

立法會
Legislative Council

LC Paper No. LS44/10-11

**Paper for the House Committee Meeting
on 1 April 2011**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 25 March 2011**

Date of tabling in LegCo : 30 March 2011

Amendment to be made by : 13 April 2011 (or 18 May 2011 if extended by resolution)

PART I SUBSIDIARY LEGISLATION

Import and Export Ordinance (Cap. 60)

Import and Export (General) (Amendment) Regulation 2011 (L.N. 43)

The Regulation is made by the Chief Executive in Council under section 31 of the Import and Export Ordinance (Cap. 60) (the Ordinance) to amend the Import and Export (General) Regulations (Cap. 60 sub. leg. A) (General Regulations) and the Import and Export (Fees) Regulations (Cap. 60 sub. leg. B) (Fees Regulations).

2. The Regulation seeks to remove-
 - (a) the licensing requirement for textiles import from countries or places other than the Mainland, and textiles export to countries or places other than the Mainland and the United States of America; and
 - (b) the licensing and notification requirements for all textiles transshipment.
3. Under sections 6C and 6D of the Ordinance, the import and export of textile products are prohibited respectively except with a licence issued under section 3 of the Ordinance. Exemptions to the licensing requirement are provided in the General Regulations.
4. The proposed amendments to the General Regulations are as follows-

- (a) to add new regulation 6(1A) and (1C) to give effect to the removal of licensing requirements mentioned in paragraph 2 above (section 4); and
- (b) to repeal regulations 6BC, 6BD, 6BE and 6BF which provide for the requirement of lodging notification by the registered traders for the import and export of textiles as transshipment under the Textiles Trader Registration Scheme (sections 6, 7, 8, 9, 12 and 13) and make consequential amendments.

5. Consequential upon the removal of the notification requirement in relation to all textiles transshipment, the Fees Regulations are amended by removing references to transshipment notification in regulation 2(2A) and item 13A of the Schedule (sections 15 and 16).

6. This Regulation will come into operation on 20 May 2011.

7. Members may wish to refer to the LegCo Brief (File Ref. : CR EIC 110/10/2/18) issued by the Commerce and Economic Development Bureau in March 2011 for the justifications of the proposed amendments and other background information.

8. At the meeting of the Panel on Commerce and Industry on 21 December 2010, the Administration briefed members on the proposed adjustments to the Hong Kong textiles control arrangements, and the consequential legislative amendments to the General Regulations and the Fees Regulations. The Panel generally supported the proposal.

District Councils Ordinance (Cap. 547)

Declaration of Constituencies (District Councils) Order 2011 (L.N. 44)

9. The Order is made by the Chief Executive in Council under section 6 of the District Councils Ordinance (Cap. 547) to declare the respective constituencies of the 18 Districts by delineating their areas and giving names to the constituencies.

10. The Order will come into operation on 23 May 2011 for the purpose only of enabling arrangements to be made for the holding of the District Council ordinary election in 2011, and wholly on 1 January 2012 (i.e. the beginning of the fourth term of office of District Councils). The existing Declaration of Constituencies (District Councils) Order 2006 (Cap. 547 sub. leg. E) will consequentially be repealed.

11. The Order is made by the Chief Executive in Council after accepting in their entirety the recommendations in the report submitted by the Electoral Affairs Commission (EAC) to the Chief Executive on the delineation and names of the constituencies for the District Council Election in 2011.

12. Members may refer to the LegCo Brief (File Ref: CMAB C2/11) issued by the Constitutional and Mainland Affairs Bureau on 25 March 2011, for the working principles adopted by the EAC in arriving at its provisional recommendations and, following public consultation on its provisional recommendations, the approach it adopted in drawing up its final recommendations. According to paragraphs 15 and 16 of the LegCo Brief, EAC, having regard to the representations received, adjusted its provisional recommendations in respect of the boundaries of 19 constituencies and the names of two. In the end, the boundaries of 122 constituencies were changed and EAC allowed 26 constituencies to deviate from the population quota by more than 25%, mainly due to the need to preserve identity and local ties.

13. In total, 412 constituencies are declared, seven more than the existing number due to an addition of one elected seat in each of the five District Councils, namely Kwun Tong, Yau Tsim Mong, Kwai Tsing, North district and Sai Kung, and an addition of two elected seats in the Yuen Long District Council for the fourth term under the District Councils Ordinance (Amendment of Schedule 3) Order 2010 which was approved by the Legislative Council on 1 December 2010.

14. The Constitutional Affairs Panel has not discussed the Order. However, during the deliberations of the Subcommittee on the District Councils Ordinance (Amendment of Schedule 3) Order 2010, members urged the Administration to expedite the delineation of constituency areas so that the preparation work of prospective candidates who planned to participate in the 2011 election will not be affected.

**Fisheries Protection Ordinance (Cap. 171)
Fisheries Protection (Specification of Apparatus) (Amendment) Notice 2011
(L.N. 45)**

15. The Notice is made by the Director of Agriculture, Fisheries and Conservation under Regulation 4A of the Fisheries Protection Regulations (Cap. 171 sub. leg. A).

16. Regulation 4A prohibits the use for the purpose of fishing any apparatus of a class or description as specified in the Schedule to the Fisheries Protection (Specification of Apparatus) Notice (Cap. 171 sub. leg. B). This

Notice adds "[a]ny apparatus, whether operated manually or mechanically, which is intended to be used to drag or tow a net on the seabed or through the water column in a bag shape by one or more vessels to capture fish by straining them from the water" (i.e. trawling devices) as an item to the Schedule. The Notice will come into operation on 31 December 2012.

17. According to the LegCo Brief (with no file reference) issued by the Food and Health Bureau on 23 March 2011, the ban on the use of trawling devices for fishing together with other fisheries management measures would help conserve the marine diversities and fisheries resources, recover and maintain a marine environment of good quality and bring the fishing industry back to a sustainable path in the long term.

18. At its meeting of 8 March 2011, the Panel on Food Safety and Environmental Hygiene was consulted on the proposed ban. Some members supported the trawl ban. However, members were generally concerned about the impact on the livelihood of trawler fishermen and other related trades. A special Panel meeting was held on 15 March 2011 to receive views from deputations on the proposal. The Administration has proposed to provide ex-gratia payment for the affected trawler owners, the trawl vessel buy-out scheme and one-off grants to the affected local docklands. A special training programme for trawler fishermen will also be introduced to assist them to switch to other sustainable fisheries related operations. Members may refer to the LegCo Brief for details of the proposed assistance and other information.

Concluding Remark

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

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

United Nations Sanctions Ordinance (Cap. 537)

United Nations Sanctions (Democratic Republic of the Congo) Regulation 2011 (L.N. 46)

United Nations Sanctions (Liberia) Regulation 2011 (L.N. 47)

United Nations Sanctions (Liberia) Regulation 2010 (Repeal) Regulation (L.N. 48)

United Nations Sanctions (Iran) (Amendment) Regulation 2011 (L.N. 49)

20. L.N. 46 to L.N. 49 were made by the Chief Executive under section 3 of the United Nations Sanctions Ordinance (Cap. 537) (UNSO) on the

instruction of the Ministry of Foreign Affairs and after consultation with the Executive Council.

United Nations Sanctions (Democratic Republic of the Congo) Regulation 2011 (L.N. 46)

21. Given the political and social instability in Democratic Republic of the Congo (Congo) which has constituted a threat to international peace and security in the region, the Security Council of the United Nations (UNSC) has adopted several resolutions imposing sanctions against Congo and renewing certain sanctions upon their expiry since 2003. These resolutions have been implemented by regulations made under UNSO, the most recent one being the United Nations Sanctions (Democratic Republic of the Congo) Regulation 2010 (Cap. 537 sub. leg. AP), which expired at midnight on 30 November 2010.

22. L.N. 46 is made to give effect to certain decisions of the UNSC in Resolution 1952 (2010) as adopted by the UNSC on 29 November 2010 in respect of Congo to renew until 30 November 2011 the prohibition against-

- (a) the supply, sale, transfer or carriage of arms or related materiel to certain persons (operating in the territory of Congo);
- (b) the provision of advice, assistance or training related to military activities in certain circumstances;
- (c) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;
- (d) dealing with funds or other financial assets or economic resources owned by or otherwise belonging to, or held by, certain persons or entities; and
- (e) entry into or transit through Hong Kong Special Administrative Region (HKSAR) by certain persons.

The provisions of L.N. 46 are similar to the provisions in the United Nations Sanctions (Democratic Republic of the Congo) Regulation 2010.

23. L.N. 46 has come into operation when it was published in the Gazette on 25 March 2011. It will expire at midnight on 30 November 2011.

United Nations Sanctions (Liberia) Regulation 2011 (L.N. 47)

United Nations Sanctions (Liberia) Regulation 2010 (Repeal) Regulation (L.N. 48)

24. Since March 2001, the UNSC has adopted several resolutions imposing sanctions against Liberia in view of the country's support for armed rebel groups in neighbouring countries which constitutes a threat to international peace and security in the region. Among these resolutions, the UNSC Resolution 1532 (2004) as adopted by the UNSC on 12 March 2004 relates to sanctions by financial measures. The relevant UNSC resolutions have been implemented by regulations made under UNSO, the most recent one being the United Nations Sanctions (Liberia) Regulation 2010 (Cap. 537, sub. leg. AQ). All provisions in the United Nations Sanctions (Liberia) Regulation 2010 (the 2010 Liberia Regulation), except for those relating to financial sanctions (including prohibition, licensing and law enforcement provisions), expired at midnight on 16 December 2010.

25. L.N. 47 was made to give effect to the decision of the UNSC in Resolution 1961 (2010) as adopted by the UNSC on 17 December 2010 in respect of Liberia to renew the prohibition against-

- (a) the supply, sale, transfer or carriage of arms or related materiel to certain persons (operating in the territory of Liberia);
- (b) the provision of advice, assistance or training related to military activities in certain circumstances; and
- (c) entry into or transit through HKSAR by certain persons.

26. L.N. 47 also continues to give effect to a decision of the UNSC in Resolution 1532 (2004) by providing for the prohibition against-

- (a) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources; and
- (b) dealing with funds or other financial assets or economic resources owned by or otherwise belonging to, or held by, certain persons or entities; and

The provisions of L.N. 47, which renew or continue the implementation of sanctions against Liberia, are similar to the provisions in the 2010 Liberia Regulation.

27. Except those provisions that relate to financial sanctions (i.e. sections 6 and 11 of L.N. 47), provisions of L.N. 47 have come into operation when it was published in the Gazette on 25 March 2011.

28. The provisions of L.N. 47 which relate to the prohibition mentioned in the above paragraph 25(a) to (c) will expire at midnight on 16 December 2011.

29. L.N. 48 repeals the 2010 Liberia Regulation consequential upon the making of L.N. 47.

30. L.N. 48 and provisions of L.N. 47 that relate to financial sanctions will come into operation on 1 April 2011.¹

United Nations Sanctions (Iran) (Amendment) Regulation 2011 (L.N. 49)

31. Since 2006, the UNSC has made several resolutions imposing a range of sanctions against Iran. In September 2007, the United Nations Sanctions (Iran) Regulation (Cap. 537 sub. leg. AF) (Iran Regulation) was made to implement sanctions specified in the UNSC Resolutions 1737 (2006) and 1747 (2007), and the Iran Regulation was amended in May 2008 to give effect the UNSC Resolution 1803 (2008) which was to expand the sanctions regime against Iran.

32. In view of Iran's continued refusal to cooperate with the International Atomic Energy Agency (IAEA) in respect of matters concerning non-proliferation of nuclear weapons and non-compliance with the resolutions of the UNSC mentioned in paragraph 31, and the concerns with the security risks posed by Iranian nuclear programme, the UNSC adopted Resolution 1929 (2010) on 9 June 2010 to strengthen and expand the current sanctions against Iran. L.N. 49 amends the Iran Regulation to give effect to the decision of the UNSC in Resolution 1929 (2010).

33. The major amendments to the Iran Regulation are as follows-

- (a) amending the definition of certain terms in section 12 of the Iran Regulation to cover additional items, equipment and technologies;

¹ According to the Administration's paper on L.N. 47 and L.N. 48 (LC Paper No. CB(1)1723/10-11(03)), after the repeal of the United Nations Sanctions (Liberia) Regulation 2010 (Cap. 537 sub. leg. AQ), the current list of the relevant persons or relevant entities as specified by the Chief Executive for the purpose of the financial sanctions will cease to have effect. A new name list can only be gazetted pursuant to section 31 of L.N. 47 after it comes into effect on 25 March 2011. To ensure continued implementation of financial sanctions against Liberia, the Administration proposes that L.N. 48 (the Repeal Regulation) and the provisions of L.N. 47 relating to financial sanctions be brought into operation one week after other provisions of L.N. 47 comes into effect.

- (b) expanding the prohibition against the carriage and procurement of certain items using ships, aircraft or vehicles to cover foreign vessels and aircraft within the territory of HKSAR;
- (c) extending to additional persons and entities the prohibition against making available to certain persons or entities any funds, or other financial assets or economic resources, and dealing with funds or other financial assets or economic resources owned or held by certain persons or entities;
- (d) extending the prohibition against the entry into or transit through the HKSAR to additional persons;
- (e) providing for the prohibition against-
 - (i) the transfer to Iran and certain persons of technology or technical assistance related to an activity that relates to ballistic missiles capable of delivering nuclear weapons;
 - (ii) the sale to, and acquisition by, certain persons of an interest in a commercial activity which involves uranium mining and the provision of financial services to facilitate the acquisition of such interest by certain persons; and
 - (iii) the provision of certain services to ships which are owned or contracted by, or chartered to, persons connected with Iran or a national of Iran;
- (f) empowering a magistrate or judge to make an order for forfeiture and disposal of seized items on application by an authorized officer, and providing for procedures for the owner of the seized items to object to the proposed forfeiture;
- (g) enabling the Chief Executive to specify additional persons or entities as a relevant person or a relevant entity for the purpose of the financial sanctions under the Iran Regulation.

34. L.N. 49 has come into operation when it was published in the Gazette on 25 March 2011.

35. Members may refer to the information papers on the above Regulations provided by the Commerce and Economic Development Bureau and circulated to Members on 28 March 2011 (LC Paper No. CB(1)1723/10-11(01)-(03)) for further information.

Concluding Remarks

36. Under section 3(5) of UNSO, sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to regulations made under UNSO. Therefore, L.N. 46 to L.N. 49 are not required to be tabled in the Legislative Council (LegCo) and are not subject to amendment by LegCo. However, since they come within the terms of reference of the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions (the Subcommittee), Members may consider referring them to the Subcommittee for its consideration.

37. The scrutiny of L.N. 46 to L.N. 49 is still ongoing and the Legal Service Division will report further if necessary.

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29 March 2011