1) of the Western Harbour Crossing Ordinance (Cap. 436) (the Ordinance) to increase the tolls payable for the use of the Western Harbour Crossing by replacing Schedule 1 to the Ordinance specifying the new tolls. The Notice came into operation on 31 July 2010.

7. The Ordinance provides for a specified toll adjustment mechanism. Under section 45 of the Ordinance, the Western Harbour Tunnel Company Limited (the franchisee) may effect toll increase on six specified dates (i.e. 1 January 2001, 1 January 2005, 1 January 2009, 1 January 2013, 1 January 2017 and 1 January 2021) (anticipated toll increases) referred to in Schedule 4. However, under section 46(1), whenever the franchisee's net revenue in any year (not being a year ending immediately before a specified date) is less than the minimum estimated net revenue (MENR) for that year as specified in Schedule 5 to the Ordinance, the franchisee may apply to the Secretary for Transport and Housing (the Secretary) to give effect to the next anticipated toll increase. Under section 48(1), where the franchisee has given effect to all the anticipated toll increases and the net revenue of the franchisee in respect of any year before the expiry of the franchise period is less than the MENR for that year, the franchisee may apply to the Secretary to give effect to an additional toll increase. The maximum levels of increase in respect of different categories of vehicles, from the operating date up to 31 December 2010 or during the period of 13 years beginning on the operating date, are specified in Schedule 2 to the Ordinance.

8. Upon enquiry, the Administration indicated that the current statutory toll increases under the Notice is the 9th statutory toll increase. The first 5 statutory toll increases were anticipated toll increases effected under section 46 of the Ordinance and the franchisee forfeited its right to effect the 1st of the 6 anticipated toll increases. The recent 4 increases (including the current one under the Notice) were additional toll increases effected under section 48(1) of the Ordinance.

9. Schedule 1 to the Ordinance specifies the Western Harbour Crossing tolls. Under section 52(1) of the Ordinance, when a toll is increased in accordance with the Ordinance and the project agreement, the Commissioner for Transport shall by notice published in the Gazette amend Schedule 1 to vary the relevant tolls. Section 52(2) stipulates that the franchisee shall not give effect to more than one increase in the tolls in one year. Section 52(3) provides that section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply in respect of such notice. Accordingly, the Notice is not required to be tabled before the Legislative Council and is not subject to amendment by the Legislative Council.

10. The amounts of increase of statutory tolls reflected in the Notice are in accordance with the maximum amounts permitted under Schedule 2 to the Ordinance. The last statutory toll increase came into effect on 31 July 2009 (L.N. 174 of 2009).

11. As regards the current statutory toll increases, the Transport and Housing Bureau issued an information paper (LC Paper No. CB(1)2681/09-10(01)) (the Paper) in July 2010. As stated in paragraph 3 of the Paper, since the commissioning of the Western Harbour Crossing in 1997, the franchisee's net revenue has consistently fallen short of the specified levels. According to paragraph 5 of the Paper, the current toll increase is based on the franchisee's 2006/07 Net Revenue Statement (NRS) showing that the franchisee's net revenue for 2006/07 was \$658 million, which is lower than the minimum net revenue of \$1,549 million for that year specified in Schedule 5 to the Ordinance. According to the Paper, the Administration has examined the NRS in accordance with the requirement under the toll adjustment mechanism and noted that the franchisee's current statutory toll increase complies with the relevant provisions under the Ordinance.

12. According to paragraph 6 of the Paper, the franchisee will give effect to new concessionary tolls on 1 August 2010. Details of the new concessionary tolls are set out in Annex B to the Paper.

13. A comparison of the statutory tolls before and after the increase effected by the Notice as from 31 July 2010 is as follows -

Western Harbour Crossing Tolls

Category	Vehicle	Toll (\$) before increase	Toll (\$) (as from 31 July 2010)
1.	Motorcycles, motor tricycles	55	60
2.	Private cars, electrically powered passenger vehicles, taxis	110	120

Category	Vehicle	Toll (\$) before increase	Toll (\$) (as from 31 July 2010)
3.	Public and private light buses	120	130
4.	(a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	165	180
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	110	120
5.	(a) Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes	225	245
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	110	120
6.	(a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	335	365
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	110	120
7.	Public and private single-decked buses	120	130
8.	Public and private double-decked buses	175	190

14. The Panel on Transport was informed of the new statutory tolls of the Western Harbour Crossing through the Paper on 30 July 2010. The Panel has neither discussed nor been consulted on the new tolls.

Changes in the format and visual design of L.N. 107

15. It is noted that changes have been made to the format and visual design (the new document design) of L.N. 107. The new document design is based on the proposed changes set out in an information paper issued by the Law Drafting Division of the Department of Justice (DOJ) in December 2009 (LC Paper No. CB(2)615/09-10(01)) (the Paper) and the Panel on Administration of Justice and Legal Services (AJLS Panel) was consulted on the Paper. According to the minutes of meeting of AJLS Panel held on 26 April 2010 (LC Paper No. CB(2)1887/09-10), the

Chairman, in concluding the relevant discussions, indicated that members in general supported the proposed changes to the document design of legislation. A letter from the Law Draftsman of DOJ to the Secretary General of the Legislative Council dated 7 July 2010 regarding the new document design was circulated to Members on 3 August 2010 (LC Paper No. CB(2)2148/09-10(01)).

16. DOJ issued a press release on 29 July 2010 indicating that although 15 July 2010 was designated as the cut off date for the implementation of the new document design, there are some yet to be gazetted legislative items prepared under the old format. Upon enquiry, Senior Law Clerk I confirmed that L.N. 106 was prepared before the cut off date and therefore is under the old format whereas L.N. 107 was prepared after the cut off date with the new document design.

17. The new document design of L.N. 107 has the following features -

- (a) a larger font size was used for the main texts. The font sizes for other parts of L.N. 107 were adjusted to reflect the organizational hierarchy;
- (b) wider line spacing between paragraphs;
- (c) replacing current out-denting of the text of sections by indenting to align with the section headings;
- (d) adding an operative provision (section 2 of L.N. 107);
- (e) restructuring the amending provision (section 3 of L.N. 107);
- (f) providing more information in the header on every page such as the title of the document and the number of the first section or the relevant description starting in that page and separating the header of pages from the main text by a continuous line;
- (g) adding a separator (i.e. a line in the centre of a page) immediately following the end of L.N. 107 before its explanatory note; and
- (h) making corresponding changes to the Chinese text of L.N. 107.

Concluding observation

18. Upon enquiry, the Administration indicated that LegCo Briefs will be issued in respect of the above items of subsidiary legislation.

19. No difficulties have been identified in the legal or drafting aspects of the above items of subsidiary legislation.

Prepared by

LO Wing-yee, Winnie
Assistant Legal Adviser
Legislative Council Secretariat
9 August 2010

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Legislative Council

LC Paper No. LS88/09-10(01)

Legal Service Division Report on Subsidiary Legislation Gazetted on 6 August 2010

Date of tabling in LegCo : 13 October 2010

Amendment to be made by : 10 November 2010 (or 1 December 2010 if extended by resolution)

Mutual Legal Assistance in Criminal Matters (Italy) Order (Commencement) Notice (L.N. 108)

By this Commencement Notice made under section 1 of the Mutual Legal Assistance in Criminal Matters (Italy) Order (Cap. 525 sub. leg. G) (the Italy Order), the Secretary for Security appoints 14 August 2010 as the day on which the Italy Order came into operation.

2. The Italy Order was made by the Chief Executive in Council pursuant to section 4(1) of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525), with the approval of the Legislative Council (LegCo) on 19 January 2000, to implement the bilateral arrangements (the Agreement) for mutual legal assistance in criminal matters between Hong Kong and Italy. The Italy Order was published in the Gazette on 21 January 2000. According to Article XIX(1) of the Agreement, the Agreement will enter into force 30 days after the date on which the parties have notified each other in writing that their respective requirements for the entry into force of the Agreement have been complied with.

3. Upon our enquiry as to the reason for taking 10 years to commence the Italy Order since its approval by LegCo in 2000, the Administration explained that it notified the Italian side on 26 January 2000 that the Agreement had been endorsed by LegCo on 19 January 2000. Subsequently, the Administration issued letters to the Italian side in March 2004, October 2004, November 2005, July 2008, February 2009 and July 2010 seeking an update on the progress of its ratification of the Agreement. All along, the Administration was informed that the ratification process was pending

completion. After receiving notice from Italy on 15 July 2010 that their ratification of the Agreement had been completed, the Administration proceeded to bring the Italy Order into operation on 14 August 2010.

4. Members may recall that on 2 June 2010, the Director of Administration (the Director) wrote to the Clerk to the House Committee agreeing to issue LegCo briefs on all subsidiary legislation with the exception of commencement notices, in respect of which the bureaux concerned would consider issuing LegCo briefs on a need basis. On the need for a LegCo brief on the Commencement Notice, Security Bureau has explained to us that according to the established practice, they normally do not issue a LegCo Brief on the Commencement Notice. It further noted that the legislative progress may vary from one jurisdiction to another and that the Italy Order and the Agreement were thoroughly examined by LegCo during their passage.

5. There are no legal or drafting difficulties identified in relation to the Commencement Notice.

Encl

Prepared by

LAM Ping-man, Stephen
Assistant Legal Adviser
Legislative Council Secretariat
23 August 2010

政府總部
香港下亞厘畢道



GOVERNMENT SECRETARIAT
LOWER ALBERT ROAD
HONG KONG

本函檔號 OUR REF: SBCR 13/22/581/87 Pt. 3

來函檔號 YOUR REF:

電話號碼: TEL NO.: 2810 3523

傳真號碼: FAX NO.: 2524 3762

來函傳真: YOUR FAX: 2877 5029

BY FAX

16 August 2010

Mr Stephen Lam
Assistant Legal Advisor
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central

Dear Mr Lam,

**Mutual Legal Assistance in Criminal Matters (Italy) Order
(Commencement) Notice (L.N. 108 of 2010)**

Thank you for your letter dated 12 August 2010 on the above subject.

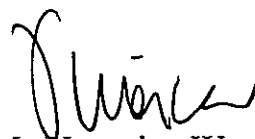
The Mutual Legal Assistance (MLA) in Criminal Matters (Italy) Order (the Order) and the MLA Agreement between Hong Kong and Italy (the Agreement) at Schedule 1 of the Order were scrutinized and passed by the Legislative Council on 19 January 2000. As stipulated in paragraph 1 of the Order and paragraph 7 of the Legislative Council Brief dated 30 December 1999, the Order shall come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette. According to Article 19(1) of the Agreement, the day should be thirty days after the date on which Hong Kong and Italy inform each other of the fulfilment of their respective requirement of the entry into force of the Agreement.

We notified the Italian side on 26 January 2000 that the Agreement had been endorsed by the Legislative Council on 19 January 2000. Following this, we issued letters to the Italian side in March 2004, October 2004, November 2005, July 2008, February 2009 and July 2010

seeking an update on the progress of their ratification of the Agreement. All along, we were informed that the ratification process was pending completion. On 15 July 2010, we received notice from Italy that their ratification of the Agreement had been completed. The Order was brought into operation on 14 August 2010 through a Commencement Notice published in the Gazette by the Secretary for Security on 6 August 2010.

The established practice is that we normally do not issue a Legislative Council Brief on the Commencement Notice. We note that the legislative progress may vary from one jurisdiction to another and that the Order and the Agreement were thoroughly examined by the Legislative Council during their passage.

Yours sincerely,



(Ms Veronica Wong)
for Secretary for Security

立法會
Legislative Council

LC Paper No. LS91/09-10(01)

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 3 September 2010**

**LEGAL NOTICE NOT REQUIRED TO BE TABLED AND NOT SUBJECT TO
AMENDMENT**

**Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474)
Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Amendment of
Schedule 1) Notice 2010 (L.N. 109)**

The Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474) (the Ordinance) provides for a specified toll adjustment mechanism in respect of the Tai Lam Tunnel and Yuen Long Approach Road. Under section 39(1) of the Ordinance, the franchisee (Route 3 (CPS) Company Limited) may give effect to toll increases on each of the three specified dates (i.e. 1 January 2003, 1 January 2010 and 1 January 2017) referred to in Schedule 3. However, under section 40(1), if the franchisee's actual net revenue (ANR) for any year, which is not a year ending immediately before a specified date, is less than the minimum estimated net revenue (MENR) for that year as specified in Schedule 4 to the Ordinance, the franchisee may apply to the Secretary for Transport and Housing (the Secretary) to give effect to the next anticipated toll increase. Under section 42(1), where the franchisee has given effect to all the anticipated toll increases pursuant to section 39(1) or 40(1) and its ANR for any year occurring before the expiry of the franchise period is less than its MENR for that year, the franchisee may apply to the Secretary to give effect to an additional toll increase¹. The maximum levels of increase in respect of different categories of vehicles are specified in Schedule 2 to the Ordinance.

2. Schedule 1 to the Ordinance specifies the Tai Lam Tunnel and Yuen Long Approach Road Tolls. Under section 45(1), where a toll is increased under the Ordinance, the Commissioner for Transport shall by notice published in the Gazette amend Schedule 1. Section 45(2) stipulates that the franchisee shall not give effect to more than one increase in the tolls in one year. Section 45(3) provides that section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply in respect of such notice. Accordingly, the Notice is not required to be tabled before the Legislative Council and is not subject to amendment by the Legislative Council.

¹ According to paragraph 8 of the LegCo Brief, as from 19 June 2005, the franchisee has given effect to all the anticipated toll increases and created four additional toll increases. The current statutory toll increase under the Notice is the 5th additional toll increase.

3. This Notice, which came into operation on 4 September 2010, replaces Schedule 1 to the Ordinance with a new Schedule 1 to reflect the increase of tolls effected under section 42 of the Ordinance. The amounts of increase are in accordance with the maximum amounts permitted under Schedule 2 to the Ordinance. The last statutory toll increase came into effect on 1 August 2009 (L.N. 173 of 2009).

4. A comparison of the statutory tolls before the increase effected by the Notice and with effect from 4 September 2010 is as follows -

Tai Lam Tunnel and Yuen Long Approach Road Tolls

Category	Vehicle	Toll (\$) before increase	Toll (\$) (as from 4 September 2010)
1.	Motorcycles, motor tricycles	45	50
2.	Private cars, electrically powered passenger vehicles, taxis	50	55
3.	Public and private light buses	135	150
4.	(a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	135	150
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	55	60
5.	(a) Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes	145	160
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	55	60
6.	(a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	165	180
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	55	60

Category	Vehicle	Toll (\$) before increase	Toll (\$) (as from 4 September 2010)
7.	Public and private single-decked buses	135	150
8.	Public and private double-decked buses	150	165

5. As stated in paragraph 3 of the LegCo Brief issued by the Transport and Housing Bureau in September 2010 (File Ref: THB(T)CR 19/3/5591/91), since the operation of the Tai Lam Tunnel and Yuen Long Approach Road in 1998, the franchisee's net revenue has consistently fallen short of the specified levels. The current toll increase is based on the franchisee's 2005/06 Net Revenue Statement (NRS) submitted in August 2005 showing that the franchisee's net revenue for 2005/06 was \$420 million, which is lower than the minimum net revenue of \$877 million for that year specified in Schedule 4 to the Ordinance. According to the LegCo Brief, the Administration has examined the NRS in accordance with the requirement under the toll adjustment mechanism and noted that the franchisee's current statutory toll increase complies with the relevant provisions under the Ordinance. Notwithstanding the statutory toll increase with effect from 4 September 2010, according to paragraph 9 of the LegCo Brief, the franchisee has indicated that it will offer concessions to all types of vehicles so that the current toll levels will be maintained. Therefore, there is no actual increase of the tolls. Details of the new statutory and concessionary tolls as compared with the current tolls are set out in Annex D to the LegCo Brief.

6. The Panel on Transport has not discussed the new statutory tolls under the Notice.

7. No difficulties have been identified in the legal and drafting aspects of the Notice.

Prepared by

LO Wing-ye, Winnie
Assistant Legal Adviser
Legislative Council Secretariat
6 September 2010

立法會
Legislative Council

LC Paper No. LS92/09-10(01)

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 24 September 2010**

Date of tabling in LegCo : 13 October 2010

Amendment to be made by : 10 November 2010 (or 1 December 2010 if extended by resolution)

**Toys and Children's Products Safety Ordinance (Cap. 424)
Toys and Children's Products Safety Ordinance (Amendment of Schedule 2)
Notice 2010 (L.N. 110)**

The Toys and Children's Products Safety Ordinance (Cap. 424) (the Ordinance) provides for safety standards for children's toys and safety standards for specified chattels used in association with children, and to provide for other powers to enhance the safety of children. The Toys and Children's Products Safety (Amendment) Ordinance 2010 (5 of 2010) (the Amendment Ordinance) amended the Ordinance by, among other things, adding a new Schedule 2, namely, "Children's Product Standards". The Amendment Ordinance came into operation on 1 April 2010 (L.N. 29 of 2010). Schedule 2 provides for operative standards for children's products, which are international standards or standards adopted by major economies. Under the combined effect of the definition of "Children's Product Standard" in section 2 and section 5 (relating to the requirement that children's product must comply with children's product standards) of the Ordinance, no person shall manufacture, import or supply a children's product unless the product complies with all the requirements contained in at least one children's product standard specified in Schedule 2 or if the standard is amended, as so amended. The Secretary for Commerce and Economic Development may, by notice published in the Gazette, amend Schedule 2 (section 37 of the Ordinance).

2. There are 12 types of children's products listed in Schedule 2 with specified standards. The Amendment Notice updates the standards specified for the following six types of products –

- (a) baby walking frames;
- (b) child safety barriers for domestic use;
- (c) children's cots for domestic use;
- (d) children's paints;

- (e) playpens for domestic use; and
- (f) wheeled child conveyances.

3. Members may refer to the LegCo Brief (ref: CITB CR 08/18/3) issued by the Commerce, Industry and Tourism Branch of the Commerce and Economic Development Bureau in September 2010 for the background about the Amendment Notice. The major changes with respect to these six types of children's products are set out in Annex B to the LegCo Brief.

4. The Amendment Notice has not been referred to any LegCo Panel. According to the Administration, consultations with major trade associations and organizations advocating children welfare were conducted in May 2010. In response to the concerns about the frequency of updates and the need for a reasonable grace period, the Administration has proposed that the updates take effect on 1 December 2010 (paragraph 7 of LegCo Brief).

5. Under section 1 of the Amendment Notice, the Amendment Notice will come into operation on 1 December 2010.

LEGAL NOTICES NOT REQUIRED TO BE TABLED AND NOT SUBJECT TO AMENDMENT

United Nations Sanctions Ordinance (Cap. 537)

United Nations Sanctions (Eritrea) Regulation (L.N. 111)

6. The United Nations Sanctions (Eritrea) Regulation (the Eritrea Regulation) was made by the Chief Executive under section 3 of the United Nations Sanctions Ordinance (Cap. 537) (the Ordinance) on the instruction of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council to give effect to the decision of the Security Council of the United Nations (UNSC) in Resolution 1907 (2009) as adopted by UNSC on 23 December 2009. According to Resolution 1907 (2009), UNSC expressed concern that Eritrea has provided political, financial and logistical support to armed groups engaged in undermining peace and reconciliation in Somalia and regional stability.

7. The Eritrea Regulation prohibits –

- (a) the supply, sale, transfer or carriage of arms or related materiel to Eritrea or certain persons;
- (b) the provision of certain assistance or training in certain circumstances;
- (c) the procurement of certain items, assistance or training from Eritrea or a person connected with Eritrea;

- (d) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;
- (e) dealing with funds or other financial assets or economic resources owned by or otherwise belonging to, or held by, certain persons or entities; and
- (f) entry into or transit through Hong Kong by certain persons.

8. The Eritrea Regulation also provides for the seizure and forfeiture of any document, cargo or article which is evidence in relation to the commission of an offence under the Eritrea Regulation.

9. Members may refer to the information paper issued by the Commerce and Economic Development Bureau in September 2010 (LC Paper No. CB(1) 2920/09-10(01)) to the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions (the Subcommittee) for further information.

10. Under section 3(5) of the Ordinance, sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to regulations made under the Ordinance. Therefore, the Eritrea Regulation is not subject to amendment by the Legislative Council. However, it comes within the terms of reference of the Subcommittee. Members may consider referring Eritrea Regulation to the Subcommittee for its consideration.

11. The scrutiny of the Eritrea Regulation is still ongoing and the Legal Service Division will report further if necessary.

Prepared by

Kitty CHENG (L.N. 110)
LEE Ka-yun, Kelvin (L.N. 111)
Assistant Legal Advisers
Legislative Council Secretariat
28 September 2010